

**DON'T LET THE DOOR HIT YOU ON THE WAY OUT: FUNDING  
AGREEMENTS, RECEIPTS AND RELEASES,  
AND ALL THAT JAZZ**

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**I. INTRODUCTION, OR "SHOW ME THE MONEY!"**

Anyone who has served as an executor<sup>1</sup> of an estate or who has represented an executor of an estate knows that there comes a time when the distributees<sup>2</sup> of the estate begin making inquiry about when estate assets will be distributed. These inquiries may be of the polite variety, or they may more closely approximate Cuba Gooding Jr.'s famous refrain from *Jerry Maguire*. Alternatively, as soon as the ink is dry on the order approving the Inventory, Appraisal, and List of Claims, the executor may be itching to make distributions and "wrap this thing up." In any event, part of an executor's essential duties include distributing assets of the estate once administration of the estate is complete.

In theory, the executor should gather up the assets of the estate, perform the required actions in the probate court, pay all of the just debts and liabilities of the decedent and the estate, and then distribute the remaining estate assets to the distributees. But in practice, it is not always that cut and dried. What happens if the executor is unsure whether there are any outstanding liabilities of the decedent? What if there are ongoing expenses of the administration of an estate? What if a beneficiary needs or is requesting distributions before the estate is fully administered? What if interest is accruing on certain bequests? What if the executor is confident in a decision to distribute some, but not all of the estate property? Once the executor makes the decision to distribute property, how is it documented? What can be included in the documentation evidencing the distributions, including partial distributions during administration and final distributions made at the conclusion of the estate administration?

In a dependent administration, the answers to some of these questions are much easier to determine because of the regimented claims process in dependent administrations and because before distributions can be made from the estate, approval is required by the probate court. Accordingly, this article will focus on how to evaluate and document distributions in the context of an independent administration. Although not the focus of this article, many of the discussions herein

may also be applicable to a trustee making distributions from a revocable trust at a decedent's death.

First, the article will address general considerations that the executor should evaluate when determining whether a distribution can and should be made to a distributee of the estate. Next, methods by which distributions can be documented will be outlined, including filings with the probate court as well as agreements regarding distributions between the parties. The article will also address the attorney's duty in communicating with non-client distributees with respect to distributions and documents evidencing distributions.<sup>3</sup> Lastly, the article will set out the facts of several fictitious estate administrations. Examples of documents that may be used to evidence the distributions and agreements between the parties in such fact scenarios will follow as exhibits.

**II. GENERAL CONSIDERATIONS BEFORE MAKING DISTRIBUTIONS, OR "TO GIVE, OR NOT TO GIVE?"**

**A. Overview.**

There are numerous things an executor will need to consider when determining whether it is appropriate to make a distribution from an estate. The executor's attorney should make sure that the executor is aware of the issues to be evaluated.

**B. Read the Will.<sup>4</sup>**

If the decedent left a Will, the Will should be consulted before any distributions are made. The Will may contain specific instructions regarding the timing of distributions, the way distributions can be made, or contingencies that must be met before distributions are made. The executor may find answers to many of his, her, or its questions or may find explicit instructions in the decedent's Will regarding the considerations outlined below.

It may be the case that a decedent leaves instructions regarding distributions outside of a document formally titled as a Will or codicil. This is a common scenario with respect to the division and distribution of household goods and personal effects. The decedent's executor may find slips of paper, sticky notes, or other writings of the decedent that appear to give directions with respect to distributions. In those situations, the executor should first determine if the extraneous writings of the executor constitute a holographic Will

<sup>1</sup>Throughout this article the term "executor" is used to indicate any independent personal representative of an estate, including an independent administrator.

<sup>2</sup> Throughout this article, the term "distributee" means the distributees of a decedent's probate estate under the decedent's Will or the laws of intestate distribution.

<sup>3</sup> There are those .25 hours of ethics!

