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Washington State Supreme Court

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Ronald R. Carpenter
Clerk

NO. 916014-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
COURT OF APPEALS NO. 31757-9-III

In Re The Estate of:

MARGARET WIMBERLEY,

Deceased.

PETITION FOR REVIEW BY
WASHINGTON STATE SUPREME COURT

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I. IDENTITY OF PETITIONER

James Wimberley (hereinafter “Jim”) is the petitioner in this Court and was the appellant in the Court of Appeals.

II. DECISION BELOW

The opinion of the Court of Appeals was originally filed on January 29, 2015, as an unpublished opinion. Appendix A-001 to A-044. The Petitioner filed a motion for reconsideration on February 10, 2015. Appendix A-045 to A-053. That motion for reconsideration was denied on March 5, 2015. Appendix A-054. Northwest Trustee Services, (“Trustee”) was one of the respondents in the Court of Appeals, and filed a Motion to Publish the opinion of the Court of Appeals on February 18, 2015, which motion was granted on March 31, 2015. Appendix A-055.

III. ISSUES PRESENTED FOR REVIEW

A. Should review be accepted where the decision of the Court of Appeals in this matter is in conflict with prior decisions of the Washington State Supreme Court which establish a duty on the part of a trustee to make and accurate and equitable accounting of trust assets, and to make efforts to return misappropriated trust assets to the appropriate trust beneficiary?

B. Should review be granted where the decision of the Court of Appeals conflicts with prior rulings of the Supreme Court holding that it is the duty of the courts to effectuate the intent of the testator whenever it is within the court's power to do so, and that the doctrine of substantial compliance applies to the modification of trusts?

C. Should review be accepted where the decision of the Court of Appeals conflicts with prior decisions of the other divisions of the Court of Appeals which have held that community property ceases to exist and cannot be created after the death of one of the members of the community?

D. Should review be granted where the issues presented herein are issues of substantial public interest with regard to the administration of revocable living trusts and the powers and duties of the trustee of a revocable living trust?

IV. STATEMENT OF THE CASE

A. The Important Facts Are Undisputed

All parties agree that it was Margaret Wimberley's (hereinafter "Margaret") intent to give her son James Wimberley (hereinafter "Jim"), without offset, the family home he helped build at 386 Fromherz Road, Yakima, WA (hereinafter "Fromherz Road Property"), as well as the assets located in the bank account at Yakima Federal Savings and Loan

Association known as the “Building Fund Account.” The Trustee, the Trial Court, and the Court of Appeal have all acknowledged this intent by awarding the Petitioner a 75% interest in both the Fromherz Road Property and the Building Fund Account. Their theory is that every item of trust property and every penny of trust assets is indivisibly owned 50% by Margaret, and 50% by C.W. Wimberley, and therefore James may only receive all of Margaret’s 50% of each individual asset plus one half of C.W.’s 50% interest in each asset for a total of 75%. But this interpretation ignores the clear language of the Wimberley Family Trust (hereinafter the “Trust”), attached hereto as Appendix B-001 to 066, which grants Margaret authority to change the beneficiaries of Trust A (Appendix B-034), and the discretion to make a non pro-rata division of assets into Trust A (Appendix B-029) that would include the Fromherz Road Property and Building Fund Account. See further, *infra* at § 4 B.

There is also no dispute that on three separate occasions in December 2009, Wes Wimberley (hereinafter “Wes”) took Margaret (at a time when she was incapacitated and no longer the trustee) to the Yakima Federal Savings and Loan where she withdrew \$306,000 in trust assets from the Building Fund Account, transferred \$26,000 to Wes Wimberley, and placed the rest in a non-trust bank account out of the reach of the then current Trustee, Jim. Appendix A-011. Over a year and a half earlier, on

April 3, 2008, Margaret had amended the trust to remove herself as trustee. Amendment 04-08 to the Wimberley Family Revocable Living Trust Agreement Dated January 15, 1999, is attached hereto as Appendix B-071 to 073. She had no legal authority to complete the transfers which occurred in December of 2009, but the Court of Appeals erroneously upheld the trial court's decision to allow the trustee to disregard the invalid transfer and misappropriation of Trust assets. The Trustee, Trial Court, and the Court of Appeals all awarded 75% of the remaining assets contained in that account (\$2,488.77) to Jim. Had the Trustee properly accounted for the invalid transfer and misappropriation, under the Trustee/Trial Court/Court of Appeals theory Jim would be entitled to an additional distribution of \$229,500 in Trust assets.

The only significant disputes in this matter are legal issues regarding 1) whether Margaret Wimberley had a right to control disposition of 100% of the Fromherz Road Property and the Building Fund Account; and 2) whether the trustee's accounting should account for the invalid transfer and misappropriation of \$306,000 in Trust assets shortly before Margaret's death.

B. C.W. and Margaret Intended for the Survivor's Trust to be Revocable, and for the Survivor to Make a Non Pro-Rata Division of Assets Between the Trusts.

The Trust document granted the Surviving Trustor absolute discretion to 1) make a non pro-rata division of Trust assets; and 2) amend or revoke the Survivor's trust without limitation. The Wimberley Family Trust instrument reads:

Survivor Trust A

Survivor's Trust A shall consist of the Survivor's on-half (1/2) interest in the commonly owned property or community property, quasi-community property and all other property included in the Trust Estate as the separate property of the Surviving Trustor. Upon division into shares at the death of a Trustor, *Survivor's Trust A shall remain revocable by the Surviving Trustor during the life of the Surviving Trustor.* Upon the death of the Surviving Trustor this share shall become irrevocable.

Any property not allocated to the Decedent's Marital Share, or otherwise allocated by the provisions of this Trust at the death of the first of the Trustors to die, shall be allocated to this Survivor's Trust A.

Decedent's Marital Share

Decedent's Marital Share shall consist of the Decedent's one-half (1/2) interest in the commonly owned property or community property of the Trust Estate, on-half (1/2) interest in the quasi-community property and all other property included in the Trust Estate as the Separate Property of the Decedent Trustor. Decedent's Marital Share shall be divided and allocated into Decedent's Trust B and C. Upon creation of such Trust shares, Decedent's Trust B and Trust C are irrevocable.

The Surviving Trustee shall have the sole discretion

to select the commonly owned, community and quasi-community assets or the proportionate share of any such assets which shall be included in the Decedent's Trust B and Trust C. In no event, however, shall there be included in Trust C any assets or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and Trust C shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind to the Decedent's share at the value of such asset at the date of distribution to the Decedent's share.

Trust, Appendix A-028 to A-029, (emphasis added)

In 2006, Margaret hired attorney Richard Greiner to draft an amendment intended to carry out her intent of transferring the Fromherz Road Property and Building Fund Account to Jim, without offset, after her death. After almost a year of planning, Margaret executed the Amendment 07-07 to the Wimberley Family Revocable Living Trust Agreement Dated January 15, 1999. Appendix B-067 to 070. There is no evidence that Margaret executed a written document purporting to make a pro-rata division of Trust property into sub-trusts during her lifetime. It is undisputed, however, that Margaret had the authority to make a non pro-rata distribution of both the Building Fund Account and the Fromherz Road Property into the Survivor's Trust over which she exercised full power to amend or revoke. Had she done this, those assets would have transferred to Jim in accordance with her wishes, and likely without dispute. Instead, she executed the 2007 Amendment that expressed her

intent to transfer those assets to Jim, but did not specifically segregate those two assets into the Survivor's Trust.

At the time of Margaret's death the Trust held assets approaching \$1,175,000 according to the Trustee's accounting. Margaret had authority to devise 50% of those assets (\$587,500), and amount sufficient to fulfill her intent to gift the Fromherz Road Property and Building Fund Account to Jim.

C. The Trustee's Accounting Failed at its Primary Purpose, Which is to Make an Accurate and Equitable Accounting.

Perhaps the most troubling error in the opinion of the Court of Appeals, is the refusal to require the Trustee to account for the invalid transfer and misappropriation of over \$306,000 in Trust assets only months before Margaret's death; at a time when she was not trustee and had no authority to access trust bank accounts; and at a time when there is no dispute that she was incapacitated and highly vulnerable to undue influence. The Court of Appeals' findings of fact, clearly acknowledge the invalid transfer and misappropriation:

- a) Wes Wimberley admitted in interrogatories to taking Margaret to the Bank on three separate occasions for the purpose of assisting her to withdraw \$306,000 in trust assets, giving him \$26,000 and placing the remainder in a non-trust account. Appendix A-11.
- b) There is no dispute that on April 3, 2008, Margaret amended the trust to remove herself as trustee, thus intentionally divesting herself of any authority to access or

control trust assets, including the Building Fund Account. Appendix A-11; Appendix A-9.

- c) There is little dispute that at the time the transfer took place Margaret was incapacitated and extremely vulnerable to undue influence. The declaration of Kristyan Calhoun, a geriatric care specialist who evaluated Margaret, found that Margaret could not remember making the transaction and that she was highly susceptible to undue influence. Appendix A-15 to A-18.

Upon being appointed as successor trustee, Northwest Trustee Services was ordered to conduct a trust accounting going back to the date of death of C.W. Wimberley in 2001. Appendix A-20. Such an accounting would have properly accounted for the invalid transfer and misappropriation of \$306,000 in trust assets from the Building Fund Account in December 2009. However, the Trustee arbitrarily decided without a prior court order, not to complete the court ordered accounting back to the date of C.W.'s death, instead opting to go back only to the date of Margaret's death. The explanation of the Trustee was that it would be too difficult to construct an accounting all the way back to 2001.

Jim agreed that an accounting going back 13 years would be onerous and expensive to produce. But, being aware of the substantial invalid transfer and misappropriation of Trust assets just prior to Margaret's death, Jim proposed that instead of the irrelevant date of Margaret's death, the accounting should begin when Margaret resigned as trustee in 2008, making Jim trustee. In that way there would be a full

accounting of all actions that occurred after she relinquished her authority as trustee, including the invalid transfer of \$306,000. Jim made this argument to the Superior Court, where it was rejected, and to the Court of Appeals where the ruling of the Superior Court was upheld.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Ruling of the Court of Appeals is in Direct Conflict with Prior Rulings of this Court and Other Divisions of the Court of Appeals.

1. The opinion of the Court of Appeals conflicts with prior case law requiring a successor trustee to make an accurate and equitable accounting of, and where necessary recover, misappropriated trust assets.

The Court of Appeals held that it was permissible for the Trustee to restrict the accounting to a time period which excluded the known, invalid withdrawal and misappropriation of \$306,000 in Trust assets. This decision conflicts with prior case law that requires a trustee to make an accurate and equitable accounting of trust assets which have been stolen or otherwise misappropriated through fraudulent or invalid means.

“The converse of the duty of the trustee to render an accounting and to furnish information is the right of the beneficiary or his representative to demand such an accounting or information.” *State v. Taylor*, 58 Wn.2d 252, 258, 362 P.2d 247 (1961). Here, Jim had a right to demand that the successor Trustee complete an accounting that accurately accounted for the misappropriation of trust assets in December 2009. A

random date produces a random result, which, as will be seen below, is not “equitably fair.”

Tucker v. Brown, 20 Wn.2d 740, 150 P.2d 604 (1944) affirms the elements that a successor trustee should consider in accounting for the actions which occurred prior to his or her appointment. The *Tucker* court was concerned with very similar issues to those in the present matter; namely the appropriateness of an accounting by a successor trustee after the death of the trustor. The *Tucker* Court stated that the duty of the trustee is to, “render an account not only mathematically correct, but equitably fair...” *Id.* at 772 (emphasis added). The *Tucker* Court established a number of important rules with regard to the duty of a successor trustee to account for trust assets and actions of a prior trustee which occurred prior to the successor trustee’s appointment:

It was the duty of appellant [the successor trustee] to make a full and correct accounting of all known assets of the Smith-Brown trust which had come into the possession or under the control of appellant. There are two reasons for the imposition of this duty:

- (1) Appellant was commanded to make an accounting by this court in *Tucker v. Brown*, supra.
- (2) It is the general rule that all successor trustees must make an accounting of the trust.

‘The personal representative of a deceased trustee must account for the period his decedent was in possession as well as for that during which he himself has held it’ 65 C.J. 890, Trusts, § 786.

Tucker, 20 Wn.2d at 770-71.

Here, when Jim demanded that the successor Trustee produce an accounting that accounted for the misappropriated Trust assets, the Trustee had a duty to make an accurate and equitable accounting. By randomly choosing a starting date that ignored the misappropriation of Trust assets, the successor trustee may have made his job easier, but the resulting “accounting” was not equitably fair as required by *Tucker*.

In addition to addressing the trustee’s duty to make an accurate and equitable accounting, the *Tucker* Court addressed the issue of what to do when title to trust property has been moved or altered through an invalid transfer. The Court stated:

In tracing trust property,

‘The court proceeds on the principle that the title has not been affected; that the true owner of the fund traced to the possession of another has the right to have it restored, not as a debt due and owing, but because it is his property wrongfully withheld from him; the equity springing as it does from the right to trace the funds as property’

Tucker, 20 Wn.2d at 784; citing *Northwest Lumber Co. v. Scandinavian-American Bank*, 132 Wash. 449, 451-52, 231 P.951 (1925).

Here, the funds which were misappropriated from the building fund account were easily traceable. The Trustee had a duty to return those funds to the proper account and beneficiary “on the principle that the title has not been affected; that the true owner of the fund traced to the

possession of another has the right to have it restored.” *Tucker*, 20 Wn.2d. at 784. The ruling of the Court of Appeals relieving the Trustee of the duty to make an accurate and equitable accounting of the misappropriated funds and return them to the proper account and beneficiary, is in conflict with the law as established in the Washington State Supreme Court case of *Tucker*.

2. The opinion of the Court of Appeals conflicts with prior case law holding that the courts have a duty to uphold the intent of the testator, and that the doctrine of substantial compliance is applicable to trust modifications.

“As stated in *Rood on Wills*, 2d Ed., § 413, p.352, ‘It has been declared a fundamental maxim, the first and greatest rule, the sovereign guide, the polar star, in giving effect to a will, that the intention of the testator as expressed in the will is to be fully and punctually observed so far as it is consistent with the established rules of law.’” *In re Elliott’s Estate*, 22 Wn.2d 334, 351, 156 P.2d 427 (1945). The Washington State Supreme Court in *In re Elliott’s Estate* then goes on to state the following:

In this connection we adopt the language used by Judge Beals in his dissenting opinion in the Bronson case, supra, as follows: ‘Courts go to the utmost possible length to carry into effect the testator’s wishes, provided always that he has given them lawful expression. It is not only the testator’s will which must be given effect, but it is his last will which must prevail. Where possible, the last will of a competent testator will be upheld, and courts will not by technical rules of statutory or other legal construction defeat the right of the testator to have effect given to the latest expression of his

testamentary wishes.’

Id.

The ruling of the Court of Appeals in this case contradicts the fundamental maxim described *In re Elliott's Estate*. There is no dispute that Margaret intended for Jim to have the Fromherz Road Property and Building Fund Account as specific distributions without offset. It is undisputed that C.W. made no provision for specific distributions of trust assets such as the Fromherz Road Property, and that he merely intended his half of the residue of the Trust split between Jim and Wes. There is no dispute that both the terms of the Trust and state statute authorize Margaret to make a non pro-rata division of Trust assets. There is no dispute that Margaret went to an experienced estate planning attorney to help her achieve her intent. The only dispute is whether the doctrine of substantial compliance should be applied to Margaret's attempts to modify the distributive provisions of the trust. In ruling that strict compliance was required, the Court of Appeals contradicts prior rulings of this Court. Appendix A-032 to 033.

The Washington State Supreme Court in *Williams v. Bank of California, N.A.*, 96 Wn.2d 860, 639 P.2d 1339 (1982) held that strict compliance is not necessary to effectuate trust modifications when the method used to amend the document substantially complies with the terms

of the trust. Here, Margaret substantially complied with the terms of the trust when she executed the 2007 Amendment.

Through the 2007 Amendment Margaret selected those assets of the trust over which she would retain control, thus effectively designating the assets which would be part of the Survivor's Trust and substantially complying with the modification requirements of the Trust. The Trust document itself did not specify any particular method for Margaret to divide and allocate the assets into the sub-trusts, and she had ample statutory authority to divide the assets by whatever method she chose. *See* RCW 11.98.070(15).¹ The division of assets into sub-trusts could have been accomplished by merely creating a ledger showing that the Fromherz Road Property and Building Fund Account constituted assets of Trust A.

In executing the 2007 Amendment, Margaret was simply accomplishing by that amendment after her death what she could have accomplished by making a non pro-rata division of Trust assets during her lifetime. C.W.'s rights are not altered by application of the doctrine of substantial compliance to uphold Margaret's intent because the ultimate outcome is the same whether the division occurs during her lifetime, as

¹ A trustee has authority to, "Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocation to any beneficiary and without any obligation to make an equitable adjustment;" RCW 11.98.072 (15).

authorized in the trust, or after her death through application of the doctrine of substantial compliance. The refusal of the Court of Appeals to uphold the intent of the testator and apply the doctrine of substantial compliance contradicts prior rulings of this Court.

3. The opinion of the Court of Appeals conflicts with prior case law holding that assets acquired after the death of the first spouse are the separate property of the surviving spouse and community property ceases to exist.

“At death, the community is dissolved and the former community property becomes the separate property of the decedent’s estate and of the surviving spouse.” *Matter of Estate of Politoff*, 36 Wn. App. 424, 427, 674 P.2d 687 (1984) (Div. I), *see also Edmonds v. Ashe*, 13 Wn. App. 690, 695, 537 P.2d 812 (1975) (Div. II). The Court of Appeals in this matter held that proceeds resulting from a wrongful death suit which Margaret received after C.W.’s death as a result of claims involving C.W.’s exposure to asbestos, became community property when placed into the Trust by Margaret. The result is that at least in this circumstance, community property was created after the death of one member of the community. Appendix A-031. This ruling conflicts with *Matter of Estate of Politoff* and *Edmonds*, and this Court should accept review to clarify the law as to this issue.

B. Review Should be Granted Because this is a Matter of Substantial Public Interest.

The issues faced in this matter are common in Washington State. A substantial number of married couples in Washington State have used Revocable Living Trusts as estate planning tools. In 2011, the Washington State Legislature acknowledged the increasing significance of these trusts by adding an entirely new chapter to the Revised Code of Washington titled RCW 11.103 “Revocable Trusts.” In drafting the bill, the legislature stated, “Revocable living trusts are commonly used as an alternative to traditional wills as a way to pass property upon death.” Washington Final Bill Report, 2011 Reg. Sess. H.B. 1051. However, while Revocable Living Trusts are becoming increasingly common, there are very few cases in our state providing guidance on the duties and authority of trustees of these trusts.

Situations such as the one presented herein are common with revocable living trusts. Trustors are often induced into establishing a living trust as a means to avoid probate, or reduce taxes. Unfortunately, they are often times not informed of the duties and restrictions involved with the establishment of a trust. They commonly fail to properly fund the

trust, comingle trust and non-trust assets, ignore accounting and reporting restrictions created by the trust, and attempt to modify or revoke trust provisions after the death of the first spouse. Like Margaret and C.W., in nearly every instance the trustors never intended to use the Trust to limit the surviving spouse's ability to control the couple's assets after the death of the first spouse. Margaret's 2007 Amendment is a reflection of this common misunderstanding where she states that she was not required to divide the trust into sub-trusts after C.W.'s death because taxes were no longer an issue. Appendix B-067. These are issues that are being encountered by a substantial number of Washington State residents, and their attorneys. As a matter of public interest this Court should accept review in order to provide guidance to attorneys and their clients about the rights and duties of trustors, trustees, and the many beneficiaries of revocable living trusts.

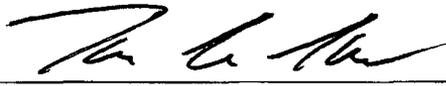
VI. CONCLUSION

The Court of Appeals decision conflicts with prior case law and raises issues of substantial public interest. The Court's decision 1) eliminates the duty of a trustee to accurately and equitably account for trust assets and return misappropriated assets to the appropriate trust account or beneficiary; 2) fails to recognize the duty of the court to uphold the intent of the testator and denies the application of the doctrine of

substantial compliance to trust modifications; 3) allows for the accumulation of community property after the death of one member of the community; and 4) addresses an issue of substantial public interests with regard to the duties and authority of trustees of a revocable living trust. These are important issues which deserve the attention and consideration of the Washington State Supreme Court.

Respectfully submitted this 30th day of April, 2015.

HELSELL FETTERMAN LLP

By: 
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Attorney's for Petitioner

CERTIFICATE OF SERVICE

I, Kacie Coselman, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.
2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman LLP, 1001 4th Avenue, Suite 4200, Seattle, WA, 98154; and did on the date listed below (1) cause to be filed with this court; (2) and cause to be delivered via U.S. Mail to Linda Sellers and Sara Watkins, Halverson Northwest Law Group P. C., P.O. Box 22550, Yakima, WA 98907-2550, and via U.S. Mail to Cam McGillivray, 7307 N. Division, P.O. Box 18969, Spokane, WA 99228-0969, the Petition for Review by Washington State Supreme Court.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: April 30, 2015, at Seattle, Washington.


Kacie Coselman

Appendix A

FACTS

C.W. and Margaret Wimberley married on July 7, 1945. They bore and raised two children, Carroll Wesley Wimberley (Wesley) and James Keith Wimberley (James). C.W. and Margaret Wimberleys' estate planning process spanned the course of many years. This statement of facts follows the creation and administration of a family trust and changes to the trust, after the death of husband C.W. Wimberley, with Wesley or James lurking in the background.

On August 17, 1967, C.W. and Margaret executed a community property agreement designating all property owned or later acquired by the couple as community property. On January 15, 1999, the couple created a revocable living trust: "The Wimberley Family Trust, C.W. Wimberley and Margaret Wimberley, Trustor and/or Trustees" (Trust). The Trust identified C.W. and Margaret as trustors, one of them as survivor trustee upon the death of the first spouse, and beneficiaries while living. The Trust named James and Wesley Wimberley as heirs and primary beneficiaries. The trust designated James as successor trustee, upon the deaths of C.W. and Margaret. As trustors, C.W. and Margaret Wimberley retained the power to make amendments to the Trust or change its beneficiaries, but only as long as both remained alive.

The Wimberley Family Trust, like many family trusts, contained A-B-C trust provisions. The instrument directed the surviving trustee of C.W. and Margaret Wimberley to divide the Trust equally into two shares: Survivor's Trust A (Survivor's

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Trust) and Decedent's Marital Share ("Decedent's Trust B" and "Decedent's Trust C"), upon the death of the first spouse. The purpose behind this division was to avoid or limit estate taxes.

The Wimberley Family Trust instrument read:

Survivor's Trust A

Survivor's Trust A shall consist of the Survivor's one-half (1/2) interest in the commonly owned property or community property, quasi-community property and all other property included in the Trust Estate as the separate property of the Surviving Trustor. Upon division into shares at the death of a Trustor, *Survivor's Trust A shall remain revocable by the Surviving Trustor during the life of the Surviving Trustor. Upon the death of the Surviving Trustor this share shall become irrevocable.*

Any property not allocated to the Decedent's Marital Share, or otherwise allocated by the provisions of this Trust at the death of the first of the Trustors to die, shall be allocated to this Survivor's Trust A.

Decedent's Marital Share

Decedent's Marital Share shall consist of the Decedent's one-half (1/2) interest in the commonly owned property or community property of the Trust Estate, one-half (1/2) interest in the quasi-community property and all other property included in the Trust Estate as the Separate Property of the Decedent Trustor. Decedent's Marital Share shall be divided and allocated into Decedent's Trust B and C. *Upon creation of such Trust shares, Decedent's Trust B and Trust C are irrevocable.*

The Surviving Trustee shall have the sole discretion to select the commonly owned, community and quasi-community assets or the proportionate share of any such assets which shall be included in the Decedent's Trust B and Trust C. In no event, however, shall there be included in Trust C any assets or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and Trust C shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind to the Decedent's share at the value of such asset at the date of distribution to the Decedent's share.

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Clerk's Papers (CP) at 138-39 (emphasis added).

Under the Trust document, Decedent's Trusts B and C would pay their net income to the surviving spouse, while the principal of Trusts B and C could pay for the survivor's health care, education, support, and maintenance. Decedent Trust B also allowed, at the surviving spouse's request, a year-end principal payment of \$5,000 or 5 percent of the trust's aggregate value.

C.W. and Margaret desired to place all their assets in the Trust. The Wimberley Family Trust instrument read:

The Trustors intend this Trust to be the recipient of all their assets, including without limitation assets whether commonly owned, jointly owned, marital, deferred marital, community, quasi community or separate. The Trustors intend this trust to be the named beneficiary of all interests of which either or both Trustors are, or may become, Beneficiaries.

....

Property held by the Trustees of this Trust, which is held in trust for the benefit of the beneficiaries subject to the provisions of this Trust Agreement, is and shall be property owned by the Trust.

The Trustors have paid over, assigned, granted, conveyed, transferred and delivered, and by this Trust Agreement do hereby pay over, assign, grant, convey, transfer and deliver unto the Trustees their property . . . any other property that may be received or which has been received by the Trustees hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustees as hereinafter set forth.

CP at 114. A 1999 deed placed title to real property in the Wimberley Family Trust.

Numerous financial account statements designated the trust as the account holder.

The Wimberley Family Trust instrument mentioned the possibility of loans from

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the parents to James and Wesley and directed that such loans be forgiven upon the death of the parents, but reduce the debtor son's distribution of trust assets. The instrument read:

Gifts or Loans

The Trustee shall reduce a Beneficiary's share by any gifts or loans as shown in Schedule A.

CP at 158. No gifts or loans were ever recorded in Schedule A.

At the time of executing the trust instrument, C.W. and Margaret signed wills.

Both wills contain "pour-over" provisions that:

give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situated and whether acquired before or after the execution of this Will, to the Trustee under that certain Trust executed by me, which is known as "The Wimberley Family Trust."

CP at 359. A pour-over will is a testamentary device wherein the writer of a will creates a trust and decrees in the will that the property in his or her estate, at the time of his or her death, shall be distributed to the trustee of the trust.

The Wimberleys also articulated their wishes in a Letter of Intent and Declaration of Gift, executed as part of the Family Trust:

As part of our estate plan, we have established a Revocable Living Trust. We have transferred property into the Trust and in the future we will take property out and put it into the Trust as we desire. It is our intent that all property held in the Trust be our commonly owned or community property, subject to the laws governing joint ownership. In confirmation of this intent, we make the following declaration:

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1. All property held by the undersigned in the Trust . . . is the commonly owned or community property of the said Trustors unless otherwise designated by writing in the Trust documents, or in the manner in which title is held in the Trust.

2. All property which is the separate property of either Trustor has been and will be so designated in writing and signed by the Trustors.

3. Any property in the said Trust which had its origin as separate property, or which cannot be traced as to its origin, is the commonly owned or community property of the Trustors. If any question should arise, it is the intent of each of the Trustors to gift, in consideration of their mutual love and affection, so much of any disputed property to the other as is necessary to create joint ownership in both Trustors. This gift is intended and made as and when any asset is placed into the Trust.

4. Any previous community property agreement entered into between the undersigned shall no longer be applicable to, and is thereby revoked with respect to, all property held by the undersigned in the Trust known as: **The Wimberley Family Trust.**

CP at 175.

C.W. Wimberley died on January 20, 2002, rendering Margaret Wimberley, at the age of 85, the Trust's survivor trustee. The Trust instrument directed her to divide the trust in half, with one-half becoming Trusts B and C. Margaret never divided the Trust into the Survivor and Decedent's trusts.

On July 18, 2007, five years after the death of C.W., Margaret Wimberley amended the Wimberley Family Trust "so as to fully comply with the Trust Laws of the State of Washington." CP at 178. Richard C. Greiner, a Yakima estate planning attorney, drafted the amendment. The 2007 amendment contained provisions that contradict key provisions of the original Trust.

The 2007 amendment stated in part: "Given the changes to the Federal Estate Tax

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laws, the Surviving Trustor/Trustee elects to not fund trust assets into what would be a 'decendent's trust'. . . . The Surviving Trustor shall have full use and control over all trust assets." CP at 178. The amendment did not specify which changes to the federal estate tax laws necessitated this substantial revision from the original Trust instrument. To the contrary, the amendment may have created more tax liability for the Wimberley family.

Stephen Fry, an attorney with whom Margaret later consulted, testified:

[T]he federal estate tax will reset to \$1 million in 2011 and by her failure to fund the irrevocable trust, and instead fund the revocable Survivor's Trust A that is for her sole benefit, she has subjected the value of her estate, including the Survivor's Trust A, which exceeds \$1 million, to federal estate tax. As a consequence of failing to fund the irrevocable trust, Margaret's estate could pay approximately \$200,000 in federal estate tax!!

CP at 325.

The 2007 amendment also changed the distribution proportions of the Trust's assets. Under the original terms of the Trust, James Wimberley, as successor trustee, upon Margaret's death, would divide all trust assets into equal separate shares and distribute them to Wesley and himself. The 2007 amendment further added a provision to the distribution instructions:

Primary Residence: The Trustor's primary residence located at 386 Fromherz Road, Yakima Wa. and all of the surrounding property, buildings, improvements and fixtures and supporting equipment used on that property shall be distributed unto James K. Wimberley as compensation time, labor and other resources in improving the property. *This distribution shall not be subject [to] offset against his share [of] the residual trust.*

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Further, the entire balance of the building fund account held with Yakima Federal Savings and Loan Association shall be set aside from all of the Trustor's other accounts and investments and be distributed to Jim for the purpose of finishing the ongoing work on the property. Jim shall use this fund at his sole discretion toward finishing the property and the fund shall not be offset against his share of the residual trust.

Residual Distribution: The rest, residue and remainder of the trust assets shall be divided in equal shares between Jim and Wes as forth in the trust document and shall be subject to the specific distribution set forth above.

CP at 179-80 (emphasis added).

Margaret Wimberley had earlier expressed a desire to leave the Fromherz Road residence to James. In a handwritten letter to Richard Greiner, dated August 31, 2006,

Margaret stated:

With respect to the Family Trust (WFT) my wishes are as follows:

1. 386 Fromherz Road property, improvements, and equipage to transfer to Jim (son). This is not meant to be an inheritance. It is in consideration for his help and responsibility from beginning to completion of the improvements. It is my home and residence so long as I live and capable on my own or with assistance.

CP at 221. According to attorney Greiner:

7. During the 2007 conversations, Margaret wanted to ensure that James would have the house, free from any interest by Wesley. She explained that James and CW built the house and James continued to work on the house after CW's passing. She wanted James to have the house as repayment for the time and labor that he put into the house.

8. Margaret also explained that there was much work to be done to finish the house so she had established an account that she named the "building fund" account at Yakima Federal. The "building fund" actually consisted of two accounts, a checking account No. 5734, and a savings account No. 5370. Margaret wanted those funds to be James' fund to finish

the house and to be James' inheritance, free from Wesley's share of the trust.

9. Therefore at Margaret's direction I prepared the 2007 amendment to the trust which Margaret edited multiple times and signed on July 18, 2007.

10. James transported Margaret to my office; but on each of our visits, I requested that James leave the room so that I could talk to Margaret candidly. I am certain that she was not being manipulated by James.

CP at 195.

Richard Greiner maintains that Margaret "knew exactly how she wanted to leave her bounty and she was clear in expressing the same to me." CP at 195. According to Greiner, Margaret worried about the relationship between her sons. She characterized Wesley as "the one who went out and made his way in the world" and she characterized James as "the one who stayed with us to help and protect us." CP at 195.

On April 3, 2008, Margaret Wimberley amended the Wimberley Family Trust again. The amendment contained three significant changes. The Trust became irrevocable with "no further changes to the trust, or the identity of the trustee, or the distributive provisions." James Wimberley became trustee, with the added condition that he "not be removed as trustee except for a finding by the trust protector that he has violated a fiduciary duty owed to Margaret V. Wimberley." The 2008 amendment anointed Richard Greiner as Trust Protector "to amend the trust where necessary to effect [sic] the initial intent of the Trustor and to appoint Trustees of the Trust, when necessary." CP at 187-88.

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Richard Greiner drafted the 2008 amendment. Greiner later recounted Margaret Wimberley's reasons for drafting the second amendment:

11. In February of 2008, Margaret again made an appointment to amend the trust. When we spoke, she was more deeply concerned about the relationship between James and Wesley and was very concerned that Wesley would try to do something to manipulate her.

12. Margaret did not want to be in the position that she could be manipulated by Wesley and therefore directed me to prepare a document for her resignation as Trustee and to appoint James as the Trustee. She also asked me to be the Trust Protector of the Trust, to ensure that the Trust plan could not be altered.

13. After numerous edits by Margaret, she signed the 2008 amendment.

14. Again, Margaret met with me in my office alone when we talked about these goals and changes.

CP at 195-96.

In September 2009, Margaret Wimberley asked Richard Greiner's office to prepare a deed for the Fromherz house, for the purpose of conveying the home immediately to James Wimberley:

While I occasionally saw Margaret after April of 2008 our next purposeful meeting was September of 2009 when she asked me to prepare a deed of the house on Fromherz to James. At that time I became concerned that Margaret was not thinking as clearly as I had witnessed in our past meetings. However, Margaret was very clear and determined that she wanted to sign over the entire house to James at that time. Upon Margaret's insistence, I prepared a Quit Claim Deed to effect the transfer, but I did not record said deed. I specifically talked to Margaret about whether James had put pressure on her to transfer the house and I was convinced that he had not. At Margaret's request, I held the deed and it was not filed but remained in my files.

CP at 196.

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In December 2009, Wesley Wimberley thrice accompanied his mother, Margaret Wimberley, to Yakima Federal Savings and Loan, where the Wimberley Family Trust maintained its principal bank account. During the first visit, Wesley Wimberley obtained copies of account withdrawals made by James Wimberley from the trust's checking and savings accounts. On the second visit, Margaret withdrew \$26,000 from the trust savings account, which Wesley maintains went to him as part of the 2009 annual estate gifting. During the final visit, Margaret withdrew \$280,000 in the form of a cashier's check, which she and Wesley took to Yakima Valley Credit Union, where they met with Suzie Williams, an investment advisor. The money, however, was later deposited at Umpqua Bank into a nontrust account. By the terms of the 2008 amendment, Margaret no longer served as trustee when she made these withdrawals from the trust's bank accounts. We are not told if Wesley Wimberley then knew of the 2008 amendment to the Wimberley Family Trust.

On January 11, 2010, Richard Greiner learned of the withdrawals from Yakima Federal Savings and Loan. Greiner later declared:

James brought Margaret into my office. He explained that he had discovered that Margaret had removed some \$306,000 of Trust money from the Irrevocable Trust account at Yakima Federal Savings and had transferred \$26,000 to Wes, and deposited the remaining \$280,000 into her personal name. I discovered that Margaret and Wesley had met with Ms. Suzie Williams at Members Financial, located at then Yakima Valley Credit Union.

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Margaret's demeanor on January 11, 2010, struck me as very frail. While she recognized me and called me by name, she had remarkably aged and was very frail physically and mentally.

She did not remember going to either Yakima Federal or going to Yakima Valley Credit Union.

She did not remember moving any money from the trust.

She did know that James was the Trustee of the trust.

When I talked to Margaret alone, she was very confused about her finances and did not know where any of her money was located.

Margaret was so mentally frail that she would have signed anything that I asked her to sign or do anything that I asked her to do.

CP at 197. On February 8, 2010, Greiner wrote a letter to Wesley Wimberley “demanding to know what the purpose of the transfer was.” CP at 197. He received a response from attorney Carter Fjeld, with whom he corresponded by mail through March 2010.

On April 9, 2010, Wesley Wimberley and his wife took Margaret Wimberley to attorney Marcus J. Fry. Fry later declared:

As is my practice, when family is present, I first cover background information. This is helpful, particularly if the elderly person is having some memory issues. There was also a discussion about issues between Jim and Wes and the lack of access Wes' family had to Margaret, including an incident while Margaret was at the hospital.

4. I then discussed the purpose of the visit, which was to review her estate planning and explain to Margaret her estate plan, which consisted of a large binder of documents. In the large binder was a trust document entitled, the Wimberley Family Revocable Living Trust, dated January 15, 1999.

CP at 321.

In April 2010, Marcus Fry reviewed the Wimberley Family Trust documents:

. . . I noticed that upon the passing of Margaret's husband, the trust created two trusts, an irrevocable trust and a revocable "Survivor's Trust." This is common estate planning as is generally referenced as "A-B estate planning." I inquired as to what was placed into each of these trusts and she was unsure what had [been] placed into each of them. I then reviewed two trust amendments to the trust and she was unaware of the effect of these. I then asked her to tell me what she thought her estate plan did. She stated that it divided everything equally between her two sons, but that her son Jim received the house that she was living in and that he was helping to build. I explained to her that in my opinion her trust as written did not carry out this plan and that the house and funds in a designated account came off of the top before being divided. She stated that this is not what she wanted.

6. About that time, I then requested that both Mr. Wes Wimberley and his wife excuse themselves from the meeting so that I could meet with Margaret alone. This is standard procedure when I have family who are part of the initial meeting. I then questioned Margaret alone about her estate plan more specifically.

CP at 321-22.

Attorney Marcus Fry discussed with Margaret Wimberley differences between her intentions and the language of the Wimberley Family Trust amendments:

First, she was unaware of the potential estate tax liability she may have exposed her estate to by not funding the irrevocable trusts created upon the passing of her husband, C.W. I advised her that as of right now, the federal estate tax will reset to \$1 million in 2011 and by her failure to fund the irrevocable trust, and instead fund the revocable Survivor's Trust A that is for her sole benefit, she has subjected the value of her estate, including the Survivor's Trust A, which exceeds \$1 million, to federal estate tax. As a consequence of failing to fund the irrevocable trust, Margaret's estate could pay approximately \$200,000 in federal estate tax!! This is something she certainly wants to avoid and desires to correct.

Second, I advised her that by electing not to fund the irrevocable trusts, she has likely breached her fiduciary duty and may be confronted with a lawsuit from either of her two sons, Jim Wimberley and Wesley Wimberley, or their children (Margaret's grandchildren) for her failure to

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properly fund C.W.'s irrevocable trusts. Again, she indicated this is something she wants to avoid and obviously can be by properly funding the irrevocable trust.

Third, I discussed the fact pursuant to the terms of the amendment she has no control of her own assets. She was rather surprised by this as well as. [sic] I explained to her that unless there is a tax avoidance benefit, usually a person does not change a revocable trust to irrevocable and eliminate one's authority to handle and dispose of his/her assets as he/she sees fit. In fact she was under the impression that she had the authority to handle and dispose of her assets and Jim was only assisting her, not controlling her affairs. I corrected her misunderstanding informing her that the amendment stated that she only had the right to use her property, but retained no decision-making authority over her own assets. Margaret desires that the trust be changed to revocable and that we eliminate the sole condition for removal of Jim as trustee as she believes that an independent professional trustee should be appointed to avoid future disputes between her two sons regarding her assets.

CP at 325-26.

After speaking with Marcus Fry, Margaret Wimberley terminated Richard Greiner as her attorney; revoked the general durable power of attorney she previously granted to James Wimberley; and contracted Kristyan Calhoun, a geriatric care manager, to assess her living situation and relationships with her children. Fry characterized the situation as a "tug-o-war" between James and Wesley, but insisted:

At no time during my meeting with her did I feel or sense that she was being unduly influenced or manipulated. Rather it was clear to me that she had been involved in unusual estate planning that was not clearly explained to her and that did not reflect her wishes.

CP at 322.

Attorney Marcus Fry memorialized events in a letter that he sent to Richard

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Greiner and James Wimberley, on April 13, 2010. Three days after Fry mailed the letter,

James delivered a handwritten note to Fry, from Margaret Wimberley:

. . . I had not thought through all things at the time of our meeting; so at this time I insist that all be returned to where we started and that you put Jim back in the position of Power of Attorney. He is to be the only Power of Attorney. I insist today.

So, please prepare the required letter or documents for that Power of Attorney for Jim's reinstatement and send myself, Jim, and Rich Greiner a copy. Also send a copy to Rich G. by fax.

I want everything reinstated as to before we talked. I insist immediately—today. Thank you.

Margaret Wimberley

April 16, 2010—2pm

No, I will not discuss this matter further at this time.

The above written I left message on Marcus Fry's voicemail—
2:15pm 16 April MPW

CP at 333. Fry stated that Margaret's voice on the voicemail "was shaky and sounded fearful," and that he "became very concerned about manipulation that may be occurring with Margaret by her son Jim." CP at 322.

On April 29, 2010, Kristyan Calhoun began her evaluation of Margaret Wimberley, then age 93, for the purpose of producing a professional care plan at the request of Margaret and attorney Marcus Fry. Calhoun visited with Margaret five times, three times privately.

Kristyan Calhoun assessed Margaret Wimberley's cognitive functioning:

I find that Mrs. Wimberley is able to make limited decisions when presented with factual information. She is not able to consistently recall events from the past 5 plus years. Mrs. Wimberley is not aware of her estate value. She does not know whether or not she has a professional who

assists her with financial matters. She does not know where her accounts are located. She relies on her son, Jim Wimberley to ensure that bills are paid in a timely manner. She does not believe that she has a lot of money but enough to meet her financial obligations and to be comfortable. She was not able to recall names of her grandchildren during two visits and was not able to tell me the name of Wes['] wife on one occasion. She does not know how long she has lived in her home. She was not aware of how long ago her husband passed away.

I believe that Mrs. Wimberley will believe whatever she is told by her family, friends or professionals. The way that information is presented to her in conversation is very important as to how she will make a decision. It is unfair to discuss issues related to her finances, estate planning and living arrangements with her. This only causes anxiety and continued conflict within the family.

CP at 202-04.

When speaking with Kristyan Calhoun, Margaret Wimberley did not remember meeting with either Marcus Fry or Richard Greiner. Margaret consistently expressed a wish that her sons receive equal shares of her estate, and that James Wimberley receive the Fromherz residence:

Mrs. Wimberley was able to understand that she had met with two attorneys and had made changes that appeared to be opposite of each other. She stated that she does not remember meeting with attorneys. I asked her on three separate occasions to help me clarify what her wishes in regards to her estate were. The first time she stated that she wanted things split 50/50 with the boys. . . . She stated that the home was to [be] Jim's when she passed away but it was hers for now. I asked her about the possessions in the home. She stated that those needed to be split between the boys. I asked her if this was consistent with documents that she signed and she stated that she hoped that it was.

The second occasion . . . she told me that C.W. took care of all of that before he died. I explained again that she had met with two attorneys and had made different plans. She did not recall the attorneys and stated that she did not want to hurt the boys and did not want them fighting. I

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asked her if she would be willing to meet with the two attorneys and myself at her home so that she could discuss this. She stated that she would rather not. I asked her if she remembered talking to me about her estate in the past. She did not.

The third time . . . she told me that she did not want to choose between her sons and that she should be able to just leave a note for them and not have to talk about this. . . . I asked her who the house belonged to. She stated that it was hers until she dies and then Jim's. I asked her where she would like her furniture, bank accounts and things to go. She stated that she would like them to be split between the boys.

CP at 203.

Kristyan Calhoun found Margaret Wimberley "highly susceptible to undue influence."

Mrs. Wimberley does not believe that either of her children has been able to access her accounts other than her son Jim, who pays monthly bills. She does not believe that she has given either son permission to take money from her accounts for their own use. I asked her if she had any concerns with her sons making investments for her. She did express concern that Wes not have access to her accounts. She stated that he has struggled with managing his finances. She does not believe that she has loaned money to either of her sons since her husband passed away.

. . . .
I recommend that Wes Wimberley not contact financial institutions to access information either with or without his mother. Mrs. Wimberley's forensic accounting should provide all information that is requested by Wes Wimberley. I do not feel that Mrs. Wimberley would say no to either of her sons to avoid a conflict. She has stated her concerns regarding Wes accessing her accounts and that neither of her sons discuss her estate or finances as it relates to inheritance.

CP at 203-09.