<sup>4</sup> Any reference in a "Will" in this article includes any codicil thereto.

under Texas Estates Code Section 251.052. If the writing does constitute a holographic Will, it will be binding if admitted to probate. If the writing does not rise to the level of a holographic Will, the executor may still consider the decedent's wishes as evidenced by the writing if they are not in contravention to the terms of the Will. However, in that situation, the writings should be considered as purely precatory.

**C. Requirement of Survival.**

One common condition precedent to a beneficiary receiving property is that a beneficiary "survive" the decedent. The general rule is that a person who does not survive the decedent by 120 hours is considered to have predeceased the decedent. TEX. ESTS. CODE 121.052. However, the 120-hour rule does not apply if the Will explicitly deals with simultaneous deaths or deaths in a common disaster, requires that a beneficiary survive the testator, or contains a time-of-survival clause. TEX. ESTS. CODE 121.101. Accordingly, if the Will bequeaths property "to my best friend Sarah, if she survives me," and does not include a time-of-survival clause, then Sarah will take the property if she survives the testator by any period of time, even if it is less than 120 hours. Note, however, that many Wills may state that a gift is contingent upon the devisee "surviving" the testator, but then in the back of the Will define "survival" using a time-of-survival clause (e.g., "a requirement that an individual 'survive' a specified person or event or be 'surviving' or 'living' means survival by at least ninety days").

**D. Property's Liability for Debts, Administration Expenses, and Taxes of the Estate.**

Whether all of the debts, administration expenses, and taxes have been paid or will be able to be paid is one of the most important determinations that must be made when considering whether to begin making distributions from the estate. If the executor is not familiar with the debts or liabilities of the decedent, it may be difficult for him or her to obtain that information. The probate process requires the publishing of notice to creditors which may result in some liabilities being brought to the executor's attention, but creditors do not always immediately respond to the notice or take action once the notice is published.<sup>5</sup> Although permissive notices can be sent to unsecured creditors to shorten the period of limitations in which the creditors can assert claims,<sup>6</sup> that is only helpful if the executor has knowledge of the creditors.<sup>7</sup> Accordingly, it may take some time for the

executor to perform the due diligence required to determine the extent of the liabilities that must be satisfied out of the assets of the estate.

**1. Debts and administration expenses.** At a decedent's death, the decedent's property vests immediately in the devisees under the decedent's Will or in the decedent's heirs at law, subject to the debts of the decedent. TEX. ESTS. CODE §§ 101.001, 101.003. It has long been held that this provision creates a statutory lien against the property in favor of the decedent's creditors. *Blinn v. McDonald*, 46 S.W. 787 (Tex. 1898), *supplemental op.*, 92 Tex. 611, 48 S.W. 571, *reh'g denied*, 92 Tex. 612, 50 S.W. 931; *Van v. Webb*, 215 S.W.2d 151 (Tex. 1948). If the executor is unsure of the extent of the debts of the estate, or believes that the assets owned by the decedent are not sufficient to pay debts and expenses and also satisfy all of the bequests and devises made by the Will, the executor should determine which gifts must be abated to pay the debts and administration expenses. If the Will addresses the payment of debts and administration expenses, the provisions in the Will control. Absent a contrary provision in a Will, however, Section 355.109 of the Texas Estates Code provides that a decedent's property is liable for debts and expenses of administration (other than estate taxes) in the following order.

a. Property passing by intestacy (or partial intestacy property).<sup>8</sup> Even if the decedent left a Will, property may pass via the laws of intestate succession if the Will does not dispose of all of the decedent's property.

b. Personal property of the residuary estate.<sup>9</sup> A residuary clause generally passes whatever remains of a testator's property after all specific bequests and devises have been satisfied. *Brandes v. Rice Trust, Inc.*, 966 S.W.2d 144, 199 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, *writ denied*). An example of a residuary gift would be: "all the rest, residue, and remainder of my property to my husband."

c. Real property of the residuary estate.<sup>10</sup> A residuary bequest may dispose of real property as well as personal property. If "all the rest, residue, and remainder" of an estate includes both, debts and expenses are charged first to the personal property, and then to the real property. *See* TEX. ESTS. CODE §§ 355.109(a)(2)-(3). As discussed further below, a devise that one might initially consider a general devise of real

<sup>5</sup> *See* TEX. ESTS. CODE § 308.051.