Wesley Wimberley told Kristyan Calhoun that he was concerned about the Fromherz home needing substantial repairs. Margaret Wimberley was not concerned and

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felt that “Jim will get to the projects as he has time.” CP at 204. James Wimberley told Calhoun that the funds for completing the house had been transferred out of the account by Wesley in the December 2009 visits to Yakima Federal Savings and Loan. Calhoun recommended that a local accounting firm complete a forensic accounting, retroactive to 2002, to address bank account withdrawals and outstanding loans that both brothers claimed the other received from Margaret.

Finally, Kristyan Calhoun recommended that Margaret Wimberley hire a caregiver to assist with her daily care and to address the conflict between Wesley and James Wimberley. Calhoun recommended that Wesley and his wife only visit and call Margaret during the caregiver’s shifts, in order to avoid the past friction and allegations between James and Wesley regarding their mother’s care. Calhoun finished her report on May 13, 2010.

On May 27, 2010, Richard Greiner sent a letter to Carter Fjeld and Marcus Fry. Greiner stated that, in light of Calhoun’s report, he would “not step away as Trust Protector and will not bow to the demands of Marcus’ letter of April 13th.” CP at 335. Greiner stated that he believed Margaret Wimberley was not capable of understanding her estate when she met with Fry at the beginning of April and that the information “must have come from Wesley.” CP at 335. Greiner also demanded that Wesley return the \$26,000 he received from his mother in December 2009.

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Marcus Fry responded to Richard Greiner's letter on June 7, 2010. He clarified that Margaret Wimberley had terminated Greiner's position as her attorney, not as Trust Protector. He also reiterated his concerns regarding Margaret's failure to fund the irrevocable Decedent's Trusts in accordance with the terms of the trust and that attempting to do so now or upon Margaret's death would incur "the wrath of the Internal Revenue Service." CP at 338.

Before the implementation of Kristyan Calhoun's recommendations, Margaret Wimberley died on August 2, 2010. On August 11, James Wimberley was appointed personal representative of Margaret Wimberley's estate. Under the terms of the 2008 amendment, James had served as trustee of the Wimberley Family Trust since April 2008.

On June 28, 2011, James deeded the Fromherz home to himself. After Margaret's death and while James served as trustee of the Family Trust, James used trust funds to pay for groceries, tires, car insurance, and his personal phone bill.

PROCEDURE

On November 1, 2011, Wesley Wimberley petitioned the court to remove James Wimberley as personal representative of Margaret Wimberley's estate and trustee of the Wimberley Family Trust. On January 20, 2012, Wesley moved to disqualify Richard Greiner as Trust Protector, and from acting as James Wimberley's attorney. Wesley

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argued that Richard Greiner cannot fulfill his duties as Trust Protector while filing motions and petitions against one of the beneficiaries.

On March 2, 2012, the trial court issued an order removing James Wimberley as trustee of the Wimberley Family Trust and appointing Stephen Trefts, dba Northwest Trustee & Management Services, as successor trustee. The order also removed Richard Greiner as Trust Protector. On March 2, the trial court directed Trefts to complete an accounting of the Wimberley Family Trust from C.W. Wimberley's death, on January 20, 2002, to the present. The court directed James Wimberley to turn over all family trust account records to the successor trustee. The court found that James Wimberley breached his fiduciary duty to the trust and to Margaret Wimberley's estate by failing to pay rent while he lived in the Fromherz home and by using trust money to pay for utilities and incidentals for the home.

In a letter opinion on December 20, 2011, the trial court addressed other payments that James Wimberley made with family trust funds that Wesley alleged amounted to a breach of fiduciary duty, including payment of James' Costco membership and food purchases. Wesley also questioned James' deeding the Fromherz house to himself without making a distribution in kind to Wesley. The trial court determined that the payments did not amount to breaches, but were "instances of disagreement between the Trustee and the Beneficiary," and that the 2007 amendment "seemed to authorize" James to deed the house to himself.

On September 28, 2012, Stephen Trefts sent an initial accounting of the Wimberley Family Trust to Wesley and James Wimberley. Trefts stated that completing an accounting from the date of C.W. Wimberley's death would be problematic because:

. . . we do not know what assets were held by Margaret and C.W. when C.W. died and . . . research could be very costly. Further, while there could be a case made that Jim, as Margaret's attorney-in-fact and trustee, was overreaching he in fact could have been following Margaret's instructions for distributions from the survivor's trust. Additionally it is now impossible to prove Margaret's incapacity. To further complicate matters, it is my understanding that toward the end of Margaret's life, there was a court finding that Wes was exploiting his mother financially and that he was only allowed supervised visitation. So, it may be an exercise in futility to try and recapture funds that were allegedly misused.

CP at 59-60.

In his accounting, Stephen Trefts concluded that James Wimberley should receive a 75 percent interest in the Fromherz home and Wesley the remaining 25 percent interest:

Margaret attempted to amend the Wimberley Family Trust to leave a 100% interest in the home to Jim. However, since a 50% interest in the home should have been placed in the [sic] C.W.'s irrevocable trust, Margaret could only leave her 50% interest in the home to Jim. Jim is also entitled to 50% of C.W.'s interest in the home (25%), for a total of 75% interest in the home. Wes is entitled to the remaining 25% interest in the home.

CP at 62. Finally, Trefts asked both brothers for additional information, including documentation for any loans made by Margaret to Wesley, James, or others; evidence that any contested expenses paid by James should be imposed on the estate; and tax information for the family trust and Margaret's estate. Trefts requested a response within

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60 days of the receipt of his letter.

Wesley Wimberley responded to Stephen Trefts' requests by November 9, 2012, but James Wimberley has yet to respond. On November 27, 2012, Richard Greiner responded on behalf of James. Greiner questioned Trefts' accounting of loans Margaret made to Wesley and his children. Greiner contended that money taken by Wesley from the home completion account at Yakima Federal Savings and Loan in December 2009 should be distributed to James, without setoff. Attorney Greiner asked why Trefts did not deduct, from Wesley's share of the assets, the \$26,000 gift to Wesley in 2009.

On December 12, 2012, Stephen Trefts responded to Richard Greiner:

1) **Templeton [Yakima Credit Union] Account** - You have questioned whether \$98,622.65 should have been moved into the Building Fund Account (YFS 45734) because Jim asserts that in the year prior to her death, Margaret moved funds from the Building Fund Account into the Templeton account.

As you are aware, our stated position is that since there was no evidence that Margaret was incapacitated prior to her death, we should begin the accounting with the assets that were in Margaret's trust and estate from the time of her death forward. At the time of Margaret's death the Building Fund had cash in the amount of \$2,488.77. Prior to Margaret's death, there were transfers between the various accounts and checks were written on the accounts for construction costs and also personal expenses. It is our contention that Margaret was aware of and approved of the transfers and balances, and that Jim as Trustee was also aware of the account values. Therefore, we have concluded that the balances in the accounts at Margaret's date of death are the appropriate starting balances.

As a point of interest, we have reviewed the records provided by Jim and find no evidence to support his assertion that there was a transfer of funds from the Building Fund to the Templeton Funds in 2009 in the records provided.

2) **Loans and Gifts** - Regarding the \$50,252.52 balance of the

outstanding loans which you questioned in your letter, the amount is an estimate of loans to grandchildren which would require further documentation as requested in the report accompanying our accounting. If documented, the loans to grandchildren would be assets of the estate, not liabilities to a Primary Beneficiary's share of the estate.

Regarding loans and gifts to the Primary Beneficiaries (Wes and Jim), page 48, paragraph 5 of the document states: "The Trustee shall reduce a Beneficiary's share by any gifts or loans as shown in Schedule A." There is no Schedule A, so it appears that loans and gifts made by Margaret to the Primary Beneficiaries are not chargeable against the share of either Wes or Jim.

However, we have a copy of a November 23, 1994 Court order as part of Jim's divorce settlement which assigns to Jim a total of \$67,000 in debt owed to C. W. and Margaret Wimberley [See CP 72-77]. Since the Order predates the January 15, 1999 Wimberley Family Trust, it would not need to be added to the Schedule A and is therefore an asset of the estate and trust. We need documentation of payment of this loan.

Another point of interest: an attempt to set aside the Schedule A required to document loans for the Primary Beneficiaries would be a daunting task. We would need to document and track loans, payments and interest. As far as gifts are concerned, the document includes as gifts "the care and maintenance, medical needs and education of any Primary Beneficiary" (page 47, paragraph 5). This would mean we would need to go back and capture not only large cash gifts such as the \$26,000 gift to Wes from Yakima Federal, but also medical and other insurance payments, room and board, etc. As stated in our prior correspondence, this is not practical and would not make a difference, because while Margaret was alive she had full authority to make gifts and transfers.

CP at 68-69.

Successor trustee Stephen Trefts set January 31, 2013, as the new deadline for James Wimberley's response to his request for information. Trefts informed James that he would file a preliminary accounting and petition for instructions if James did not timely respond. James Wimberley provided information in a January 23, 2013, response,

but Trefts found the information lacking and replete with meritless contentions.

On February 1, 2013, successor trustee Stephen Trefts filed a preliminary accounting and petition for instructions in Yakima County Superior Court. The trial court set a hearing for the petition on April 19, 2013. Richard Greiner withdrew as James Wimberley's attorney on March 19, 2013, and the court rescheduled the petition hearing for May 24, 2013. On May 21, 2013, James Wimberley filed a 225-page response to the preliminary accounting and petition for instructions. The response contained 200 pages of the Wimberley Family Trust's financial account history, assets, loans, and other documentation originally requested by Trefts. In a section of his response, James Wimberley asked the court to disinherit Wesley Wimberley for financially exploiting his mother, a vulnerable adult. The response asked that the trial court schedule a trial on this claim of James Wimberley.

In his February 1, 2013, petition, Stephen Trefts listed eleven instructions that he recommended the superior court deliver to him as successor trustee. The trial court agreed with the recommendations, lettered A to K, in a June 4, 2013, order approving preliminary accounting and petition for instructions. The June 4 order is the subject of this appeal. The body of the order read:

- A) That the start date for the accounting period is August 2, 2010, the date of Margaret Wimberley's death;
- B) Northwest Trustee & Management Services' accounting dated August 24, 2012 is accepted;
- C) James Wimberley shall reimburse the Wimberley Family Trust

(the "Trust") a sum of money in the amount of \$254,437.91;

D) James Wimberley shall reimburse the Trust interest accruing from the date of the entry of this Order at the rate of 12% per annum;

E) James Wimberley shall allow Stephen Trefts and/or his agents and/or Wesley Wimberley to enter and remain on the premises located at 386 Fromherz Drive, Yakima, and/or any other real property where Mr. Trefts believes property which belonged to Margaret Wimberley may be stored. Said meetings are to be coordinated with Wes Wimberley and must be concluded no later than August 1, 2013;

F) James Wimberley shall reimburse the Trust for the fees and costs associated with bringing this petition, including reasonable attorney fees and costs;

G) James Wimberley shall pay fees accrued by Northwest Trustee & Management Services' related to its forensic accounting;

H) The deed executed by James Wimberley quitclaiming the home located at 386 Fromherz Dr., Yakima, WA to himself is hereby null and void;

I) James Wimberly [sic] shall pay the Trust rent in the amount of \$800 per month for the period commencing August 2, 2010, the date of Margaret Wimberley's death;

J) This court shall issue Letters of Administration with Will Annexed to Stephen W. Trefts d/b/a Northwest Trustee & Management Services; and,

K) Petitioner has the right to amend his accounting to include newly discovered evidence, including without limitation the \$67,000 debt from James Wimberley to C.W. and Margaret Wimberley as indicated on James' dissolution decree.

CP at 345.

The trial court sent the signed June 4, 2013, order, along with a letter. In its transmittal letter, the court noted:

Mrs. Wimberley's intentions appear to have ebbed and flowed over the years, and at times were contrary to or at least in conflict with the terms of the trust she and her late husband, CW, entered into in 1999. Without delving deeply into the intricacies of the Dead Man Statute, RCW 5.60.030, it is sufficient to say the trust documents manifest Mr. and Mrs.

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Wimberley's intention clearly and inexplicably and it is those intentions which govern this proceeding.

Consequently, James' objections to the accounting are rejected and the successor Trustee's recommendations are accepted.

CP at 347. Neither the formal order nor the letter addressed James Wimberley's request for disinheritance of Wesley Wimberley.

LAW AND ANALYSIS

The Start Date of the Trust Accounting

We now begin our review of the many objections raised by James Wimberley to the accounting submitted by successor trustee Stephen Trefts. James Wimberley first contends that Trefts erred in using August 2, 2010, Margaret Wimberley's date of death, for his accounting's start date, rather than C.W. Wimberley's date of death. The trial court, on March 2, 2012, directed successor trustee Trefts to perform an accounting beginning on January 20, 2002, C.W.'s date of death.

Although he assigned error to the accounting's start date, James failed to deliver any analysis, case law, or statute that supports his contention that the trial court could not change the accounting's beginning date upon the recommendation of the successor trustee. RAP 10.3(a)(6) provides that an appellate brief should contain "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." Assignments of error not argued or further referred to in a brief are treated as abandoned by an appellant. *Talps v. Arreola*, 83

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Wn.2d 655, 657, 521 P.2d 206 (1974); *Anderson v. Dep't of Labor & Indus.*, 174 Wash. 702, 705-06, 26 P.2d 77 (1933); *State v. Wilson*, 16 Wn. App. 434, 439, 557 P.2d 18 (1976). Therefore, we will not address this assignment of error.

We observe that trustee Stephen Trefts recommended the new commencement date because of the expense of reconstructing the finances of Margaret Wimberley and Wimberley Family Trust transactions. James Wimberley, in part, caused this difficulty by his refusal to furnish records to Trefts. James is thus complaining about a problem he helped to create. As successor trustee and personal representative of the Wimberley estate, Stephen Trefts had the duty to settle the estate as quickly and efficiently as possible. RCW 11.18.200; RCW 11.48.010. The trial court, under Washington's Trust and Estate Dispute Resolution Act (TEDRA), ch. 11.96A RCW possessed "full and ample power and authority . . . to administer and settle . . . all trusts and trust matters," RCW 11.96A.020, by issuing orders it deems necessary or proper in resolving a dispute. RCW 11.96A.060.

Community Property Agreement

James Wimberley next contends that the successor trustee erred in his accounting because the 1967 community property agreement executed by C.W. and Margaret Wimberley superseded the Wimberleys' subsequently executed wills and the initial trust instrument. Stephen Trefts based his recommendations primarily upon the Wimberley Family Trust instrument signed in 1999. According to James, if the successor trustee and

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the trial court understood that the community property agreement remained in effect throughout Margaret Wimberley's life, the accounting and distribution of assets would change. Under James' theory, all assets not in trust at the time of C.W. Wimberley's death passed free of the trust such that Margaret could distribute those assets differently than demanded in the trust instrument. James Wimberley does not identify the assets in trust or outside of the trust at the date of C.W.'s death, but under our ruling, this identification is unimportant.

The Wimberley Family Trust instrument recognized the intention of transferring all assets owned by C.W. and Margaret Wimberley into the trust. Records show real property and financial accounts to be placed in the Trust. When the trustor is also the trustee, no formal transfer of assets from the trustor to the Trust is needed. *Samuel v. King*, 186 Or. App. 684, 64 P.3d 1206, *review denied*, 335 Or. 443, 70 P.3d 893 (2003); *Sutter v. Sutter*, 345 Ark. 12, 43 S.W.3d 736 (2001); *Taliaferro v. Taliaferro*, 260 Kan. 573, 921 P.2d 803 (1996); *Brevard County v. Ramsey*, 658 So. 2d 1190 (Fla. Dist. Ct. App. 1995). Thus, we assume that all property of the couple entered the trust in 1999, when the Wimberleys signed the trust instrument. This assumption alone terminates the effectiveness of the community property agreement upon the couple's assets.

A second document disassembles James Wimberley's argument. At the time of creating the Family Trust, C.W. and Margaret Wimberley declared their intent in a Letter of Intent and Declaration of Gift. The Letter of Intention confirmed the desire to revoke

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the community property agreement for property held in the trust. Therefore, regardless of the language of the trust instrument, the community property agreement ended.

James advocates for a narrow interpretation of this statement to mean that C.W.'s share of any community property not held in the Wimberley Family Trust devised to Margaret upon his death. James' construction of the community property agreement, wills, and trust, is counter to the testamentary intentions of C.W. and Margaret Wimberley, and existing case law. "Community property agreements are treated as contracts, and the general rules of contract rescission apply." *Higgins v. Stafford*, 123 Wn.2d 160, 165, 866 P.2d 31 (1994). Parties to a community property agreement can therefore rescind the agreement by mutually manifested intention clearly shown.

Higgins, 123 Wn.2d at 165; *In re Estate of Lyman*, 7 Wn. App. 945, 948, 503 P.2d 1127 (1972). In finding intent of rescission, Washington courts look to the language of written agreements, the subject matter of the agreement, and the subsequent actions of the parties. *Higgins*, 123 Wn.2d at 165. Generally, the legal effect of a subsequent contract made by the same parties and covering the same subject matter, but containing inconsistent terms, rescinds the earlier contract. *Higgins*, 123 Wn.2d at 165-66; *Bader v. Moore Bldg. Co.*, 94 Wash. 221, 224, 162 P. 8 (1917).

James Wimberley emphasizes the phrase "held by the undersigned in the Trust," in the Letter of Intention, CP at 175, as evidence that C.W. and Margaret did not have a mutually manifested intention to abandon or rescind the community property agreement.

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We disagree for several reasons. First, this argument conflicts with the Supreme Court's analysis in *Higgins*. In that case, the Supreme Court found that a couple's mutually executed wills and will agreement rescinded a prior community property agreement, even though the couple did not explicitly state in their wills that they were rescinding it. *Higgins*, 123 Wn.2d at 169-71. It was enough that the disposition directed by the wills and community property agreement were "squarely in conflict:"

If the community property agreement controlled, Odous took Lois' property in fee simple, immediately upon Lois' death. Taking the property in fee simple, Odous could make any testamentary disposition he desired. In contrast, if the 1977 agreement controlled, Odous was limited to the testamentary disposition identified in the wills. Because the conflicting agreements controlled the disposition of all of the Staffords' property, these agreements could not coexist. Passing the property under one agreement necessarily rendered the other agreement a nullity.

Higgins v. Stafford, 123 Wn.2d at 170-71.

The Wimberleys' wills and trust instrument directly conflicted with the 1967 community property agreement. We would do violence to the terms of the trust, and the intentions of C.W. and Margaret Wimberley, to hold otherwise. Also, per the terms of C.W.'s "pour over" will, his entire share of the Wimberleys' community property devised to the Wimberley Family Trust, and not to Margaret.

Second, James Wimberley's position that assets placed by Margaret Wimberley into the Wimberley Family Trust after C.W.'s death somehow remained her "separate property" is both unsubstantiated and illogical. James overlooks another provision of the

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Letter of Intention that clarifies the intentions of C.W. and Margaret regarding property placed in the Trust:

Any property in the said Trust which had its origin as separate property, or which cannot be traced as to its origin, is the commonly owned or community property of the Trustors. *If any questions should arise, it is the intent of each of the Trustors to gift, in consideration of their mutual love and affection, so much of any disputed property to the other as is necessary to create joint ownership in both Trustors.* This gift is intended and made as and when any asset is placed into the Trust.

CP at 175 (emphasis added). The trust instruments are clear: all property placed into the Trust became the community property of C.W. and Margaret, to be divided and distributed pursuant to the terms of the Trust. The trial court did not err in disregarding the community property agreement and holding that the terms of the trust control.

The Fromherz Property and the "Building Fund"

James Wimberley asserts that the approved trust accounting is incorrect because (1) the accounting does not honor Margaret's wish to leave the Fromherz house entirely to him without any offset of assets to Wesley, and (2) the accounting does not recognize the unauthorized withdrawal from the "building fund" trust account, in Yakima Federal Savings and Loan, by Margaret when Wesley exploited her. In so arguing, James relies on the 2007 amendment to the trust. He also references the handwritten letter Margaret sent to Richard Greiner, expressing her intent to leave James the house and building fund.

The relevant provisions of the 2007 amendment provided:

Primary Residence: The Trustor's primary residence located at 386

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Fromherz Road, Yakima Wa. and all of the surrounding property, buildings, improvements and fixtures and supporting equipment used on that property shall be distributed unto James K. Wimberley as compensation time, labor and other resources in improving the property. This distribution shall not be subject [to] offset against his share [of] the residual trust.

Further, the entire balance of the building fund account held with Yakima Federal Savings and Loan Association shall be set aside from all of the Trustor's other accounts and investments and be distributed to Jim for the purpose of finishing the ongoing work on the property. Jim shall use this fund at his sole discretion toward finishing the property and the fund shall not be offset against his share of the residual trust.

Residual Distribution: The rest, residue and remainder of the trust assets shall be divided in equal shares between Jim and Wes as forth in the trust document and shall be subject to the specific distribution set forth above.

CP at 179-80. Stephen Trefts' accounting delineated a 75-25 split of the Fromherz home and building fund between James and Wesley Wimberley respectively. Trefts arrived at this division by interpreting Margaret's 2007 amendment as devising her 50 percent interest in the two assets to James, in addition to the 25 percent interest James received under the terms of the 1999 trust instrument through his father. Under this delineation, the 1999 trust document remained binding and thus Margaret Wimberley did not control the half interest in the home previously owned by C.W. that should have been placed in one of the Decedent's Trusts upon C.W.'s death. We agree with this division.

As Stephen Trefts correctly determined, the terms of the Wimberley Family Trust did not permit Margaret Wimberley to adjust James and Wesley Wimberley's inheritance after C.W.'s death. The instrument read:

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The Trustors may, *during the joint lives of the Trustors*, by signed instruments delivered to the Trustee: change the beneficiaries, their respective shares and the plan of distribution; amend this Trust in any other respect; or, revoke this Trust in its entirety or any provision therein, *except as to any share or Trust created herein which has become irrevocable by the terms hereof or by operation of law.*

CP at 122 (emphasis added). The trust instrument prevented changes to the beneficiaries and distributions from the Wimberley Family Trust, unless effectuated while C.W. and Margaret both lived. Changes are prohibited when the trust, or a share of the trust, became irrevocable. 50 percent of the Wimberleys' community property held in the trust, and all of C.W.'s separate property held in trust, became unalterable upon C.W.'s passing. Margaret could not give Wesley's 25 percent interest in the Fromherz home and building fund to James, since C.W. was not alive to consent to the trust amendments. The trial court correctly approved the successor trustee's 75-25 split of the Fromherz home and building fund between the brothers.

In the alternative, James Wimberley argues that Margaret could have given a full interest in the home to him, as long as Wesley was given an equivalent value of assets from other property. James claims Margaret placed the home under the ledger of the Survivor's Trust, rather than the Decedent's Trusts. Nevertheless, James presents no evidence Margaret divided the assets of the trust upon C.W. Wimberley's death, let alone that she assigned the entire value of the home to the Survivor's Trust. The evidence

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showed that Margaret violated the terms of the trust and considered all property to be under her full ownership.

Loans Made to Wesley Wimberley and His Family

James Wimberley argues that the successor trustee's accounting should have, but failed to, offset, from Wesley Wimberley's inheritance, loans made to Wesley and his family from Margaret or the Wimberley Family Trust. James submitted his handwritten accounting of loans made by Margaret and cancelled checks evidencing the loans with his response to the trustee's initial accounting. James contends that the Yakima Federal Savings and Loan withdrawal of \$26,000 received by Wesley should be considered a loan to be deducted from Wesley's distribution of assets.

Stephen Trefts requested that James Wimberley provide documentation of loans multiple times while he prepared the initial accounting of the Trust. James submitted insufficient information. James instead bickered and dickered with Trefts about the amount of the loans, the transfer from the building fund Margaret made prior to her death, and Trefts' refusal to allocate trustee fees to James during his time as Trustee.

Under the terms of the Wimberley Family Trust instrument, all gifts and loans to be taken from either beneficiary's inheritance needed to be recorded in Schedule A. Schedule A was blank at the time of Margaret's death. Therefore, Trefts determined that loans and gifts made by Margaret to her sons were not chargeable against the share of either Wesley or James. We agree with the successor trustee's handling of the loans and

therefore affirm the trial court's approval of this handling. We note, as did Stephen Trefts, that James' contention may be self-defeating since he likely received more gifts and loans than his brother.

Stephen Trefts also correctly determined that a loan to Wesley's son Aaron for \$37,802.52 at three percent interest is a trust asset, and not an offset against Wesley's inheritance. The Wimberley Family Trust provided that the trustee could give money for support and education to be charged against the receiving beneficiary's inheritance, and that the provision "shall also apply to the issue of a deceased Primary Beneficiary." CP at 158. This language indicated that loans or gifts made to grandchildren will not count against the beneficiary-parent's share of the trust distribution, unless the beneficiary predeceases their issue. Wesley cosigned on the loan to Aaron and will be responsible for repaying the loan if Aaron does not.

James Wimberley's Reimbursement of the Trust with Interest

James Wimberley contends that the trial court erred in ordering him to repay the Trust \$254,437.91. When ordering the reimbursement, the trial court ascertained Margaret Wimberley's intent regarding which withdrawals from the trust accounts should be characterized as James' personal expenses rather than trust expenses. In this context, we apply the substantial evidence standard of review. Determining the parties' intent in regard to a trust is a factual question. *Niemann v. Vaughn Cmty. Church*, 154 Wn.2d 365, 374-75, 113 P.3d 463 (2005). We review factual questions under a substantial evidence

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standard, determining whether the evidence was sufficient to persuade a rational fair-minded person the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000); *In re Riddell Testamentary Trust*, 138 Wn. App. 485, 491-92, 157 P.3d 888 (2007).

Successor trustee Stephen Trefts identified \$254,437.91 of personal expenses that James charged to the Wimberley Family Trust account. Some of the expenses result from James Wimberley, while trustee, failing to pay Wesley Wimberley his 25 percent interest in the Fromherz house. While trustee, James paid for groceries, tires, car insurance, and his personal phone bill from trust funds. The trial court agreed with Trefts' accounting, noting that "the trust documents manifest Mr. and Mrs. Wimberley's intention clearly and inexplicably and it is these intentions which govern this proceeding." CP at 347.

Substantial evidence supports the trial court's findings. The estate planning documents and testimony from most witnesses established that Margaret Wimberley did not intend for James Wimberley to take such a large portion of the Trust's assets or to charge personal expenses to the family trust. The trust assets were to be divided 50-50. Charging personal expenses to the trust contradicts this division.

James Wimberley had ample opportunity to supplement Stephen Trefts' accounting with his own documentation of trust versus personal expenses. James chose to wait until three days before the trial court hearing on the accounting to produce

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incomplete, self-serving evidence that omitted benefits he received from Margaret while living in her house. Wesley Wimberley aptly stated: "The preliminary accounting is as accurate as Jim allowed it to be." Br. of Resp't Wimberley at 25. The trial court did not err in ordering James Wimberley to reimburse the Trust \$254,437.91.

The trial court correctly ordered James Wimberley pay twelve percent interest on the money he must reimburse the Trust. RCW 4.56.110(4) provides that judgments shall bear interest from the date of entry, at the maximum rate permissible under RCW 19.52.020. Under RCW 19.52.010, interest accrues on debts at twelve percent interest per annum when the parties fail to reach an agreement as to the amount of interest. James provides no argument on appeal as to why twelve percent per annum is improper.

Allocation of Attorney and Accounting Fees

James Wimberley contends that he should not be ordered to reimburse the Wimberley Family Trust for attorney fees and costs associated with bringing the petition for approval of the preliminary accounting and instructions, or the fees incurred by Stephen Trefts in preparing a forensic accounting of family trust activity. He argues: (1) Wesley Wimberley is responsible for the present action as he has complicated the administration and distribution of the Trust, and (2) James incurred fees acting as trustee and personal representative and is entitled to receive compensation for his services.

Washington's Trust and Estate Dispute Resolution Act (TEDRA) allows superior or appellate courts in Washington to order:

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costs, including reasonable attorneys' fees . . . to any party: (a) From any party to the proceedings. . . . The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

RCW 11.96A.150(1). This court reviews a trial court's decision to award fees under TEDRA for abuse of discretion. *Bale v. Allison*, 173 Wn. App. 435, 461, 294 P.3d 789 (2013); *In re Estate of Black*, 153 Wn.2d 152, 173, 102 P.3d 796 (2004). In determining whether an award of attorney fees is appropriate, the trial court must consider whether the litigation and the participation of the party seeking attorney fees caused a benefit to the trust. *Allard v. Pac. Nat'l Bank*, 99 Wn.2d 394, 407, 663 P.2d 104 (1983).

Successor Trustee Stephen Trefts sought reimbursement from James Wimberley for attorney fees the family trust incurred as a result of petitioning the trial court for approval of the accounting and for instructions. Trefts wished to avoid the petition and consistently informed James that his failure to respond with needed information would result in litigation. Trefts' petition benefitted the trust because it expedited the administration of a trust prolonged for three years by James' mismanagement and self-dealing with trust funds, and his unwillingness to cooperate with Trefts' subsequent management of the trust. Therefore, the trial court did not abuse its discretion in ordering James to pay the trust the monies it spent in petitioning the court.

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The trial court also did not exceed its discretion when ordering James Wimberley to pay Stephen Trefts' accountant fees in preparing the forensic accounting for the Wimberley Family Trust because the court found the accounting accurate. *In re Estate of Cooper*, 81 Wn. App. 79, 93, 913 P.2d 393 (1996). In *Cooper*, this court affirmed a trial court's proportional award of attorney and accountant's fees to a trustee-father and his beneficiary-children. 81 Wn. App. at 97. The court determined that the award was justified as a benefit to the estate because the trial court found that the accounting accurately traced the estate's assets. *Cooper*, 81 Wn. App. at 93.

James Wimberley's Self-Deeding of the Fromherz Residence

James Wimberley contends that the trial court erred in voiding the June 28, 2011, deed, by which he conveyed the Fromherz home to himself. Although he assigns error to this aspect of the court's June 4, 2013 order, he presents no argument in his brief. Rather, he requests that this court order the successor trustee to effectuate the intent of Margaret Wimberley by transferring to him his 100 percent interest in the Fromherz Road property. We already affirmed the trial court's ruling that James holds only a 75 percent interest.

A court of equity has jurisdiction to reach the property either in the hands of the original wrong-doer, or in the hands of a subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right, and takes the property relieved from the trust. *Rennebohm v. Rennebohm*, 153 Wash. 102, 108, 279 P. 402 (1929). The 2007 amendment of the Trust was ineffective in conveying James 100 percent of the

Fromherz home. When James deeded the property to himself in 2011, he withheld from Wesley the 25 percent interest he owned. Wesley's interest is worth \$75,000 or one-fourth of the home's value of \$300,000. The trial court wisely voided the quitclaim deed and returned the house to the trust, so that successor trustee Stephen Trefts could effect a fair and proper distribution.

Payment of Rent for Residing in the Fromherz Home after Margaret's Death

James Wimberley next contends that the trial court erred in ordering him to pay the Trust \$800 rent per month from the date of Margaret's death. As with some other assignments of error, James omits substantive argument that the \$800 rental amount is inaccurate or improper. Instead, he relies on the ineffective provisions of the 2007 amendment as support for his contention that he received 100 percent interest in the Fromherz home. We already ruled to the contrary.

As the trial court found in its order removing James Wimberley as trustee, *In re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004), controls here. In that case, a personal representative resided in his deceased mother's home, deeding the property to himself after living there for a year without distributing the shares to his three brothers. 152 Wn.2d at 12. The Supreme Court found that the personal representative breached his fiduciary duty by "possessing the house in an individual capacity before the estate was closed." *Jones*, 152 Wn.2d at 12. An executor may possess and control property while administering an estate, if he posts bond. RCW 11.48.020. However, when a person's

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right to possession of the property arises from his status as executor, he does not have a right to use the property when there are other reasonable alternatives open, such as renting the property. *Jones*, 152 Wn.2d at 14. If the personal representative resides in the house and uses it for his own benefit, he must pay rent. *Jones*, 152 Wn.2d at 14.

Until distribution of each brother's share in the home, the Fromherz home remained the property of the Wimberley Family Trust. James should have paid the trust rent while the estate was in the process of settling.

Consideration of a \$67,000 Debt from James Wimberley that Pre-Dates the Trust

James Wimberley contends that the trial court erred in allowing the successor trustee to amend his accounting to include newly-discovered information, including a \$67,000 debt owed by James to C.W. and Margaret, mentioned in an exhibit attached to James' divorce decree, filed November 23, 1994. James raises the defenses of laches and the statute of limitations against the trustee's enforcement of the debt against him. Under RCW 4.16.040, the limitation period for a debt in writing is six years.

An action to collect an unpaid debt is barred once the statute of limitations has run. *In re Receivership of Tragopan Props., LLC*, 164 Wn. App. 268, 270, 263 P.3d 613 (2011). However, the clock resets once the promisor executes a new writing expressly acknowledging the debt or promising to pay it. *Fetty v. Wenger*, 110 Wn. App. 598, 602, 36 P.3d 1123 (2001). If this acknowledgement occurs after the statute of limitations has run, then it must be strictly construed, and any subsequent action must be brought on the

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newly executed instrument. *Tragopan*, 164 Wn. App. at 274. Also, a partial payment extends the limitation period another six years. *Wickwire v. Reard*, 37 Wn.2d 748, 759, 226 P.2d 192 (1951).

The statute of limitations likely bars an action against James Wimberley to recover the \$67,000 debt mentioned in his 1994 divorce decree. Assuming the debt accrued in 1994, James is correct that any action to enforce the debt, absent evidence of a clear acknowledgement of it after November 23, 2000 or partial payment, is barred by the statute of limitations. RCW 4.16.040. Nevertheless, James is inconsistent. He argues that his debt is barred by the statute of limitations or laches, but he seeks to enforce a debt owed by Aaron Wimberley and received on October 6, 2006.

The statute of limitations likely bars the Wimberley Family Trust from enforcing either James Wimberley's or Aaron Wimberley's debts. Nevertheless, Stephen Trefts, as successor trustee, holds authority to explore whether either debtor paid a portion of the debt or confirmed the debt in a new writing and thereby prolonged the limitation period. We affirm the trial court's ruling with the caveat that, if the successor trustee finds no evidence of the extension of the statute of limitations or payment within the limitation period, he take no action to collect the debt.

Assigning for Trial the Claim that Wesley Wimberley Should be

Disinherited as an Abuser

Finally, James Wimberley asserts that the trial court erred in refusing to assign for

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trial the claim that Wesley Wimberley should be disinherited as an abuser under Washington's slayer and abuser statute, chapter 11.84 RCW. Wesley contends that this reviewing court should ignore the assignment of error, because the claim was not properly pled before the trial court. We agree with Wesley.

RCW 11.96A.100(5), a section of TEDRA, provides that in a trust dispute:

The answer to the petition and any counterclaims or cross-claims must be served on the parties or the parties' virtual representatives and filed with the court at least five days before the date of the hearing.

RAP 2.5(a) provides that this court may refuse to review any claim of error that was not properly raised before the trial court.

James Wimberley filed a 225-page response to the trustee's petition on May 21, 2013, two days before the scheduled hearing on Stephen Trefts' petition to approve the accounting and for instructions. The response raised for the first time a claim that Wesley Wimberley abused his mother by accompanying her to the bank while she transferred funds to different accounts. The trial court was correct in ignoring this late request.

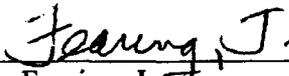
CONCLUSIONS

We affirm all rulings of the trial court in its June 4, 2013, order, with one caveat. Unless the successor trustee discovers any partial payment or written promise to pay by James Wimberley on the loan owed to his parents within the last six years, the trustee

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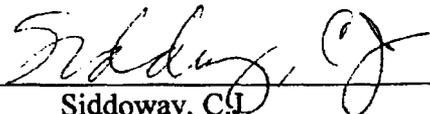
should not pursue collection of the debt. The same caveat applies to the debt owed by Aaron Wimberley.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Fearing, J.

WE CONCUR:



Siddoway, C.I.



Brown, J.

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In Re the Estate of:

MARGARET WIMBERLEY,
Deceased.

NO. 317579

MOTION FOR
RECONSIDERATION

(RAP 12.4)

I. IDENTITY OF MOVING PARTY

This motion for reconsideration is filed by Appellant James Wimberley.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 12.4, James Wimberley seeks reconsideration of the Court's Ruling upholding the start date for the Trustees Accounting which fails to include the invalid transfer of trust assets in the amount of \$306,000 to the benefit of Respondent Wesley Wimberley. The ruling of this court suggests that it refused to consider the issue of the start date because "James failed to deliver any analysis, case law, or statute that supports his contention that the trial court could not change the accounting's beginning date..." However, a substantial portion of the argument contained in Jim's briefing directly addressed this very issue.

The Court of Appeals should reconsider its ruling because it misapprehended the Appellant's argument and the requested relief is just. Appellant's position was not that the Trial Court could not change the start date, but that in changing the start date of the accounting the way it did, it failed to account for a substantial transfer of trust assets that resulted in a grossly inaccurate accounting. As the entire purpose of the accounting was to produce an accurate trust accounting that would result in a proper distribution of trust assets, the discretionary decision of the Trial Court was clear error and should be reversed.

III. BRIEF FACTUAL RECITATION

On two separate occasions in December 2009, Wesley Wimberley took his incapacitated mother to the bank and directed her to withdraw \$306,000 from her account, transferring \$24,000 to him immediately, and effectively increasing his share of trust distributions by over \$150,000. This is not in dispute by anyone, including Wes.

The trustee conducted a forensic accounting that went back only to August 2, 2010. Had it gone back a mere nine more months, it would have included the transfer that everyone agrees was invalid. James Wimberley objected to this accounting start date at the Trial Court, and at the Court of Appeals.

Assignment of Error number 2 argued that the trial court erred

when it determined that the start date for the accounting period was August 2, 2010.

Issue Pertaining to the Assignment of Error number 2 explains that the choice of such an arbitrary date had no relevance to the facts and circumstances involved in the matter.

Section F and G of the Argument Section of Appellant's Opening Brief and Section D of the Arguments Section of Appellant's Reply Brief provided detailed and specific argument why the accounting needed to go back far enough to account for the illegal transfer of \$306,000 of Margaret Wimberley's assets by Wesley Wimberley.

IV. ARGUMENT

A. Court Rules Allow for a Motion for Reconsideration

A party may file a motion for reconsideration of a decision terminating review where a party contends a point of law or fact has been overlooked or misapprehended. RAP 12.4(a), (c).

B. The Purpose of the Accounting Was to Account for Improper Transfers of Trust Assets, and Jim's Briefing Argues Extensively that the Accounting Should have Accounted for the Improper Transfer of \$306,000 of Trust Assets.

The ruling of the Court of Appeals, which refuses to consider the Appellant's arguments that the trust accounting should have accounted for the improper transfer of \$306,000 from a Trust account in December

2009, results in a legal and equitable injustice. The purpose of an accounting is to account. This proposition is so inherently obvious that legal authority is not necessary, and therefore does not expressly exist.¹ Here, the trustee's accounting fails to account for the improper transfer of \$306,000, and it has therefore failed in its basic purpose. There is no legal or factual dispute that this money was transferred from a trust account; that the transfer was invalid; and that it affected the ultimate distribution of trust assets. These points were strenuously argued in the Appellant's Opening Brief, Reply Brief, and at Oral Argument.

1. Section B of the Opening Brief argues that the transfer of \$306,000 by the Respondent was invalid, and must be accounted for in the trust accounting.

“Wes’ financial exploitation and its effects on the Trust’s assets are directly connected to the accounting and must be addressed.” Appellant’s Opening Brief, pg. 24. The actions of Wes Wimberley in directing his incapacitated mother with no legal authority to control trust assets to remove \$306,000 from the building fund account was argued in the brief and is inextricably connected to the trial court’s error in allowing the accounting date to start after the transfer occurred. Clearly, the argument that Wes’ actions materially affected the distribution of Trust assets in his

¹ RCW 11.106.070 simply states that the court will make a determination if an accounting is accurate, and says nothing of time period for the accounting. No statute or case law dictates a time period for an accounting.

favor and must be accounted for in the trustee's accounting, was argued in this section of the Appellant's brief.

2. Section F Argues that the invalid transfer of Trust assets from the building fund account "Should be Credited Back to the 'Building Fund' Account" for Purposes of Calculating Final Trust Distributions.

Section F of the Appellant's Opening Brief presents legal authority and argument as to why the transfer of \$306,000 in trust assets by the Respondent in December 2009 was an invalid transfer, and why it was error for the Trial Court to fail to require the trustee to account for said transfer. There is no dispute that the Trial Court had discretion to modify the start date for the accounting, but where that modification resulted in a failure of the entire purpose of the accounting, it was error and must be reversed. This case presents a unique situation where there is no question in law or fact that the December transfer of \$306,000 was improper. The courts discretionary decision to allow the trustee's accounting to ignore this substantial transfer misapprehends the fundamental nature of a court ordered accounting, that is, to get a verifiable history of income and disbursements so that the final distribution is as accurate as is reasonably possible.

There is no statutory or legal authority that specifically dictates the time period for a trustee's accounting because such time period ultimately

depends wholly on the specific facts of the case. Ultimately, the purpose of an accounting is to account, and the time period set for the accounting must be such that it fulfills this primary purpose. The question the court has to answer in determining an appropriate time period is, “what time period for the accounting is most likely to properly account for all questionable transfers of assets.” Here, the court initially answered that question by directing the trustee to account all the way back to 2001. While the Trial Court had discretion to modify that period, it was obligated to do so in a way that did not render the purpose of the accounting meaningless. When the Trial Court changed the time period that failed to account for the invalid transfer of \$306,000 in trust assets, it committed error. All of this is argued in the Appellant’s Briefing.

3. Section G provides legal authority and argument about how the accounting should be revised to properly account for the invalid transfer.

“The value of the specific bequest of the ‘building fund’ account to Jim should be determined as of the date that the distributive provisions of the Trust became irrevocable.” Appellant’s Opening Brief at pg 39. The earlier sections of the Appellant’s Briefing explain why the accounting was erroneous and should be reversed, this section presents authority and argument about what should happen on remand. Again, the Trial Court has discretion to determine when the accounting starts, but it is an abuse of

discretion to choose a start date that results in an incomplete or erroneous accounting, as was the case here.

The Appellant, in Section G of his Opening Brief, argued that the more appropriate start date would have been the date that Ms. Wimberley removed herself as trustee and made the trust irrevocable. In this way all actions that took place after she was no longer trustee would be properly accounted for, and the primary purpose of the accounting would be fulfilled. This was argued and the Court of Appeals should reconsider its ruling that ignores this argument.

V. CONCLUSION

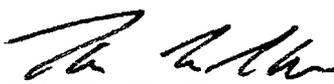
The Trial Court made a discretionary decision to modify the accounting date such that the accounting failed to account for an invalid transfer of \$306,000, thus failing to fulfill its primary purpose. This decision was an abuse of discretion and should be reversed. Substantial time and effort in Appellants briefings and oral arguments were devoted to this argument. The refusal of the Court of Appeals to consider this argument results in legal and equitable error. The Respondent admits to stealing money from his incapacitated mother, this cannot simply be ignored.

It is respectfully requested that the Court of Appeals reconsider its decision of January 29, 2015.

Dated this 10 day of February, 2015.

Respectfully submitted,

HELSELL FETTERMAN LLP

By: 

Kameron L. Kirkevold, WSBA No. 40829
Attorneys for James Wimberley

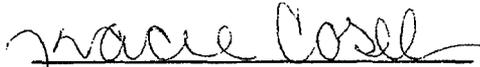
CERTIFICATE OF SERVICE

I, Kacie Coselman, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.
2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman LLP, 1001 4th Avenue, Suite 4200, Seattle, WA, 98154; and did on the date listed below (1) cause to be filed with this court; (2) and cause to be delivered via U.S. Mail to Linda Sellers and Sara Watkins, Halverson Northwest Law Group P. C., P.O. Box 22550, Yakima, WA 98907-2550, and via U.S. Mail to Cam McGillivray, 7307 N. Division, P.O. Box 18969, Spokane, WA 99228-0969, the Motion for Reconsideration.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: February 10, 2015, at Seattle, Washington.