<sup>6</sup> *See* TEX. ESTS. CODE § 403.005.

<sup>7</sup> Because other types of creditor notices have been mentioned herein, it should also be noted that Texas Estates Code Section 308.053 also requires notice to secured creditors.

<sup>8</sup> TEX. ESTS. CODE § 355.109(a)(1).

<sup>9</sup> TEX. ESTS. CODE § 355.109(a)(2).

<sup>10</sup> TEX. ESTS. CODE § 355.109(a)(3).



property might actually be a real property residuary clause.

d. General bequests of personal property.<sup>11</sup> A bequest or devise is general if "(1) it bequeaths a designated quality or value of property or money, and (2) the testator intended for it to be satisfied out of his general assets rather than disposing of, or being charged upon, any specific fund or property." *Hurt v. Smith*, 744 S.W.2d 1, 4 (Tex. 1987). An example of a general bequest of personal property would be: "\$10,000 to my cousin Amanda."

e. General devises of real property.<sup>12</sup> Case law has not made clear what would qualify as a general legacy of real property. In *Hurt v. Smith*, for example, the Will bequeathed one-half of all of the decedent's mineral interests to each of two people. *Id.* The court held that the devises were specific enough to distinguish the gifts from the remainder and therefore constituted specific devises of real property. *Id.* at 4-5. On the other hand, the court found that a devise of "all real estate not specially bequeathed in" earlier clauses of the Will was "typical of a real property residuary clause." *Id.* at 5. The court clarified that although that section did not contain residuary language such as "all of the rest and residue of my real property," the gift nevertheless had the practical effect of a real estate residuary clause. *Id.*

f. Specific bequests of personal property.<sup>13</sup> A bequest or devise is specific if (1) it is described with such particularity that it can be distinguished from all of the testator's other property and (2) the testator intended for the beneficiary to receive that particular item, rather than cash or other property from his or her general estate. *Houston Land & Trust Co. v. Campbell*, 105 S.W.2d 430, 433 (Tex. Civ. App.—El Paso 1937, *writ ref'd*); *Hurt v. Smith*, 744 S.W.2d 1 (Tex. 1987). An example of a specific bequest of personal property would be: "all of my shares of stock in Exxon to my granddaughter."

g. Specific devises of real property.<sup>14</sup> An obvious example of a specific devise of real property would be: "my property located at 123 Sesame Street to Maria." However, as discussed above, even a gift with less specificity (e.g., "all of my mineral interests") has been held to be a specific devise of real property.

Note that the statute does not address demonstrative legacies. "Demonstrative legacies are bequests of sums of money, or of quantity or amounts having a pecuniary value and measure, not in themselves specific, which the testator intended to be charged primarily to a particular fund or piece of property." *Hurt*, at 4 (citing *Houston*

*Land & Trust Co.*, at 433). An example of a demonstrative legacy would be "\$25,000 to my nephew Teddy, to be paid from the proceeds of the sale of my scooter collection."

The court in *Houston Land & Trust Co.*, which was decided before enactment of the statute regarding abatement, specified that demonstrative legacies are to be treated as "true specific legacies." *Houston Land & Trust Co.*, at 433. Accordingly, when determining the order of abatement, if a Will contains a demonstrative legacy, with respect to order of abatement, an executor can probably categorize the gift as a specific devise of personal property or real property, whichever applies.