Kacie Coselman

FILED
March 5, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Estate of:)	No. 31757-9-III
)	
Margaret Wimberley.)	
)	
Deceased)	ORDER DENYING MOTION
)	FOR RECONSIDERATION

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of January 29, 2015 is hereby denied.

DATED: March 5, 2015

PANEL: Judges Fearing, Brown, Siddoway

FOR THE COURT:


LAUREL H. SIDDOWAY, Chief Judge

FILED
MARCH 31, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Estate of:)	No. 31757-9-III
)	
Margaret Wimberley,)	
)	
Deceased.)	ORDER GRANTING MOTION
)	TO PUBLISH OPINION
)	

THE COURT has considered the respondent's motion to publish the court's opinion of January 29, 2015, and the record and file herein, and is of the opinion the motion should be granted. Therefore,

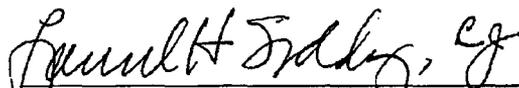
IT IS ORDERED, the motion to publish is granted. The opinion filed by the court on January 29, 2015 shall be modified on page 1 to designate it is a published opinion and on page 44 by deletion of the following language:

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

DATED: March 31, 2015

PANEL: Judges Fearing, Brown, Siddoway

FOR THE COURT:


LAUREL H. SIDDOWNAY, Chief Judge

Appendix B

THE WIMBERLEY FAMILY TRUST

(Married A-B-C Living Trust)

CREATION OF THE TRUST

This revocable Living Trust is formed to hold title to real and personal property for the benefit of the creators of this Trust and to provide for the orderly use and/or transfer of such assets during the existence of this Trust and upon the demise of the creators of this Trust.

Name of Trust

This Trust shall be known as:

"The Wimberley Family Trust, dated January 15, 1999, C. W. Wimberley and Margaret Wimberley, Trustor and/or Trustees."

Notice of Arbitration

The Trustors and Trustees of this Trust have agreed that alternative dispute resolution should be utilized to preserve the total Trust Estate from the expenses of legal fees and litigation. For that reason, THIS TRUST IS SUBJECT TO ARBITRATION. The Trustee shall submit all disputes to arbitration as provided in this Trust and arbitration awards shall be fully enforceable under the terms of state law and common law to the extent they are not inconsistent.

Parties to the Trust

This Trust is entered into by and between C. W. Wimberley and Margaret Wimberley of the County of Yakima, State of Washington, hereinafter called "Settlers" or "Trustors" or separately, "Husband" or "Wife," and C. W. Wimberley and Margaret Wimberley of the County of Yakima, State of Washington, hereinafter called "Trustees" or "Trustee," and "Beneficiaries" or "Beneficiary" while living.

Heirs at Law

The children who are named as Primary Beneficiaries are as follows: C. W. Wimberley's and Margaret Wimberley's children are James Keith Wimberley and Carroll Wesley Wimberley.

Trustee Authority to Act Independently

The above named Trustors who are Trustees shall serve jointly and severally and either shall have full authority for the Trust without the consent of the other and to act independently in performing transactions on behalf of the Trust, except as to transactions involving real property owned by the Trustors which shall require the joint consent and signatures on all sale and transfer documents of both the Trustors while they are both living and competent. Notwithstanding the foregoing, property held in any Trust created herein as the separate property of either Trustor shall be solely administered under the authority of the Trustor whose property it is, so long as he or she is living and competent. This authority shall extend to all powers granted to the Trustees under "Trustee Powers" hereof and shall include the right to contract for and on behalf of the Trust and to execute, negotiate, and compromise such instruments as may be necessary to carry out the purposes and intents of this Trust.

Tax Treatment of Revocable "Grantor Trust"

Pursuant to Trustor Powers of this Trust, the Trustors have the right to amend this Trust in whole or in part and, therefore, while the Trustors are alive, for income tax purposes, the Trust shall be treated as a revocable "Grantor Trust" pursuant to Internal Revenue Code Section 676. All items of income and expense related to the assets of the Trust or its operation shall be reported by the Trustors, as if owned by them, on the Trustors' Federal Income Tax Return, Form 1040 and state income tax return, if appropriate.

Use of IRS Taxpayer Tax Identification Number

As long as both Trustors are living, this Trust is revocable and Trustees are directed not to file income tax returns for this Trust. Instead, the Trustors shall report income to the IRS using the Trustors' Social Security Number.

Upon the death of a Trustor, the Surviving Trustor's Trust A remains revocable and income shall be reported using the Surviving Trustor's social security number _____ (leave blank until death of first Trustor). Any trusts established for a decedent are irrevocable and the assets in these trusts should be identified using the IRS Taxpayer Identification Number. The Trustees are directed to obtain a Taxpayer Identification Number for each trust established for the deceased Trustor. The IRS Taxpayer Identification Number _____ for decedent's Trust B and _____ for decedent's Trust C, will be used when filing Form 1041 trust tax returns. **(Enter IRS Taxpayer Tax Identification Number when received.)**

Upon the death of both Trustors, the entire Trust is irrevocable by its terms and the Trustees are directed to obtain and report income to the IRS by using the IRS Taxpayer Identification Number _____. **(Enter IRS Taxpayer Tax Identification Number when received.)**

When part, or all, of the Trust becomes irrevocable, the Trustees are directed to file a Form 1041 trust tax return or appropriate alternative form, as specified by IRS regulations, and state income tax return as appropriate, annually for income and expenses relating to assets retained in the irrevocable part of the Trust. All other income and expenses will be reported on the Trustors' Federal Income Tax Return, Form 1040 tax return, and state income tax return, as appropriate.

TRUST PROPERTY

The Trustors intend this Trust to be the recipient of all their assets , including without limitation assets whether commonly owned, jointly owned, marital, deferred marital, community, quasi-community or separate. The Trustors intend this trust to be the named beneficiary of all interests of which either or both Trustors are, or may become, Beneficiaries.

Property Transferred to the Trust

Property held by the Trustees of this Trust, which is held in trust for the benefit of the beneficiaries subject to the provisions of this Trust Agreement, is and shall be property owned by the Trust.

The Trustors have paid over, assigned, granted, conveyed, transferred and delivered , and by this Trust Agreement do hereby pay over, assign, grant, convey, transfer and deliver unto the Trustees their property and may cause the Trustees to be designated as beneficiary of life insurance policies for and in behalf of the Trust and its beneficiaries. These insurance policies, and any other insurance policies that may be delivered to the Trustees hereunder or under which the Trustees may be designated as beneficiary, the proceeds of all such policies being payable to the Trustees, and any other property that may be received or which has been received by the Trustees hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustees as hereinafter set forth.

All property transferred to this Trust shall retain its character, joint, community, separate, or otherwise, subject to the terms of this Trust agreement.

Commonly Owned Property

Property transferred to the Trustees by the Trustors which is commonly owned by the Trustors shall remain their commonly owned property, and treated in accordance with the laws of

the State in which they reside or the situs of the property, whichever controls. This property, as invested and reinvested, together with the rents, issues and profits therefrom (hereinafter referred to as "commonly owned property") shall retain its character as commonly owned property during the joint lifetimes of the Trustors.

Community and quasi-community property transferred to the Trustees by the Trustors shall be their community property, and treated in accordance with the laws of the State in which they reside or the situs of the property, whichever controls. This property, as invested and reinvested, together with the rents, issues and profits therefrom (hereinafter referred to as "the Community Estate" or the "community property") shall retain its character as community property during the joint lifetimes of the Trustors, in spite of any change in the situs of the Trust, subject, however, to the provisions of this Agreement.

Property transferred to the Trustee by the Trustors which is jointly owned with rights of survivorship shall be held and owned by the trust as the commonly owned property of the Trustors.

Separate Property

Separate property of either Trustor transferred to the Trustees, as invested and reinvested, together with the rents, issues and profits therefrom (hereinafter referred to as "the Separate Estate") shall retain its character as separate property of the Trustor who transferred such property to the Trustees, subject to the provisions of this Agreement.

Residence As Homestead - State of Florida

The Trustors reserve the right to reside upon any real property placed in this Trust as their permanent residence during their life, it being the intent of this provision to retain for the Trustors the requisite beneficial interests and possessory rights in and to such real property to

comply with Section 196.041 of the Florida Statutes such that said beneficial interests and possessory rights constitute in all respects, "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this Trust to the contrary, the Trustors' interest in any real property in which they will reside pursuant to the provisions of this Trust shall be deemed to be an interest in real property and not personalty and shall be deemed the homestead of the Trustors.

Residence As Homestead - State of Texas

The Trustors retain the right to use and occupy for life, rent free, and without charge (except such charges as are allowed by Section 11.13(j) of the Texas Tax Code), their residence homestead whether or not the residence homestead is transferred or placed in this Trust Estate, to secure and preserve for the Trustors the requisite rights, beneficial interests and possessory rights in and to such residence homestead to qualify for all homestead exemptions and protection from forced sale under the Texas Property Code, the Texas Tax Code, and Article 16, Sections 50 and 51 of the Constitution of the State of Texas. Any real property transferred to this Trust that is the residence homestead of the Trustors shall retain that status as the Trustors' homestead unless and until the Trustors designate other real property as homestead pursuant to Chapter 41 of the Texas Property Code. It is the Trustors' intent that this Trust be a "Qualifying Trust" as that term is defined by Section 11.13(j) of the Texas Tax Code and any applicable provisions of this Trust shall be construed and applied to meet that end. The Trustors agree to remain jointly and severally liable for taxes properly imposed on the interest of the Trust in their residence homestead.

SUCCESSOR TRUSTEE

Upon the death, resignation, disappearance or incompetence of a Trustee, the next acting Trustee will immediately assume the duties of Trustee and manage the Trust according to its terms.

Surviving Trustee

In the event of the death, resignation, or incompetency of an original Trustee, or if for any reason any ceases, or is unable, to serve as Trustee hereunder, the Trustors nominate and appoint the remaining original Trustee to continue to serve as Trustee hereunder without the approval of any court.

So long as the Surviving Trustor has not ceased to serve as Trustee, the Surviving Trustor shall continue to serve as Trustee over all assets held, managed and distributed according to the terms of this Trust Agreement with respect to Trust A

If the Surviving Trustor is either or both, not a United States citizen or not a United States resident, the provisions in this Trust Agreement relating to qualifying the Decedent's C Trust for the unlimited marital deduction shall apply.

First Successor Trustee

In the event of the death, resignation, or incompetency of the remaining or surviving original Trustee who is a Trustor, or if for any reason such person ceases, or is unable, to serve as Trustee hereunder, the Trustors nominate and appoint James Keith Wimberley to serve as Successor Trustee hereunder without court approval.

Second Successor Trustee

In the event of the death, resignation, or incompetency of all the above named Successor Trustee(s), or if for any reason such named Successor Trustee(s) cease(s), or is unable, to serve as Trustee hereunder, the Trustors nominate and appoint Carroll Wesley Wimberley to serve as Successor Trustee hereunder without court approval.

No Bond Requirement

No Trustee shall be required to post bond or any other security for the faithful performance of any duty or obligation of such office.

Multiple Successor Trustees Must Act Together

When there is more than one Successor Trustee serving, the multiple trustees must unanimously agree in order to act. If the Trustors are serving as Trustee this provision does not apply.

Resolution of Conflict

Any controversy between the Trustees and any controversy between the Trustee and any other parties to this Trust, including Beneficiaries, involving the construction or application of any of the terms, provisions, or conditions of this Trust shall, on the written request of any disagreeing party served on the other or others, be submitted to arbitration. The parties to such arbitration shall each appoint one person to hear and determine the dispute and, if they are unable to agree, then the persons so chosen shall select another impartial arbitrator whose decision shall be final and conclusive upon all parties. The cost of arbitration shall be borne by the losing party or parties, in such proportion as decided in arbitration proceedings. Such arbitration shall comply with the commercial Arbitration Rules of the American Arbitration Association, 140 West 51st Street, New York, New York, 10020.

No-Contest Clause

If the Trustors seemingly failed to provide for any of their heirs, the Trustors did so intentionally with full knowledge of that heir's needs, wants and desires.

If any beneficiary under this Trust, or any legal heir of a Trustor or any person claiming under any of them, singly or in conjunction with any other person or persons, contests in any court the validity of this Trust or any of its provisions or of the deceased Trustor's or Trustor's spouse's Will or seeks to obtain an adjudication in any proceeding in any court that this Trust or any of its provisions or that such Will or any of its provisions are void, or seeks otherwise to void, nullify, impair or set aside this Trust or any of its provisions, or such Will or any of its provisions, or conspires with or voluntarily assists anyone attempting to do any of those things, then the Trustors and each of them specifically disinherit such contesting person and all interests given to such contesting person under this trust and/or under such Will shall be forfeited and shall be determined as it would have been determined if the person had predeceased the execution of this Trust and such Will without surviving issue (as to an individual) or were not in existence at the time of such execution (as to an organization).

The provisions of this section shall not apply to any disclaimer by any person of any benefit under this Trust or under any Will.

Litigation

Trustees are hereby authorized to defend, at the expense of the Trust estate, any contest or other attack of any nature on the Trust or any of its provisions.

Discharge or Resignation of Trustee

The Surviving Trustor shall have the right following the Decedent Trustor's death to discharge the Trustee of any Trust hereunder, which is revocable, including any Successor

Trustee, and to appoint a Trustee in their place. Discharge of a Trustee shall be by delivery to such Trustee thirty (30) days' written notice of discharge.

The Trustee of any Trust hereunder, including any Successor Trustee, may resign by delivery to all the income Beneficiaries of such Trust upon thirty (30) days' written notice of resignation. If no Successor Trustee is named by the Trust, such income Beneficiaries who are adults shall have the right to appoint a Trustee; provided that if no such income Beneficiaries are adults, then such appointment shall be made by the parent or legal guardian of such income Beneficiaries; provided, further, that in the event of a dispute among such income Beneficiaries, their parents or guardians, the majority shall prevail.

A discharged or resigned Trustee shall serve as Trustee until a successor shall accept office, and shall execute all instruments and do all acts necessary to vest title of the Trust Estate in the Successor Trustee without court accounting. However, any discharged Trustee shall have authority to apply to a court of competent jurisdiction to ensure that a Successor Trustee is appointed.

In the event the Surviving Trustor serves as Trustee of decedent's Trust B, or decedent's Trust C, the Surviving Trustor shall have no authority to change the Beneficiary designation on any insurance policies or other property whatsoever held in the Decedent's Trust.

Trustee Compensation

No Trustor shall receive compensation for services as Trustee.

Any Successor Trustee shall be entitled to reasonable compensation for their services, which compensation shall be commensurate with comparable charges for similar services made from time to time by corporate Trustees in the geographic area in which the Trust has its principal situs for administration. The Trustee shall also be entitled to reimbursement for

expenses necessarily incurred in the administration of the Trust Estate. No Trustee shall be required to accept compensation for their services. No duty to pay compensation or reimbursement to any Trustee shall arise unless and until that Trustee has submitted a request or billing for compensation or reimbursement.

Competency Clause

The Trustors hereby provide that two (2) designated licensed physicians shall be authorized and empowered to determine the competency of any Trustor or Trustee of this Trust Agreement. One of the physicians to determine competency shall be the attending physician of the Trustor or Trustee whose competency is to be determined. The second physician shall be appointed by said attending physician.

The appointed physicians shall confirm in writing the incompetency or competency of the appointing Trustor or Trustee, and their joint decision thereon shall be binding upon the Trustors, Trustees and Beneficiaries of this Trust.

If a Trustor or Trustee has no attending physician at the time when a determination of their competency is desired, the Trustors and Trustees hereby direct that the Attorney-in-Fact, appointed under the Durable Power of Attorney for Health Care or similar instrument, of the Trustor or Trustee whose competency to serve as Trustee is to be determined, will name and engage an attending physician on their behalf. Such physician shall then appoint the second physician and they shall determine competency in accordance with these provisions.

Confirmation of removal or reappointment of any Trustee removed for incompetency by reason of the determination of the appointed physicians or whose recovery and competency to serve as Trustee hereunder has been re-certified by the appointed physicians, may be confirmed by application to a court of competent jurisdiction of the then situs of the Trust.

TRUSTOR POWERS

Trustors Retain Absolute Right as Trustee

The Surviving Trustor shall be the Trustee, unless and until, the Trustee resigns in writing, or is determined incompetent as provided in this Trust Agreement. The Surviving Trustor continues to retain all absolute rights to discharge or replace any Successor Trustee of any portion or share of the Trust which is revocable by the Surviving Trustor, as long as the Trustor is competent.

Description of Powers

The Trustors may, during the joint lives of the Trustors, by signed instruments delivered to the Trustee: change the beneficiaries, their respective shares and the plan of distribution; amend this Trust in any other respect; or, revoke this Trust in its entirety or any provision therein, except as to any share or Trust created herein which has become irrevocable by the terms hereof or by operation of law.

Both Trustors acting as Trustees may, during the joint lives of the Trustors: Withdraw the commonly owned and/or community estate from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee and other Trustor, provided, however, that all or any part of the commonly owned and/or community estate withdrawn by the Trustors shall be delivered to the Trustors as commonly owned and/or community property as appropriate; add commonly owned and/or community property to the Trust; change the beneficiaries, their respective shares and the plan of distribution; amend this Trust in any other respect; or revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation. Both Trustors are authorized and empowered with

respect to any property, real or personal, to: assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of the Trustors, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of the Trustors, invest, lease, manage, mortgage, hypothecate, encumber, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, guarantee the obligations of the Trust, the Trustors personally, or any other person or entity, make distributions in cash or in kind or partly in each without regard to the income tax basis of such asset, or do any other related acts all for and in behalf of the Trust or for the Trustors' own accounts or to secure the Trustors' own debts or obligations.

In the event that either Trustor is living and competent, but is for any reason not serving as Trustee of this Trust, he or she may exercise each and every right and power retained and granted by this Section, "TRUSTOR POWERS" by signed instrument or instruments delivered to the Trustee.

Gifts Treated as Revocation

The Trustors intend that all transfers (other than sales or exchanges made for full and adequate consideration, or distributions for the direct benefit of the Trustor made from the assets of the Trust) shall be a revocation by the Trustors as to Trust administration over the transferred assets and shall constitute an initial distribution to the Trustors and subsequent transfer by the Trustors to the donee. This provision shall apply whether such transfer is made by the Trustors or by a Trustee at the written direction of both the Trustors.

TRUSTEE POWERS

The Trustee shall hold, administer and distribute the Trust Estate as follows:

Discretionary Powers of Trustee

In exercising discretion hereunder, the Trustee is to consider the needs of the Surviving Trustor, during his or her lifetime, as the primary purpose of the Trust, even if the satisfaction of such needs requires invasion of the entire Trust Estate.

After the death of the Surviving Trustor, the needs of the children shall be paramount to the conservation of the Trust Estate for the benefit of those who will be entitled to the Trust Estate at its termination. The Trustee shall, in exercising the discretion given herein for the benefit of the children or their issue, do so in such a manner as will encourage thrift, industry, and self-reliance to the maximum extent practicable by the respective Beneficiaries, and discourage extravagance or indolence on the part of any such Beneficiary.

Trust As The Beneficiary Of A Qualified Plan Or Account

In addition to all other distributions required or permitted by this Trust Declaration, if the Trust is the beneficiary of a plan or account qualified under Section 401 of the Internal Revenue Code, the Trust is to make at least the minimum distributions to the Trust Beneficiary in the amount and manner required by Section 401(a)(9) of the Code and any other applicable provision of the Code.

Commonly Owned Property

During the lives of the Trustors, the Trustee shall have no more extensive power over any commonly owned and/or community property transferred to the Trust than either Trustor would have under the property laws of this state, had this Trust not been created, and this instrument shall be so interpreted to achieve this intention.

The Trustee shall hold, manage, invest and reinvest the commonly owned and/or community estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal during the joint lives of the Trustors as follows:

The Trustee shall pay to, or apply for the benefit of the Trustors, jointly, all the net income.

The Trustee may pay to, or apply for the benefit of the Trustors, individually and/or jointly, such sums from the principal as in their sole discretion shall be necessary or advisable from time to time for the medical care, welfare and maintenance of the Trustors, taking into consideration to the extent the Trustee deems advisable any other income or resources of the Trustors known to the Trustee.

Either Trustor may, at any time during the joint lives of the Trustors, and from time to time, withdraw all or any part of the principal of the commonly owned and/or community estate, free of trust, by delivering an instrument in writing, duly signed by both Trustors, to the Trustees and to the Trustors, describing the property or portion thereof desired to be withdrawn (although such a writing may be dispensed with where both Trustors are themselves the Trustees). Upon receipt of such instrument, the Trustees shall thereupon convey and deliver to the Trustors, as commonly owned and/or community property, free of trust, the property described in such instrument.

Separate Property

The Trustee shall hold, manage, invest and reinvest the separate estate of each Trustor (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal during the joint lives of the Trustors as follows:

The Trustee shall pay to, or apply for the benefit of the Trustor who contributed such separate estate, all of the net income of such Trustor's separate estate.

The Trustee may pay to, or apply for the benefit of the Trustor who contributed such separate estate, such sums from the principal thereof as in the Trustee's sole discretion shall be necessary or advisable from time to time for the medical care, welfare and maintenance of such Trustor, taking into consideration to the extent the Trustee deems advisable, any other income and resources of such Trustor known to the Trustee.

The Trustor who contributed such separate estate may at any time, during the joint lives of the Trustors and from time to time, withdraw all or any part of the principal of such separate estate, free of trust, by delivering an instrument in writing duly signed by him or her to the Trustee, describing the property or portion thereof desired to be withdrawn. Upon receipt of such instrument, the Trustee shall thereupon convey and deliver to such Trustor, as his or her separate property, free of trust, the property described in such instrument.

Incompetency

In the event that a Trustor is adjudicated to be incompetent or in the event that a Trustor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle his or her own affairs, then and in that event, the Trustee may during the joint lives of the Trustors, in addition to the payments of income and principal for the benefit of such Trustor, pay to or apply for the benefit of the affected Trustor such sums from the net income and from the principal of such Trustor's separate estate as in the Trustee's sole discretion shall be necessary or advisable from time to time for the medical care, maintenance and welfare of such affected Trustor, taking into consideration the extent the

Trustee deems advisable any other income or resources of the affected Trustor known to the Trustee.

Specific Trustee Powers

By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to trustees generally, the Trustee is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this Trust: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of the Trustor, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of the Trustor, invest, lease, manage, mortgage, hypothecate (by Deed of Trust or other appropriate instrument), encumber, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, make distributions in cash or in kind or partly in each without regard to the income tax basis of such asset and in general, exercise all of the powers in the management of the Trust Estate which any individual could exercise in the management of similar property owned in his/her own right, upon such terms and conditions as to the Trustee may seem best, and execute and deliver any and all instruments and do all acts which the Trustee may deem proper or necessary to carry out the purposes of this Trust, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

The Trustee is authorized to pledge the assets of the Trust to secure the indebtedness of the Trustors.

Securities Authorization

The Trustee is empowered to buy, sell, trade and deal in stocks, bonds, mutual funds and securities of all nature (including "short" sales) and commodities of every nature, including but

not limited to United States of America or foreign government bonds and securities, and contracts for future delivery of commodities of every nature on margin or otherwise; whether those contracts be in the nature of "puts" or "calls" as such terms are normally understood in the securities industry; and for such purpose to maintain and operate margin and commodities accounts with brokers; and in connection therewith, to borrow money and to pledge any and all stocks, bonds, securities, mutual funds, commodities and contracts for the future delivery thereof, held or purchased by the Trustee, with such brokers for loans and advances made to the Trustee.

The Trustee is empowered to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable.

The Trustee is empowered to engage in listed option transactions (including initiating and closing transactions) of the following nature: Covered Writing, Uncovered Writing, Buying, Spreading and Uncovered Call Writing.

The Trustee is expressly authorized in the Trustee's sole discretion to exercise any option to purchase stock under any stock option purchase plan in which any decedent Beneficiary is a participant.

The Trustee shall have the power, unless limited by law, in the Trustee's absolute discretion to hire, employ and retain third parties and managers of Trust assets and to grant to such managers authority to manage, buy, and sell Trust assets at such managers' discretion provided that in selecting any such manager the Trustees shall exercise the care which persons of prudence, discretion and intelligence employ on their own account and further provided that any such grant of powers to any such manager shall be in writing.

The Trustee is authorized to employ attorneys, accountants, investment advisors, investment managers, specialists and such other agents as the Trustee shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said manager investment discretion, within the limits prescribed by law, if any. Such appointment shall include the power to acquire and dispose of such assets. The Trust shall be solely liable for the compensation of such attorneys, accountants, investment advisors, investment managers, specialists and other agents and any other related costs or expenses.

If the Trustee elects to appoint an investment manager, the Trustee shall enter into an agreement with each investment manager so appointed, specifying the duties and compensation of such investment manager and other terms and conditions under which such investment manager shall be retained. The Trustee shall not be liable for any act or omission of any investment manager, and shall not be liable for following the advice of any investment manager, with respect to any duties delegated to the investment manager.

The Trustee shall have the power to determine the portion of the Trust assets to be invested pursuant to the direction of a designated investment manager and to set investment objectives and guidelines for the investment manager.

The investment manager shall have the same power to invest and reinvest the assets of the Trust under his/her management that he/she would have if he/she were him/herself the Trustee of the Trust (subject to the guidelines established by the Trustee).

Sub-Chapter S Authorization

It is the Trustors' intent that all Trusts and shares created hereby each qualify as a Qualified Subchapter S Trust ("QSST") for federal tax purposes (if the appropriate election is

made) and in any event to conform to the requirements of the provisions of the Internal Revenue Code from time to time existing with respect to the federal income tax treatment of S Corporations and their shareholders with respect to any S Corporation Stock or rights therein. The Trustors intend that the provisions of this Trust, including any power, duty or discretionary authority, be construed to conform to that intent. To the extent that any such provision cannot be so construed with respect to any S Corporation Stock or rights therein, it shall be deemed void as to such Stock or right. In no event shall the Trustee take any action or have any power that will impair the power of such trusts or shares to hold S Corporation stock, and all provisions regarding such trusts shall be interpreted to conform to that objective with respect to any S Corporation Stock or rights therein.

Precious Metals and Limited Partnerships

The Trustee is empowered to purchase and sell, directly or indirectly, precious metals, limited partnerships of any type, investment quality gems, rare coins and stamps, and objects of art.

Stock of Professional Corporation

Any professional corporation stock transferred to this Trust by a duly licensed Trustor shall be held, managed and administered by the licensed Trustor as the Stock Trustee for the use and benefit of said licensed Trustor. The Stock Trustee shall have all the powers described in the provision entitled "TRUSTEE POWERS" with regard to such stock. Subject to the remaining paragraphs of this Article, if the professional corporation stock is transferred from the Trust during the lifetime of the licensed Trustor, it shall be transferred only to the licensed Trustor or to a bona fide purchaser for adequate consideration.

The licensed Trustor shall have legal and equitable title to such shares, subject only to any commonly owned or community property interest which the non-licensed Trustor may have. Nothing in this Article shall be deemed to limit or otherwise affect said commonly owned or community property interest in the proceeds which may be received from the sale of such stock after the death of the licensed Trustor.

At such time as the professional corporation is no longer engaged in the practice of its licensed profession or if it becomes unable to do so, the stock shall be held by the Trustee(s) named in this Agreement, subject to all the provisions of this Trust Agreement exclusive of this Provision, "Stock of Professional Corporation."

Trust Investments

The Trustee shall invest the Trust Estate so that it will produce for the Surviving Trustor, during his or her lifetime, an income or use which is consistent with the value of the Trust Estate and with its preservation.

Marital Deduction

It is the intent of the Trustors that the property of Trust A, and the property allocated to any trust created hereunder having provisions which are intended to qualify its property as qualified terminable interest property, as that term is defined in the Internal Revenue Code, qualify for the unlimited federal estate tax marital deduction for federal tax purposes under the Economic Recovery Tax Act of 1981, or successor statute, that the provisions of this trust instrument relating to the marital deduction, including any power, duty, or discretionary authority, comply with the marital deduction provisions of the Internal Revenue Code, and that they be construed to conform to that intent. To the extent that any such provision cannot be so construed, it shall be deemed void. In no event shall the Trustee take any action or have any

power that will impair the marital deduction, and all provisions regarding Trust A and any qualified terminable interest property trust shall be interpreted to conform to that primary objective.

Payment to Minor and/or Handicapped Individual

In case the income or principal payment under any Trust created hereunder or any share thereof shall become payable to a person under the age of twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: directly to such Beneficiary; to the legally appointed Guardian of such Beneficiary; to some relative or friend for the care, support and education of such Beneficiary; or by the Trustee using such amounts directly for such Beneficiary's care, support and education.

Reimbursement of Guardian's Expenses

The Trustors do not desire that the Guardian of any minor Beneficiary should incur personal expense for the support of such Beneficiary. The Trustee is authorized to distribute funds from such Beneficiary's share for the purpose of reimbursing such Guardian for reasonable expenses incurred in accommodating such Beneficiary.

Occupancy of Residence

The Trustee may permit any Trustor Beneficiary to occupy rent free any residence constituting a part of the assets of a Trust for such Beneficiary and: to pay the real estate taxes thereon; expenses of maintaining said residence in suitable repair and condition; and to pay hazard insurance premiums on said residence; provided, however, the Trustee shall not exercise this power in any way which would deprive either Trustor under this Trust of the beneficial

enjoyment of the Trust and either Trustor shall have the right to limit, restrict or terminate the Trustee's exercises of this power if it interferes with such beneficial enjoyment.

Either Trustor shall further have the right to sell any residence constituting a part of the Trust estate or Trust B and/or Trust C and buy another of the same or lesser value, or exchange any residence constituting part of the said Trust estate for another; any excess value not used to acquire the new residence becoming part of the said Trust estate.

Discretionary Dissolution of Trust

If at any time any Trust created in this Trust Agreement has a fair market value, as determined by the Trustee, of fifteen thousand (\$15,000) dollars or less, the Trustee, in the Trustee's absolute discretion if the Trustee determines that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income Beneficiary, the Trustee shall make such distribution to such income Beneficiaries in the proportion in which they are Beneficiaries or, if no proportion is designated, in equal shares to such Beneficiaries.

Valuation of Assets

In making the distributions of any trust or share created under this Trust Agreement, the judgment of the Trustee concerning the valuation of assets distributed shall be binding and conclusive upon all Beneficiaries. The Trustee may distribute the shares of the various Trusts to Beneficiaries by making distribution in cash, or in kind, or partly in cash and partly in kind, or in undivided interests, in such manner as the Trustee in his or her sole and absolute discretion deems advisable. The Trustee may sell such property as the Trustee deems necessary to make such division or distribution. After any division of the Trust Estate, the Trustee may make

commonly owned investments with funds from some or all of the several shares of the Trust Estate.

Application to Court

If there ever is any need to obtain court approval of any accounting or interpretation of this Agreement, the Trustors direct the Trustee to make such application to any court of competent jurisdiction, it being the intent of the Trustors that the court shall not assume continuing jurisdiction.

Insurance

The following provisions apply to insurance held by the Trust or of which the Trust is the Beneficiary.

Policy Owner's Rights - Nothing in this Article shall be construed as limiting the right of either Trustor to dispose of by Will his or her interest in any life insurance policy on the other Trustor's life that is payable to the Trustee hereunder or as limiting any such right a Trustor may possess in any such insurance policy by virtue of its commonly owned or community property character.

Trustee Held Harmless as Custodian - The owner of any life insurance policies payable to the Trustee shall have all rights under any such policies, including the right to change the Beneficiary, to receive any dividends or other earnings of such policies without accountability therefore to the Trustee or any Beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to either Trustor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon owner's written request and upon the payment to the Trustee of reasonable compensation

for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee.

Canceling a Policy - If any policy is surrendered or if the Beneficiary is changed, this Trust shall be revoked with respect to such policy. However, no revocation of the Trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in Beneficiary of the policy is accepted by the insurance company.

Policy Options - Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the insured that matures any such policy, the Trustee, in the Trustee's discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to the Trustee, and the Trustee shall deliver any policies on the Trustor's life held by the Trustee and payable to any other beneficiaries as those beneficiaries may direct.

Insurance Payment Discharge - Payment to, and the receipt of, the proceeds, by the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this Trust Agreement or see to the application of any payment.

Suing an Insurance Company - The Trustee need not engage in litigation to enforce payment of any policy without prior indemnification to the Trustee from the Trust satisfactory to the Trustee for any resulting expenses.

Limitation on Change of Beneficiary - The Trustee shall not have the power or authority to change the beneficiary of any policy of insurance held in any irrevocable trust created under the terms hereof.

PAYMENT OF DEATH COSTS

The Trustee shall see to the payment of all obligations of a deceased Trustor, including costs of final illness, funeral and interment as deemed appropriate by the Trustee.

Discretionary Powers of Trustee

After a Trustor's death, the Trustee may, in the Trustee's discretion, pay all or any part of such deceased Trustor's funeral and last illness expenses, legally enforceable claims against the Trustor or his or her estate, reasonable expenses of estate administration, any allowances by court order to those dependent upon such Trustor, any estate, inheritance, succession, death or similar taxes payable by reason of such Trustor's death, together with any interest thereon or other additions thereto, without reimbursement from such Trustor's Executor, Personal Representative or Administrator, from any Beneficiary of insurance upon such Trustor's life, or from any other person. All such payments, except for interest, shall be charged generally against the principal of the Trust Estate includable in such Trustor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof except as follows:

Specific Provisions for Settling Estate

On the death of the first of the Trustors to die, the Surviving Trustor shall allocate and charge the final costs of the death of the first Trustor to die, to Trust A or Trust B or Trust C, as appropriate.

Final costs shall include the costs of final illness, funeral expenses, and any Federal and State taxes. All taxes shall be charged against the Trust estate containing the assets creating the liability. Costs and expenses deducted in computing Federal Estate Tax and/or any State death tax shall be charged against the estate of the decedent Trustor.

On the death of the Surviving Trustor, the Successor Trustee shall charge Trust A and Trust C proportionately with the costs of final illness, funeral expenses, and any Federal and State taxes of the Surviving Trustor.

Written Statement as Evidence

Written statement by the executor, personal representative or administrator of such sums due and payable by the Trust Estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee, and the Trustee shall be under no duty to see to the application of any such payments.

Flower Bonds

The Trustee shall see to the redemption of any obligations of the United States Government held hereunder which may be redeemed at par in payment of federal estate taxes, if held as part of the deceased Trustor's taxable estate, to the extent of the deceased Trustor's interest therein.

If someone other than the Trustee is charged with the filing of returns and payment of death taxes, then the Trustee may pay over to such person(s) the obligations to be used in payment of taxes and upon receipt by such person(s) the Trustee shall be released from any duty to see to the application thereof.

DEATH OF TRUSTOR

Upon the death of either Trustor the Surviving Trustee shall divide and allocate the Trust Estate into two (2) separate shares as described in the following section. This division shall include any property which may be added from the deceased Trustor's general estate. One share shall be designated as Survivor's Trust A and the other share shall be designated as Decedent's Marital Share, Trust B and Trust C.

Survivor's Trust A

Survivor's Trust A shall consist of the Survivor's one-half (1/2) interest in the commonly owned property or community property, quasi-community property and all other property included in the Trust Estate as the separate property of the Surviving Trustor. Upon division into shares at the death of a Trustor, Survivor's Trust A shall remain revocable by the Surviving Trustor during the life of the Surviving Trustor. Upon the death of the Surviving Trustor this share shall become irrevocable.

Any property not allocated to the Decedent's Marital Share, or otherwise allocated by the provisions of this Trust at the death of the first of the Trustors to die, shall be allocated to this Survivor's Trust A.

Decedent's Marital Share

Decedent's Marital Share shall consist of the Decedent's one-half (1/2) interest in the commonly owned property or community property of the Trust Estate, one-half (1/2) interest in the quasi-community property and all other property included in the Trust Estate as the Separate Property of the Decedent Trustor. Decedent's Marital Share shall be divided and allocated into Decedent's Trust B and C. Upon creation of such Trust shares, Decedent's Trust B and Trust C are irrevocable.

The Surviving Trustee shall have the sole discretion to select the commonly owned, community and quasi-community assets or the proportionate share of any such assets which shall be included in the Decedent's Trust B and Trust C. In no event, however, shall there be included in Trust C any assets or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and Trust C shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind to the Decedent's share at the value of such asset at the date of distribution to the Decedent's share.

Unlimited Marital Deduction

The term "unlimited marital deduction" shall not be construed as a direction by the deceased Trustor to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws. This term is used to indicate the Trustors' desire to minimize any tax on the event of the first to die, and it is their wish that the Trustee administer the Trust Estate in such a manner as will result in the largest allowable estate tax marital deduction at the death of the first of the Trustors to die, after funding Decedent's Trust B to the maximum amount which can be allocated to Decedent's Trust B without incurring any Federal Estate Tax.

Disclaimer of Interest

The Surviving Trustor may disclaim his or her interest in any asset, or portion thereof, which is included in the Trust Estate or any share created by this Trust Agreement. Such disclaimer shall be in writing, in such form as may be prescribed by state law, and which may meet the further requirements of the rules and regulations of the Internal Revenue Service for qualified disclaimers. The Surviving Trustor may disclaim his or her right to income, the right to

invade principal (whether by ascertainable standard or otherwise), the right to appoint the residual by amendment to this trust or by testamentary instrument, and any other right or rights, interest and/or portions thereof.

In making the election to disclaim any interest in property, the Surviving Trustor may choose that property to be disclaimed, and such interest or interests therein as they may deem prudent. If a disclaimer extends to the Surviving Trustor's entire interest in an asset, and all rights therein, such asset shall be held, managed, allocated and distributed according to the terms hereof which obtain upon the death of the Surviving Trustor, as if such death had occurred.

If the Surviving Trustor shall not disclaim his or her entire interest in an asset of the Trust Estate, such partial disclaimer shall act as an amendment of this Trust, and the Trustee shall abide by the terms, provisions and limitations contained therein. To the extent necessary to comply with the requirements of state or federal law, the Trustee is empowered to make specific amendments to this Trust and its provisions to give effect to the terms of a qualified disclaimer by the Surviving Trustor, except that no such amendment(s) may amend any Trust that has become irrevocable due to the death of a Trustor.

Division of Marital Share

The marital share shall be divided and administered as follows: Taking into account any assets already assigned into and held under the terms of Decedent's Trust B, and including any assets disclaimed by the Surviving Trustor in favor of Decedent's Trust B, an amount equal to the exemption equivalent available by reason of the unified tax credit available under Internal Revenue Code Section 2010 or any successor or modified version of that Section (reduced by any such credit applied to life-time transfers) shall be placed in Decedent's Trust B and shall be administered under the terms of Trust B as hereinafter set forth (Decedent's Trust B), and any

amount of the marital share exceeding the amount allocated to Trust B shall be administered under the terms of Trust C as hereinafter set forth.

The assets allocated to Decedent's Trust B shall include amounts held by the Decedent Trustor in IRA or other retirement plans, and which have been disclaimed in favor of said Trust B by the Surviving Trustor. As to such assets in Trust B, the terms of Trust B shall be irrevocable, and the Surviving Trustor shall be the irrevocable lifetime beneficiary thereof. The Successor Trustee is given the authority by the Trustors to amend the said Trust B as necessary to conform it to the appropriate laws and regulations, now and in the future, that apply to a trust named as a beneficiary of such a retirement account, so as to retain all options for the settlement thereof as if the Surviving Trustor were the direct beneficiary, as may be prescribed by the Internal Revenue Code and related laws and regulations.

Decedent's Trust B

Decedent's Trust B shall be composed of cash, securities or other property of the Trust Estate having a value equal to the largest amount, that after allowing for the unified credit against the federal estate tax and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will not result in a federal estate tax being imposed on the estate of the deceased Trustor.

Notwithstanding the foregoing, if the decedent Trustor is a non-resident, non-citizen of the United States at death, then all of the Decedent's Share shall be allocated to Survivor's Trust A after funding Decedent's Trust B.

Decedent's Trust C

Trust C shall be composed of cash, securities or other property of the trust estate having a value equal to the unlimited marital deduction as finally determined in the Decedent Trustor's Federal Estate Tax Return, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interest in property, passing or which have passed to the Surviving Trustor, otherwise than pursuant to the provisions of this article, reduced by the amount of cash, securities or other property allocated to Trust B herein.

Use of Trusts A and B - Simultaneous Death

If both Trustors should die under circumstances which would render it doubtful as to which Trustor died first, half of the commonly owned and/or community assets and all of one of the Trustor's separate property shall be allocated and transferred to Trust A, and the other half of the commonly owned and/or community assets and all of the other Trustor's separate property shall be allocated and transferred to Trust B. Assets so allocated shall be administered in accordance with the terms for each Trustor's share, as their interests appear.

If any non-Trustor beneficiary and a Trustor should die under circumstances which would render it doubtful as to which died first, the Trustor or the non-Trustor beneficiary, it shall be conclusively presumed that said non-Trustor beneficiary predeceased such Trustor by (60) sixty days.

SURVIVOR'S TRUST A

Survivor's Trust A shall be held, administered and distributed as follows:

Right to Income

Commencing with the date of the first Trustor's death, the Trustee shall pay to or apply for the benefit of the Surviving Trustor during his or her lifetime all the net income from Trust A in convenient installments but no less frequently than quarterly.

Right to Principal

In addition, the Trustee may pay to or apply for the benefit of the Surviving Trustor such sums from the principal of Trust A as in the Trustees' sole discretion shall be necessary or advisable from time to time for the medical care, maintenance and welfare of the Surviving Trustor, taking into consideration to the extent the Trustees deem advisable, any other income or resources of the Surviving Trustor known to the Trustees.

Right to Withdraw Principal

The Surviving Trustor may, at any time during his or her lifetime and from time to time, withdraw all or any part of the principal of Trust A, free of trust, by delivering to the Trustee an instrument in writing, duly signed by the Surviving Trustor, describing the property or portion thereof desired to be withdrawn. Upon receipt of such instrument, the Trustee shall thereupon convey and deliver to the Surviving Trustor, free of trust, the property described in such instrument.

Control of Assets

The Surviving Trustor may, at any time by written notice, require the Trustee either to make any nonproductive property of this Trust productive or to convert productive property to

nonproductive property, each within a reasonable time. The Surviving Trustor may further require the Trustee to invest part, or all, of this share of Trust assets for the purpose of maximizing income rather than growth, or growth rather than income.

Right to Change Beneficiary

The Surviving Trustor retains the right to change the beneficiaries of Trust A

Allocation to Survivor's GST Trust

Effective as of the date of death of the last of the Trustors to die, this Trust A, as finally determined, shall be further divided and held as two (2) parts known respectively as the "Survivor's GST Trust" and "Trust A."

The Survivor's GST Trust shall consist of that amount of property, if any, that has a value equal to the amount of the decedent Trustor's then available generation-skipping transfer ("GST") tax exemption.

In making the division of property into Survivor's GST Trust and Trust A: (a) the values as finally determined for federal estate tax purposes (or, if no estate tax return is required with respect to the decedent Trustor's estate, the values determined in accordance with federal estate tax laws), will be conclusive; and (b) the trustee may select the property to be used to satisfy the Survivor's GST Trust and Trust A amounts, but the trustee must select such property in a manner that the assets, including cash, of each share will have an aggregate fair market value fairly representative of each part's proportionate share of the appreciation or depreciation in value to the date or dates of allocation of all property then available for allocation.