**2. Non probate property liability for debts.** While Texas Estates Code Section 355.109 only addresses abatements of a decedent's probate property, if the decedent's probate estate is insufficient to pay the decedent's debts, some non-probate property is also available to pay the claims of creditors. Texas Estates Code Section 113.252 provides that a multiple-party account remains subject to the debts of a deceased account holder for debts, taxes, and expenses of administration (including statutory allowances) if other assets of the estate are insufficient to satisfy those liabilities. Another party to the account, a pay on death ("POD") payee, or a beneficiary named on the account who receives the funds in the account as a result of the decedent's death must account to the executor for the decedent's portion of the account that is necessary to discharge these claims and expenses. TEX. ESTS. CODE § 113.252(b). Of course, the party, POD payee, or beneficiary is only liable to the extent of the property that he or she received from the account. *Id.* An executor can only institute a proceeding to request the accounting and obtain the amounts if written demand has been made on the executor by a creditor, surviving spouse, or representative of a minor child of the decedent. *Id.* at § 113.252(c)(1). The proceeding must be commenced by the executor within two years of the decedent's death. *Id.* at § 113.252(c)(2).

**3. Estate taxes.** Absent a contrary provision in the decedent's Will, Subchapter A of Chapter 124 of the Texas Estates Code governs the apportionment of estate taxes. Subchapter A provides that estate taxes are generally apportioned pro rata among all beneficiaries with the exception of any gift that qualifies for the marital deduction and any gift that qualifies for the charitable deduction, which are not subject to estate taxes. *See* TEX. ESTS. CODE §§ 124.005, 124.007. The

<sup>11</sup> TEX. ESTS. CODE § 355.109(a)(4).

<sup>12</sup> TEX. ESTS. CODE § 355.109(a)(5).

<sup>13</sup> TEX. ESTS. CODE § 355.109(a)(6).

<sup>14</sup> TEX. ESTS. CODE § 355.109(a)(7).

apportionment applies to both probate and non-probate assets.<sup>15</sup>

Section 2002 of the Internal Revenue Code provides that estate taxes shall be paid by the executor of the estate.<sup>16</sup> This duty applies to the entire tax, regardless of the fact that the gross estate may consist in part of property which does not come within the possession of the executor or administrator. Treas. Reg. § 20.2002-1. Accordingly, if there is estate tax due, the executor should make sure that there are sufficient assets in the probate estate to pay the estate tax before making any distributions from the estate. Section 124.014 of the Texas Estates Code gives the executor a right of recovery against any person who received non-probate property to which tax was attributed, so the executor has the right to recover the amount of estate taxes attributable to non-probate assets and then make distributions to the beneficiaries of the decedent's probate estate. However, if the executor cannot recover the amount of the tax apportioned to the non-probate assets, or if the executor determines that an attempt to recover the amount would be economically impractical, the probate estate may have to bear the additional tax, and accordingly, distributions from the probate estate may be reduced or abated.<sup>17</sup>

### **E. Personal Liability of Fiduciary for Federal Taxes.**

One consideration that certainly motivates an executor to evaluate whether a distribution can properly be made from the estate is the concept that an executor may be personally liable for federal income, gift, and estate tax liabilities of the decedent.

**1. Imposition of personal liability on the fiduciary.**<sup>18</sup> Section 3713 of Title 31 of the United States Code requires claims of the United States to be paid first if a decedent's estate is insufficient to pay all of the decedent's debts. An executor who pays any part of a debt of the person or estate before paying a claim of the United States government is liable to the extent of the payment for unpaid claims of the government. 31 USC § 3713(b). In this context, the term "debts" includes distributions to beneficiaries. See Treas. Reg.