For the purposes of determining the amount of property allocated to Survivor's GST Trust and Trust A, the decedent Trustor's then available GST tax exemption means an amount equal to the GST tax exemption provided in Section 2631(a) of the Internal Revenue Code of 1986, as

amended, that has not been allocated by the decedent Trustor (or by operation of law) to property transferred by the decedent Trustor during the decedent Trustor's lifetime and that has not been allocated by the decedent Trustor's personal representative to any other disposition under the decedent Trustor's will, this trust, or otherwise. In determining the allocation amount, if the decedent Trustor has died without filing a federal gift tax return that is required to be filed and that has a due date (including extensions) that is after the decedent Trustor's death, then the decedent Trustor will be deemed to have allocated the decedent Trustor's GST tax exemption to all the property with respect to which the decedent Trustor is the transferor for federal GST tax purposes that (a) may at some time be subject to the federal GST tax; (b) is required to be reported on such gift tax return; (c) is to or for the benefit of the decedent Trustor's lineal descendants or any of them; and (d) does not qualify for any other exemption or exclusion from the federal GST tax. Nonetheless, the decedent Trustor shall not be deemed to have allocated his GST tax exemption to any trust if the entire trust principal may, at any time, either be required under the terms of the governing instrument to be paid to one or more children of the decedent Trustor or to one or more persons treated as a child of the decedent Trustor for federal GST tax purposes (other than as an invasion of principal in the discretion of a trustee or pursuant to an ascertainable standard), or be subject to federal estate tax by reason of the death of a child of the decedent Trustor or a person treated as a child of the decedent Trustor for federal GST tax purposes.

The Trust property held as Survivor's GST Trust and as Trust A shall be held and administered in accordance with the other terms and conditions of this section of the Trust, "SURVIVOR'S TRUST A," as herein contained.

Distribution of Residual of Trust A and Survivor's GST Trust

After the death of the surviving Trustor, the balance of the principal of Trust A shall be held, managed and distributed in accordance with the provisions specified in the section of this trust titled "ALLOCATION AND DISTRIBUTION OF TRUST ASSETS" as constituted and provided on the date of the last of the Trustors to die.

After the death of the last Trustor, the trustee shall, to the extent possible, make property allocations and distributions of the Trust Estate so that any distributions to "skip persons" (as defined in the Internal Revenue Code of 1986, as amended) of the Trustor shall be made from the Decedent's GST portion of Trust A or Trust A, as the case may be, so long as all distributions to skip persons will be made from those portions of the Trust Estate or the deceased Trustor's taxable estate having an inclusion ratio of zero (0). If for any reason the trustee allocates the Trust Estate so that distributions from the Trust Estate or the deceased Trustor's taxable estate will be subject to the Generation Skipping Transfer Tax because the portion of the Trust Estate or taxable estate from which the distributions are to be made has an inclusion ratio other than zero (0), then distributions to skip persons shall be made first from those portions of the Trust Estate which have an inclusion ratio other than zero (0). The Trustors' desire that any portion of the trust estate having an inclusion ratio of zero (0) be allowed to appreciate free of generation skipping transfer tax during the period the Trust Estate is being held for ultimate distribution of principal to skip persons to the extent this is legally possible.

If the Trustor whose share is represented by this Trust A makes specific provision for beneficiaries, allocation and distribution; and such provision cannot be complied with due to the death of a specified beneficiary, or if for any reason a specified distribution cannot be made as directed, then provisions of "Per Stirpes" as specified herein shall govern distribution, with reference to the affected Trustor's beneficiaries and share.

DECEDENT'S TRUST B

Decedent's Trust B shall be irrevocable and shall be held, administered and distributed as follows:

Payment of Income

Commencing with the date of first Trustor's death, the Trustee shall pay to or apply for the benefit of the Surviving Trustor during his or her lifetime all the net income from Trust B in convenient installments, but no less frequently than quarterly.

Payment of Principal

The Trustee may pay to, or apply for the benefit of, the Surviving Trustor, during his or her lifetime, such sums from the principal of Trust B as in the Trustee's sole discretion shall be necessary or advisable from time to time for the health care, education, support and maintenance of the Surviving Trustor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Surviving Trustor known to the Trustee.

Other Payments

In addition to the income (paid under "Payment of Income" above) and discretionary payments of principal (paid under "Payment of Principal" above) from this Trust, there shall be paid to the Surviving Trustor, during his or her lifetime, from the principal of this Trust, upon the Surviving Trustor's written request, during the last month of each fiscal year of the Trust an amount not to exceed during such fiscal year the amount of five thousand (\$5,000) dollars or five (5%) percent of the aggregate value of principal for such fiscal year, whichever is greater. This right of withdrawal is noncumulative, so that if the Surviving Trustor does not withdraw, during such fiscal year, the full amount to which he or she is entitled under this Paragraph, his or her right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

Control of Assets

The Surviving Trustor may, at any time by written notice, require the Trustee either to make any nonproductive property of this Trust productive or to convert productive property to nonproductive property, each within a reasonable time. The Surviving Trustor may further require the Trustee to invest part, or all, of this share of Trust assets for the purpose of maximizing income rather than growth, or growth rather than income.

Qualified Terminable Interest

It is the intent of the Trustors that Trust B shall meet the requirements for treatment as a qualified terminable interest under I.R.C. Sections 2523(f)(2)(C) and 2056(b)(7)(B)(v). The Trustee (or Personal Representative of the first Trustor to die, as the case may be) shall have the authority to elect to treat all or a fractional share of the assets in Trust B as qualified terminable interest property. In addition, the Trustee (or Personal Representative of the first Trustor to die, as the case may be) shall have the authority to make an election under any applicable state law to treat all or a fractional share of Trust B Property (including a different fractional share than selected in any federal law election) as qualifying for any state law marital deduction.

The Trustees of Trust B are given the authority to amend this Trust Agreement to conform the terms to the applicable rules and regulations, now and in the future, to secure for the property of Trust B, treatment as qualified terminable interest property as defined in I.R.C. Sections 2523(f)(2)(C) and 2056(b)(7)(B)(v) or any subsequent provisions of the I.R.C. and as interpreted and applied by the rules and cases thereunder, insofar as it is legally possible to do so.

Distribution of Residual of Trust B

The balance of the principal of Trust B shall be distributed in accordance with the provisions specified in the section of this Trust titled "ALLOCATION AND DISTRIBUTION OF TRUST ASSETS " as constituted and provided on the date of the death of the first of the Trustors to die.

If the Trustor whose share is represented by this Trust B makes specific provision for beneficiaries, allocation and distribution; and such provision cannot be complied with due to the death of a specified beneficiary, or if for any reason a specified distribution cannot be made as directed, then provisions of "Per Stirpes" as specified herein shall govern distribution, with reference to the affected Trustor's beneficiaries and share.

DECEDENT'S TRUST C

Decedent's Trust C shall be irrevocable and shall be held, administered and distributed as follows:

Payment of Income

Commencing with the date of first Trustor's death, the Trustees shall pay to or apply for the benefit of the Surviving Trustor during his or her lifetime all the net income from Trust C in convenient installments, but no less frequently than quarterly.

Payment of Principal

The Trustees may pay to, or apply for the benefit of, the Surviving Trustor, during his or her lifetime, such sums from the principal of Trust C as in the Trustees' sole discretion shall be necessary or advisable from time to time for the health care, education, support and maintenance of the Surviving Trustor, taking into consideration to the extent the Trustees deem advisable, any other income or resources of the Surviving Trustor known to the Trustees.

Control of Assets

The Surviving Trustor may, at any time by written notice, require the Trustees to make any nonproductive property of this Trust productive within a reasonable time. The Surviving Trustor may further require the Trustees to invest part, or all, of this share of Trust assets for the purpose of maximizing income rather than growth, or growth rather than income.

Qualified Terminable Interest

It is the intent of the Trustors that this Trust C shall qualify for the Marital Deduction on the death of the first of them to die. They therefore direct that the Trustees of this Trust C shall make such election as may be required by law (I.R.C. Sections 2523(f)(2)(C) and

2056(b)(7)(B)(v) or any subsequent provisions of the I.R.C. and as interpreted and applied by the rules and cases thereunder).

In the event that it is not possible to obtain treatment for the principal of Trust C as "qualified terminable interest property" because the surviving Trustor is not a United States citizen, then the Trustees shall secure alternative deferral of tax on the property of this Trust C by following the provisions for "Qualified Domestic Trust" herein.

The Trustees of this Trust C are hereby given the authority by the Trustors to amend the Trust as necessary to conform it to the appropriate laws and regulations, now and in the future, that apply to securing for the property of this Trust C its treatment as "qualified terminable interest property" as defined in I.R.C. Sections 2523(f)(2) and 2056(b)(7)(B)(i) (or any subsequent provisions of the I.R.C. and as interpreted and applied by the rules and cases thereunder), insofar as it is possible to do so.

Qualified Domestic Trust

In the event that the surviving Trustor is not a citizen of the United States on the date of death of the first of the Trustors to die, the Trustors intend that this Trust C be a "Qualified Domestic Trust" under the provisions of I.R.C. Section 2056(d)(2) (or any subsequent provisions of the I.R.C. and as interpreted and applied by the rules and cases thereunder). They therefore direct that the Trustees of this Trust C shall be a citizen, or be citizens of the United States, or a qualifying institution, so that the property of this Trust C shall not be taxed on the death of the first of the Trustors to die. If a Trustee is not a citizen of the United States, the Trustee shall appoint a U.S. Citizen to serve as successor Co-Trustee with the then serving non-U.S. Citizen Trustee. The U.S. Trustee shall withhold from Trust C taxes properly imposed by section 2056A of the Internal Revenue Code, as amended, in conformity with Internal Revenue Service

regulations. The Trustees of this Trust C are hereby given the authority by the Trustors to amend the provisions of this Trust C as necessary to conform it to the appropriate laws and regulations, now and in the future, that apply to a "Qualified Trust" as that term is defined by the Internal Revenue Code and related laws and regulations.

Allocation to Decedent's GST Trust

Effective as of the date of death of the first of the Trustors to die, this Trust C, as finally determined, shall be further divided and held as two (2) parts known respectively as the "Decedent's GST Trust" and "Trust C."

The Decedent's GST Trust shall consist of that amount of property, if any, that has a value equal to the amount of the decedent Trustor's then available generation-skipping transfer ("GST") tax exemption.

In making the division of property into Decedent's GST Trust and Trust C: (a) the values as finally determined for federal estate tax purposes (or, if no estate tax return is required with respect to the decedent Trustor's estate, the values determined in accordance with federal estate tax laws), will be conclusive; and (b) the trustee may select the property to be used to satisfy the Decedent's GST Trust and Trust C amounts, but the trustee must select such property in a manner that the assets, including cash, of each share will have an aggregate fair market value fairly representative of each part's proportionate share of the appreciation or depreciation in value to the date or dates of allocation of all property then available for allocation.

For the purposes of determining the amount of property allocated to Decedent's GST Trust and Trust C, the decedent Trustor's then available GST tax exemption means an amount equal to the GST tax exemption provided in Section 2631(a) of the Internal Revenue Code of 1986, as amended, that has not been allocated by the decedent Trustor (or by operation of law) to

property transferred by the decedent Trustor during the decedent Trustor's lifetime and that has not been allocated by the decedent Trustor's personal representative to any other disposition under the decedent Trustor's will, this trust, or otherwise. In determining the allocation amount, if the decedent Trustor has died without filing a federal gift tax return that is required to be filed and that has a due date (including extensions) that is after the decedent Trustor's death, then the decedent Trustor will be deemed to have allocated the decedent Trustor's GST tax exemption to all the property with respect to which the decedent Trustor is the transferor for federal GST tax purposes that (a) may at some time be subject to the federal GST tax; (b) is required to be reported on such gift tax return; (c) is to or for the benefit of the decedent Trustor's lineal descendants or any of them; and (d) does not qualify for any other exemption or exclusion from the federal GST tax. Nonetheless, the decedent Trustor shall not be deemed to have allocated his GST tax exemption to any trust if the entire trust principal may, at any time, either be required under the terms of the governing instrument to be paid to one or more children of the decedent Trustor or to one or more persons treated as a child of the decedent Trustor for federal GST tax purposes (other than as an invasion of principal in the discretion of a trustee or pursuant to an ascertainable standard), or be subject to federal estate tax by reason of the death of a child of the decedent Trustor or a person treated as a child of the decedent Trustor for federal GST tax purposes.

The Trust property held as Decedent's GST Trust and as Trust C shall be held and administered in accordance with the other terms and conditions of this section of the Trust, "**DECEDENT'S TRUST C,**" as herein contained.

Distribution of Residual of Trust C

After the death of the surviving Trustor, the balance of the principal of Trust C shall be held, managed and distributed in accordance with the provisions specified in the section of this trust titled "ALLOCATION AND DISTRIBUTION OF TRUST ASSETS" as constituted and provided on the date of the first of the Trustor's to die.

After the death of the first Trustor, the trustee shall, to the extent possible, make property allocations and distributions of the Trust Estate so that any distributions to "skip persons" (as defined in the Internal Revenue Code of 1986, as amended) of the Trustor shall be made from the Decedent's GST portion of Trust B or Trust C, as the case may be, so long as all distributions to skip persons will be made from those portions of the Trust Estate or the deceased Trustor's taxable estate having an inclusion ratio of zero (0). If for any reason the trustee allocates the Trust Estate so that distributions from the Trust Estate or the deceased Trustor's taxable estate will be subject to the Generation Skipping Transfer Tax because the portion of the Trust Estate or taxable estate from which the distributions are to be made has an inclusion ratio other than zero (0), then distributions to skip persons shall be made first from those portions of the Trust Estate which have an inclusion ratio other than zero (0). The Trustors' desire that any portion of the trust estate having an inclusion ratio of zero (0) be allowed to appreciate free of generation skipping transfer tax during the period the Trust Estate is being held for ultimate distribution of principal to skip persons to the extent this is legally possible. The trustees are authorized to make any elections permitted under the I.R.C. to effectuate this purpose including an election to treat the first Trustor to die as the transferor of property which may constitute a portion of Trust C (a so-called reverse QTIP election).

If the Trustor whose share is represented by this Trust C makes specific provision for beneficiaries, allocation and distribution; and such provision cannot be complied with due to the death of a specified beneficiary, or if for any reason a specified distribution cannot be made as directed, then provisions of "Per Stirpes" as specified herein shall govern distribution, with reference to the affected Trustor's beneficiaries and share.

ALLOCATION AND DISTRIBUTION OF TRUST ASSETS

The Trustee shall allocate, hold, administer and distribute the Trust assets as hereinafter delineated.

Upon Death of the First Trustor

Upon the death of the first Trustor, the Trustee shall make any separate distributions that have been specified by the deceased Trustor. The Trustee shall also take into consideration the appropriate provisions of this section.

Upon the Death of Both Trustors

Upon the death of the Surviving Trustor, the Trustee shall hold, administer and distribute the Trust in the following manner.

Personal Property Distribution

The Trustors request the Trustee to abide by any memorandum by the Trustors directing the disposition of personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, china, silverware, glass, books, jewelry, wearing apparel, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property. Otherwise, the personal and household effects of the Trustors shall be distributed with the remaining assets of the Trust Estate.

Support and Education

At any time prior to the division of the Trust into shares as hereinafter provided, or prior to distribution if divided, the Trustee may, at his/her sole and absolute discretion, provide such sums as shall be necessary or advisable, for the care and maintenance, medical needs, and education of any Primary Beneficiary, provided, however, such aid or support shall be charged against the share of the Beneficiary receiving it, and that no such aid or support shall in any way

diminish the benefits available to any other Beneficiary. This provision shall also apply to the issue of a deceased Primary Beneficiary (as hereinafter designated).

Extraordinary Distribution

The Trustee is further authorized, in his or her sole and absolute discretion, to provide such sums as shall be necessary or advisable, for the furtherance of worthwhile personal, professional or business goals, and if deemed appropriate by the Trustee, to provide such reasonable sums for a partial or complete down-payment on a home of any Primary Beneficiary, provided, however, such aid or support shall be charged against the share of the Beneficiary receiving it, and that such aid or support shall in no way diminish the benefits available to any other Beneficiary. Such provision shall also apply to the issue of a deceased Primary Beneficiary of the Trustors.

The Trustee is authorized, in his or her sole and absolute discretion, to distribute all the net income of the Trust Estate, at least annually, to the beneficiaries then entitled to income. Any distribution of income shall be made in the same proportion as the beneficiary's right to principal bears to the total principal of the Trust Estate. For example, if a beneficiary is entitled to a future distribution of twenty-five percent (25%) of the principal, the Trustee may distribute twenty-five percent (25%) of the net income to the beneficiary.

The Trustee shall record such extraordinary distributions that are made under this provision in Schedule A.

Gifts or Loans

The Trustee shall reduce a Beneficiary's share by any gifts or loans as shown in Schedule A.

Handicapped Beneficiaries

As used in this section, the term "Handicapped Beneficiary" and any variations thereof and references thereto, shall mean any beneficiary of this Trust who has been determined by a court of competent jurisdiction to be incompetent or unable to adequately manage his or her affairs. Additionally, the Trustee may make a determination, in accordance with the procedures for determining the competency of a Trustee, of the incompetency of any beneficiary. The interests of all such beneficiaries shall be governed by these provisions for Handicapped Beneficiaries.

Handicapped Beneficiaries shall not have any discretionary rights of a beneficiary with respect to this Trust, or with respect to his or her share or portion thereof. The Trustees shall hold and maintain such incompetent beneficiary's share of the Trust Estate in trust.

Notwithstanding the foregoing, any Beneficiary who is diagnosed for the purposes of governmental benefits (as hereinafter delineated) as being not competent or as being disabled, and who shall be entitled to governmental support and benefits by reason of such incompetency or disability, shall cease to be a Beneficiary, and Trustee if so named, of this Trust if such aid is jeopardized by reason of the individual's status as a Beneficiary or Trustee. Likewise, they shall cease to be a Beneficiary or Trustee if any share or portion of the principal or income of the Trust shall become subject to the claims of any governmental agency for costs or benefits, fees or charges.

The portion of the Trust Estate which, absent the provisions of this section "Handicapped Beneficiaries," would have been the share of such incompetent or handicapped person shall be retained in Trust for as long as that individual lives. All income from such share, not otherwise utilized for the purposes of this Trust share, shall be added to the principal thereof annually.

While the Trustees hold Trust property available for the benefit of any handicapped beneficiary, it is the intent of the Trustors, and they direct that the Trustee(s), in their sole and absolute discretion, provide life enrichment benefits for that handicapped beneficiary which will not cause the loss of any Governmental benefit to which that beneficiary would otherwise be entitled. Such benefits may include: training to develop skills and abilities, transportation, educational support, tutoring, adaptive vocational skills training, home and residential adaptation assistance, and any other programs to provide "life enrichment" as may be permitted by law. Upon the death of this individual, the residual of this share shall be distributed as otherwise specified in the Trust.

If such individual recovers from incompetency or disability, and is no longer eligible for aid from any governmental agency, including costs or benefits, fees or charges, such individual shall be reinstated as a competent beneficiary after sixty (60) days from such recovery, and the allocation and distribution provisions as stated herein shall apply to that portion of the Trust Estate which is held by the Trustee subject to the foregoing provisions of this section.

Upon the death of a Handicapped Beneficiary who otherwise would have been a Beneficiary of this Trust, any allocation of the Trust Estate held in Trust which would otherwise have inured to the benefit of said Handicapped Beneficiary shall be distributed to his or her issue, if any, per the provisions which allocate and distribute Trust assets.

Each share shall be distributed or retained in Trust as hereinafter provided.

Primary Beneficiaries

Unless otherwise herein provided, upon or after the death of the Surviving Trustor, the Primary beneficiaries of this Trust are James Keith Wimberley and Carroll Wesley Wimberley.

Carroll Wesley Wimberley

Allocation of Trust Assets

Upon the death of the Surviving Trustor the Trustee shall allocate the balance of the Trust Estate as then constituted into equal separate shares to provide one (1) share each for James Keith Wimberley and Carroll Wesley Wimberley, the Primary Beneficiaries of the Trust Estate.

Each share shall be held, managed and distributed as provided in the provision entitled "**Distribution of Trust Assets.**"

In the event James Keith Wimberley dies before receiving James Keith Wimberley's entire share, James Keith Wimberley's share shall be reallocated in the following manner: the undistributed balance of James Keith Wimberley's share shall be allocated to create one share for each living child and one share for each group composed of the living issue of a deceased child of the deceased Primary Beneficiary who are all contingent beneficiaries of James Keith Wimberley, the Primary Beneficiary, and distributed to such then living issue by right of representation in accordance with the Provision titled "Per Stirpes."

If all the issue of James Keith Wimberley die before receiving their entire share the undistributed balance of James Keith Wimberley's share shall be allocated equally among the Trustors' remaining Primary Beneficiaries and deceased Primary Beneficiaries leaving then living issue by right of representation and distributed as otherwise provided in this Trust Agreement.

In the event Carroll Wesley Wimberley dies before receiving Carroll Wesley Wimberley's entire share, Carroll Wesley Wimberley's share shall be reallocated in the following manner: the undistributed balance of Carroll Wesley Wimberley's share shall be allocated to create one share for each living child and one share for each group composed of the living issue of a deceased child of the deceased Primary Beneficiary who are all contingent beneficiaries of Carroll Wesley

Wimberley, the Primary Beneficiary, and distributed to such then living issue by right of representation in accordance with the Provision titled "Per Stirpes."

If all the issue of Carroll Wesley Wimberley die before receiving their entire share the undistributed balance of Carroll Wesley Wimberley's share shall be allocated equally among the Trustors' remaining Primary Beneficiaries and deceased Primary Beneficiaries leaving then living issue by right of representation and distributed as otherwise provided in this Trust Agreement.

Distribution of Trust Assets

Following the death of the Surviving Trustor, the Trustee shall distribute to James Keith Wimberley according to the following schedule:

The Trustee shall distribute the share outright as soon as practicable. Any share allocated to the issue of James Keith Wimberley due to that Primary Beneficiary's death prior to receiving his or her share shall be distributed according to the provision titled "Per Stirpes."

Following the death of the Surviving Trustor, the Trustee shall distribute to Carroll Wesley Wimberley according to the following schedule:

The Trustee shall distribute the share outright as soon as practicable. Any share allocated to the issue of Carroll Wesley Wimberley due to that Primary Beneficiary's death prior to receiving his or her share shall be distributed according to the provision titled "Per Stirpes."

Per Stirpes

After division into shares, pursuant to the allocation and distribution directions set forth in this trust, if a Primary Beneficiary or the issue of a deceased Primary Beneficiary predeceases complete distribution of his or her share, and there is no other direction for allocation and distribution, then the undistributed balance of such share shall be allocated and distributed as hereinafter provided. Any share allocated to the issue of a deceased Primary Beneficiary shall be

distributed by right of representation in the following manner: when such an heir (issue of a deceased Primary Beneficiary) attains the age of twenty-five (25) years, the Trustee shall distribute to such beneficiary one-third (1/3) of the principal and accumulated income of that beneficiary's share as then constituted; and when such an heir (issue of a deceased Primary Beneficiary) attains the age of thirty (30) years, the Trustee shall distribute to such beneficiary one-half (1/2) of the principal and accumulated income of that beneficiary's share as then constituted; and when an heir (issue of a deceased Primary Beneficiary) attains the age of thirty-five (35) years, the Trustee shall distribute to such beneficiary the undistributed balance of his or her share. If an heir (issue of a deceased Primary Beneficiary) has already attained age twenty-five (25), or age thirty (30), or age thirty-five (35) at the time this trust is divided into shares, the Trustee shall, upon making the division, distribute to such beneficiary one-third (1/3), two-thirds (2/3), or all of that beneficiary's share, respectively. If no provision has been made for allocation of trust assets and distribution of trust assets for the disposition of a trust share in the event such trust share cannot be distributed to the designated beneficiary because the designated beneficiary predeceases distribution, or for any other reason, then the balance of such trust share shall be allocated to the issue of the designated beneficiary by right of representation and held, administered and distributed in accordance with the provisions of this section, "Per Stirpes."

Intestate Succession

If at the time of the death of the Surviving Trustor, or at any later time prior to final distribution hereunder, all the issue of the Trustors are deceased and no other disposition of the property is directed by this Trust, then and in that event the then remaining property of this Trust

shall be distributed to the heirs of the Trustors by the laws of intestate succession then in effect in the state where the Trustors resided at the Trustors' death, except that no amounts shall be allocated or distributed to the parents, brothers and/or sisters, aunts and/or uncles of the Trustors. If any real property held as an asset in the Trust Estate is located in the Commonwealth of Pennsylvania, real estate distributions shall be limited to those beneficiaries deemed "exempt" under Pennsylvania's Realty Transfer Tax Laws.

Charity

If no such heirs are extant, then the Trustee is directed to distribute the property to qualified non-profit charitable organizations identified in Schedule B. If no such charity is identified in Schedule B, the Trustee shall select appropriate non-profit charitable organizations for distribution of the Trust Estate. Any distributions to a charity, whether by specific allocation or in Schedule B as determined in this provision, shall be made at the discretion of the trustee after having pursued good faith and due diligence to value the estate. If the charity refuses to accept this appraisal, an alternate charity shall receive the specified distribution. If any real property held as an asset in the Trust Estate is located in the state of Pennsylvania, real estate distributions shall be limited to those beneficiaries deemed "exempt" under Pennsylvania Realty Transfer Tax Laws.

The Trustee is directed to charge the payment of any estate and gift taxes against that portion of the Trust Estate that does not qualify for the charitable or marital deduction as defined in the Internal Revenue Code. If any gift to charity results in excess estate and gift taxation due to a so-called "tax spiral," the gift to charity shall be void.

Property Exposed to Environmental Hazards

The Trustors are not aware of any environmental harm existing on any property now owned by the Trustee(s) on behalf of this Trust. Any property in the trust estate determined by the Trustee to be subject to CERCLA (Comprehensive Environmental Response Compensation and Liability Act) liability in an amount which exceeds the fair market value of the property as finally determined in the deceased Trustor's final tax return shall be irrevocably devised to the government of the United States of America as an absolute and unrestricted charitable gift.

GENERAL PROVISIONS

The following general provisions apply to the entire Trust Agreement.

Intention to Avoid Probate

It is the intention of the Trustors to avoid probate through the use of this Trust Agreement. If, however, the Trustee of this Trust and the Executor or Personal Representative of the estate of either or both Trustors shall mutually determine that it shall be in the best interests of the Beneficiaries of the Trust, and the beneficial interests of the Beneficiaries shall not thereby be altered, the Trustee may subject any asset to probate to accomplish a result unavailable without probate (e.g. to bar future creditor claims).

Annual Accounting

Any non-Trustor Successor Trustee shall render an annual accounting to the Beneficiary or Beneficiaries of the Trust not more than one hundred twenty (120) days following the close of the fiscal year of the Trust.

Partial Invalidity

If any provision of this Agreement is void, invalid or unenforceable, the remaining provisions shall nevertheless be valid and carried into effect.

Headings

The headings of this Agreement are for convenience only and are not a part of the text.

Counterparts

This Agreement may be executed in any number of counterparts and each shall constitute an original of one and the same instrument.

Spendthrift Provisions

Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the Beneficiary of any Trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any Beneficiary.

Last Illness and Funeral Expense

On the death of any person entitled to income or support from any Trust hereunder, the Trustee shall be authorized to pay the funeral expenses and the expenses of the last illness of such person from the corpus of the Trust from which such person was entitled to income or support.

GLOSSARY OF TERMS

The Glossary of Terms covers four basic categories: Trustee, Child or Children, Internal Revenue Code Terminology and Commonly Owned Property.

Trustee

Whenever the word "Trustee" or any modifying or substituted pronoun therefore is used in this Trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

Child or Children

For the purposes of this Trust, "children" means the lawful blood descendants in the first degree of either or both Trustors; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted while a minor, that person shall be considered a child of such adopting parent and such adopted child and their issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of either or both Trustors even though such descendant is born after the death of a Trustor.

Internal Revenue Code Terminology

As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "unlimited marital deduction," "marital deduction," "qualified terminable interest," "qualified terminable interest property," and any other word or words which form the context in which it or they are used referring to the Internal Revenue Code shall be assigned the same meaning as such words have for the purposes of applying the Internal Revenue Code to a deceased Trustor's estate. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of such Trustor's death.

Commonly Owned Property

As used herein, the words "commonly owned property" refer to all property of the Trustors which is held by either or both of them together with each other or together with others, but as a part of the property of this Trust. Such property may be held using any designation permitted under the laws of the jurisdiction where the property is located. Such property shall include property held by the Trustors as Trustees, or as husband and wife under the laws of the jurisdiction where the property is located, any other legal situs of this Trust, or where the Trustors reside.

CREATION AND DISSOLUTION OF TRUST

The Trust is created in the State of Washington; however, it is intended to be effective in all states and foreign jurisdictions where it owns property of any kind or value.

Situs of Trust

The situs of the Trust Estate may be transferred from Washington to such other jurisdiction within the United States as the majority of the income Beneficiaries may designate only with the approval of the Trustee. While the situs of the Trust is in Washington, Washington law will govern the Trust provisions.

Recordation of Trust Provisions

This Trust Agreement, as executed by the Trustors, and acting in their capacities as Trustors and Trustees, shall not as a matter of course be recorded as a public document.

Termination of Trust

Notwithstanding anything herein to the contrary, the trusts created hereunder shall terminate not later than twenty-one (21) years after the death of the last survivor of the last of the Trustors to die and any other Beneficiary or Beneficiaries named or defined in this Trust and living or conceived on the date of death of the last of the Trustors to die. Upon termination by operation of this paragraph or by law due to the rule against perpetuities as applied by any court of competent jurisdiction, the Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof; and if there is more than one beneficiary, in the proportion in which they are beneficiaries; or if no proportion is designated, in equal shares to such beneficiaries.

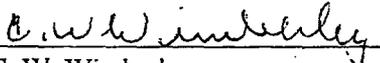
Agreement Between Parties

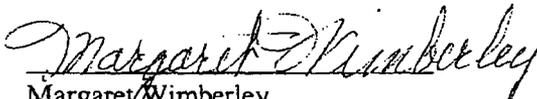
This is to witness that I, C. W. Wimberley, and I, Margaret Wimberley, have read the provisions of this Trust and understand the provisions therein, and it is our intent to enter into this Trust as husband and wife, contracting with each other regarding our commonly owned, separate and community property.

IN WITNESS WHEREOF, the provisions of this Declaration of Trust shall bind C. W. Wimberley and Margaret Wimberley as Trustors, and C. W. Wimberley and Margaret Wimberley as Trustees; Successor Trustees assuming the role of Trustee hereunder, and the Beneficiaries of this Trust as well as their successors and assigns.

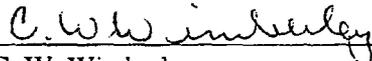
Dated this 15th day of January, 1999, at Pasco, Washington.

TRUSTORS:


C. W. Wimberley


Margaret Wimberley

TRUSTEES:


C. W. Wimberley


Margaret Wimberley

STATEMENT OF WITNESSES

I declare under penalty of perjury under the laws of this state that the person(s) who signed or acknowledged this Document is personally known to me (or proved to me on the basis of convincing evidence) to be the person(s) who signed or acknowledged this document in my presence, and that the person(s) appear(s) to be of sound mind and under no duress, fraud or undue influence.

Signature [Signature]
Address 1600 N. 20th #13
Pasco, WA
Date 1/15/1999

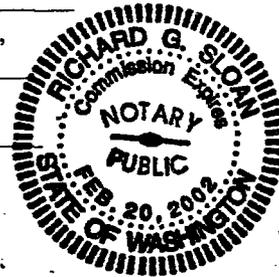
Signature [Signature]
Address 9302 W. Hood #510
Kennewick, WA
Date 1/15/99

STATE OF WASHINGTON)
) ss.
COUNTY OF FRANKLIN)

On this 15th day of January, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared C. W. Wimberley and Margaret Wimberley, known to me or proved to me on the basis of satisfactory evidence to be C. W. Wimberley and Margaret Wimberley who subscribed the within instrument and acknowledged that they executed the same.

[Signature]
NOTARY PUBLIC in and for the State of Washington,
residing at Pasco, Wa

My Commission Expires: 2/24/02



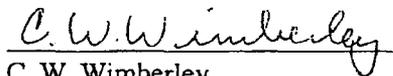
Mr. and Mrs. C. W. Wimberley
906 South 19th Avenue
Yakima, Washington 98902

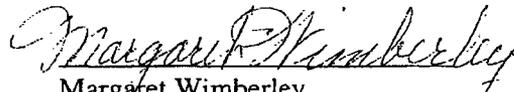
LETTER OF INTENT and DECLARATION OF GIFT

As part of our estate plan, we have established a Revocable Living Trust. We have transferred property into the Trust and in the future we will take property out and put it into the Trust as we desire. It is our intent that all property held in the Trust be our commonly owned or community property, subject to the laws governing joint ownership. In confirmation of this intent, we make the following declaration:

1. All property held by the undersigned in the Trust known as: **The Wimberley Family Trust, dated January 15, 1999, C. W. Wimberley and Margaret Wimberley, Trustor and/or Trustees** is the commonly owned or community property of the said Trustors unless otherwise designated by writing in the Trust documents, or in the manner in which title is held in the Trust.
2. All property which is the separate property of either Trustor has been and will be so designated in writing and signed by the Trustors.
3. Any property in the said Trust which had its origin as separate property, or which cannot be traced as to its origin, is the commonly owned or community property of the Trustors. If any question should arise, it is the intent of each of the Trustors to gift, in consideration of their mutual love and affection, so much of any disputed property to the other as is necessary to create joint ownership in both Trustors. This gift is intended and made as and when any asset is placed into the Trust.
4. Any previous community property agreement entered into between the undersigned shall no longer be applicable to, and is thereby revoked with respect to, all property held by the undersigned in the Trust known as: **The Wimberley Family Trust, dated January 15, 1999, C. W. Wimberley and Margaret Wimberley, Trustor and/or Trustees.**

IN WITNESS WHEREOF, the parties have hereto executed this Letter of Intent and Declaration of Gift this 15th day of January, 1999.


C. W. Wimberley

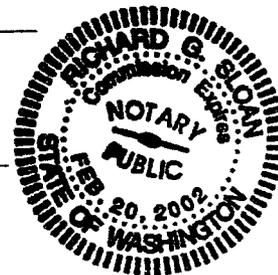

Margaret Wimberley

STATE OF WASHINGTON)
) ss.
COUNTY OF FRANKLIN)

On this 15th day of January, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared C. W. Wimberley and Margaret Wimberley, known to me or proved to me on the basis of satisfactory evidence to be C. W. Wimberley and Margaret Wimberley who subscribed the within instrument and acknowledged that they executed the same.

Richard G. Sloan
NOTARY PUBLIC in and for the State of Washington,
residing at Basco, Wa.

My Commission Expires: 2/20/02



AMENDMENT 07-07
to the
Wimberley Family
Revocable Living Trust Agreement.
Dated January 15, 1999

This amendment to the above identified Revocable Living Trust Agreement, shall be effective on the date set forth below and shall effect the said trust from this date forward, to wit:

Initially it should be noted that James K. Wimberley is commonly known as Jim and Carroll Wesley Wimberley is commonly known as Wes.

Given the passing of C. W. Wimberley, the surviving spouse, Margaret V. Wimberley pursuant to her power to amend and revoke the trust as set forth in the trust agreement, now Amends the trust so as to fully comply with the Trust Laws of the State of Washington. Accordingly, the Trustor elects to make the following changes:

A. Given the changes to the Federal Estate Tax laws, the Surviving Trustor/Trustee elects to not fund trust assets into what would be a 'decendent's trust'. As such the 'Specific Provisions for Settling Estate' located at page 26 and implemented at page 28 of the Trust shall be ignored. The Surviving Trustor shall have full use and control over all trust assets.

B. To the Powers of the Trustee, located at page 12 of the trust agreement, the following shall be substituted:

Trustor acting as Trustee's - Powers: During the time that the Trustor is acting in the capacity as Trustee, she shall have the unfettered right to use and manage the trust assets in her complete discretion. This control shall include but not be limited to the powers as set forth in RCW 11.98 et.seq. No heir, beneficiary or third party shall have the right nor ability to question the use or management of the trust funds by the Trustor while acting as Trustee.

The provisions of the recited statute shall control where not inconsistent with the direct powers as set forth in the trust agreement.

The following provision shall be added as a specific power of the Trustee:

Investment Powers: The Trustors shall also have the power to specifically deal with financial and investment accounts including the purchase and sale and to assign and transfer securities, stocks, and bonds of all nature as maintained or owned by or on behalf of the principal with financial institutions, including banks, savings and loans, stock brokerages or investment houses, and any other financial institution or authority, as defined in RCW 30.22.040.

The following provision shall also be added as to the Trustee Powers found at page 14 of the Trust, as follows:

Self Correcting: In the event that unforeseen events occur which may render the intent of this trust impractical or impossible, then the Successor Trustee is specifically granted the limited power to take any action necessary to correct the provisions of this trust, the trust assets, or the intended distribution of the trust assets as set forth herein.

C: Changing the Order of Successor Trustee as follows:

Identity of Trustee:

- A. During the lifetime of the Trustor, the Trustor shall be the Trustee of this Trust and shall act in her own behalf.
- B. Upon the death or incapacity of Margaret Wimberley, unless changed by written amendment executed by the Trustor and attached hereto, the Successor Trustee shall be **James K. Wimberley** with regard to all trust decisions.
- C. Upon the death of Jim the Successor Trustee shall be **Carroll Wesley Wimberley**.
- D. Any Successor Trustee shall have the Powers and authority as granted under the trust agreement and as supplemented by this amendment.

D: The Trustor further elects to modify the distributive provisions of the trust beginning at page 50 of the trust agreement as follows:

Primary Residence: The Trustor's primary residence located at 386 Fromherz Road, Yakima Wa. and all of the surrounding property, buildings, improvements and fixtures and supporting equipment used on that property shall be distributed unto James K. Wimberley as compensation time, labor and other resources in improving the property. This distribution shall not be subject offset against his share the residual trust.

Further, the entire balance of the building fund account held with Yakima Federal Savings and Loan Association shall be set aside from all of the Trustor's other accounts and investments and be distributed to Jim for the purpose of finishing the ongoing work on the property. Jim shall use this fund at his sole discretion toward finishing the property and the fund shall not be offset against his share of the residual trust.

Residual Distribution: The rest, residue and remainder of the trust assets shall be divided in equal shares between Jim and Wes as forth in the trust document and shall be subject to the specific distribution set forth above.

Contingent Distribution: In the event that Jim passes away prior to having received his full share of the trust, then his share shall be distributed unto Kirk R. Wimberley as his sole and separate property.

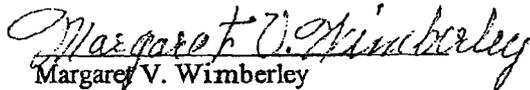
In the event that Wes passes away prior to having received his full share of the trust, then his share shall be distributed in equal shares unto Wes' spouse and children, unto each as their sole and separate property.

Share to Spouses: Other than as set forth above, in no event shall the share of any intended beneficiary be distributed unto the spouse or ex-spouse of an intended beneficiary. In the event that a spouse or ex-spouse attempts to garner or attach a share of the trust, then any share so awarded or attached by that spouse shall be distributed unto a charity to be named by the Successor Trustee. In other words, if a spouse is successful in attaching a share, then the amount so attached shall be forfeited to the selected charity.

E: If any beneficiary in any manner directly or indirectly, contests or attacks this instrument or any of its provisions, any share or interest in the trust given to that contesting beneficiary under the trust or this instrument is revoked and shall be distributed unto a charity chosen by the Trustee. If a court of law is requested to rule on the provisions of the trust then the Court is directed to invoke this provision, event if the contestant prevails in that lawsuit.

Except as set forth above, the remaining provisions of the Trust, which are not inconsistent with these Amendments, shall continue to control the trust.

Dated: July 18, 2007


Margaret V. Wimberley

STATE OF Washington)
County of Yakima)Ss.

I certify that I know or have satisfactory evidence that Margaret V. Wimberley signed the foregoing document as her free will and consent for the uses and purposes set forth therein.



Notary Public in and for the State of Washington

STATE OF WASHINGTON
RICHARD C. GREINER
NOTARY PUBLIC
COMMISSION EXPIRES
JULY 13, 2007

AMENDMENT 04-08
to the
Wimberley Family
Revocable Living Trust Agreement
Dated January 15, 1999

This amendment to the above identified Revocable Living Trust Agreement, shall be effective on the date set forth below and shall effect the said trust from this date forward, to wit:

Given their power to amend and/or revoke the trust as set forth in the trust agreement, the Surviving Trustor now Amends the trust. Accordingly, the Trustor elects to make the following changes:

A. Changing character of the trust to an IRREVOCABLE TRUST:

From the date of this Amendment forward, the trust shall hereafter become irrevocable and no further changes to the trust, or the identity of the trustee, or the distributive provisions shall be permitted.

B. Changing identity of Trustee.

Given the change of character of the trust to an irrevocable trust, Margaret V. Wimberley shall no longer be the trustee of the trust.

The Trustee of the Trust shall be James K. Wimberley. Only the Trust protector, established below, shall have the ability to appoint a successor to James, should he be unwilling or unable to serve. James may not be removed as trustee except for a finding by the trust protector that he has violated a fiduciary duty owed to Margaret V. Wimberley.

The Trustor acknowledges that Jim and Bettye are residing in Margaret's house and are presently providing care for Margaret. Margaret desires that Bettye L. Wimberley be a care giver for Margaret, in the event that Jim is not able to do so. Bettye shall have the right to be a care giver for Margaret, without oversight from any family member, and to continue to reside in Margaret's house for so long as she desires.

C. Assigning classes of beneficiaries.

Margaret V. Wimberley shall be the present beneficiary of the trust. She shall continue to be the present income beneficiary of the trust and as such shall have the right to use all of the trust real property and shall continue to receive all income associated to the trust investments.

The Remainder beneficiaries of the trust shall be James K. Wimberley and Carroll Wesley Wimberley. Amendment 07-07 to the trust dated July 18, 2007 shall control the distribution of the trust upon the passing of Margaret V. Wimberley.

Given the marriage of Jim, then in the event of his demise, if he has not received his full share of the trust, his remaining share shall be distributed unto his present spouse Bettye L. Wimberley. In the event that both Jim and Bettye should pass away, then their share shall be distributed unto Kirk. The trust and Amendment 07-07 is hereby amended to effect this intent.

In the event that the 'Share to Spouses' provision of Amendment 07-07 is invoked, then the charities shall be Union Gospel Mission of Yakima, the Trustor's church that she is regularly attending at the time prior to her demise and Billy Graham Ministries. The amount shall be equally divided amongst these charities.

Other than as set forth herein, the provisions of that amendment are hereby ratified and declared irrevocable.

D. Assigning a Trust Protector.

The Trust Protector of this Trust shall be **Richard C. Greiner**, attorney at law or his appointee. The trust protector shall never be able to directly receive income from the trust, nor shall the trust protector be able to use the trust assets. The sole rights and purpose of the trust protector is to amend the trust where necessary to effect the initial intent of the Trustor and to appoint Trustees of the Trust, when necessary.

E. Grantor Trust laws applicable.

For federal income tax purposes, this trust shall be treated as a "Grantor Trust" pursuant to Sections 671 to 679 of the United States Internal Revenue Code of 1986. Accordingly, the Trustor as Present Income Beneficiary is intended to be treated as owner of the trust for income tax purposes, and to be subject to tax on taxable income received by the trust.

The Trustor further elects to be treated as owner of the Grantor's primary residence held in the name of the trust for the purpose of excluding any gain associated to their primary residence under Section 121 of the United States Internal Revenue Code.

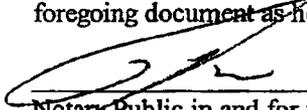
Except as set forth above, the remaining provisions of the Trust, which are not inconsistent with these Amendments, shall continue to control the trust.

Dated: 4-3-2008

Margaret V. Wimberley
Margaret V. Wimberley

STATE OF Washington)
County of Yakima)Ss.

I certify that I know or have satisfactory evidence that Margaret V. Wimberley signed the foregoing document as her free will and consent for the uses and purposes set forth therein.



Notary Public in and for the State of Washington

NOTARY PUBLIC
STATE OF WASHINGTON
RICHARD C. GREINER
My appointment expires July 18, 2011

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Estate of:

MARGARET WIMBERLY,

Deceased.

No.

DECLARATION OF
EMAILED DOCUMENT
(DCLR)

I declare as follows:

1. I am the party who received the foregoing email transmission for filing.
2. My address is: 3400 Capitol Blvd. SE #103, Tumwater WA 98501
3. My phone number is (360) 754-6595.
4. I have examined the foregoing document, determined that it consists of 154 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: April 30, 2015 at Tumwater, Washington.

Signature: _____

Print Name: James Lincoln