§ 20.2002-1; *Want v. Comm'r*, 280 F.2d 777 (2nd Cir. 1960). Accordingly, if the executor distributes any portion of the estate before all federal estate tax liabilities are paid, the executor is personally liable, to the extent of the payment or distribution, for so much of the tax as remains due and unpaid. See Treas. Reg. § 20.2002-1.

a. Exceptions for certain expenses and debts. Section 3713 does not provide for any exceptions regarding debts paid before claims of the government are paid. However, exceptions have been recognized in case law. Specifically, costs of administering an estate (including reasonable compensation for the executor and the attorney) and funeral expenses and widows' allowances may be paid before the payment of government claims. See *Champlin v. Comm'r*, 6 T.C. 280, 285 (1946) (regarding exceptions for estate administration expenses) and Rev. Rul. 80-112, 1980-1 C.B. 306 (regarding exceptions for funeral expenses and widows' allowances).

b. Requirement of knowledge of tax liability. Although the statute on its face imposes strict liability on an executor, the courts generally have ruled that a fiduciary is not liable under Section 3713 unless the fiduciary had actual or constructive knowledge of the government's tax claim when the estate had assets sufficient to pay the government's claim and elects to satisfy other debts. See *U.S. v. Coppola*, 85 F.3d 1015 (2nd Cir. 1996); *Want v. Comm'r*, 280 F.2d 777 (2nd Cir. 1960); *Viles v. Comm'r*, 233 F.2d 376 (6th Cir. 1956); *Leigh v. Comm'r*, 72 T.C. 1105, 1109 (1979); and *Fitzgerald v. Comm'r*, 4 T.C. 494, 504 (1944). A fiduciary has constructive knowledge if he or she has had notice of facts that would put a reasonably prudent person on inquiry of the existence of the unpaid claim. See *Leigh*, at 1109.

**2. Time period for assessment and collection of tax.** The executor will not know the extent of the federal tax liability (be it for income, gift, or estate taxes) until the IRS has assessed the amount of any tax due.

<sup>15</sup> See TEX. ESTS. CODE § 124.001(2) (Defining "estate" as the gross estate of a decedent as determined for the purposes of estate taxes).

<sup>16</sup> Internal Revenue Code Section 2203 defines the term "executor" as the duly appointed executor or administrator of the estate, or if there is no duly appointed and acting U.S. fiduciary, then any person in actual or constructive possession of any property of the decedent.

<sup>17</sup> See TEX. ESTS. CODE § 124.015(a)-(b). If an executor is not able to collect the amount of the tax apportioned to the non-probate asset, the beneficiaries who resultingly bear the

additional estate tax have a right of reimbursement against the person who received the non-probate asset and did not contribute to the tax paid. See *id.* at § 124.015(c). To enforce this right the executor must assign the right to the beneficiaries. *Id.*

<sup>18</sup> Although not discussed in this article, under Internal Revenue Code Section 6901(a)(1)(A), the IRS can also impose liability for unpaid income, gift or estate taxes "at law or in equity" upon a transferee of the decedent's property. This is frequently referred to as "transferee liability."

a. General rule regarding statute of limitations for assessment of tax and collection of tax. As a general rule, the IRS must assess income, gift, and estate tax, or file suit against the taxpayer to collect the tax, within three years after a return is filed. IRC § 6501(a). Note, however, that there is no limit on the statute of limitations where a false return is filed, there is a willful attempt to evade tax, or no return is filed. IRC § 6501(c). The statute of limitations for collection of any tax assessed is ten years after the assessment of the tax. IRC § 6502(a)(1). Courts have held that this ten year statute of limitations runs from the date the tax was assessed against the estate, not from the date of the assessment against the fiduciary. *United States v. Motsinger*, 123 F.2d 585 (4th Cir. 1941); *United States v. Rose*, 227 F. Supp. 259 (E.D. Pa. 1964).

b. Shortening statute of limitations for assessment of tax other than estate tax. The executor may shorten the period of time for the IRS to assess additional taxes (other than estate taxes) on returns previously filed by the decedent or the executor from three years to eighteen months. This can be accomplished by filing IRS Form 4810 (Request for Prompt Assessment Under Internal Revenue Code Section 6501(d)), or by submitting a written request containing the information required on the form. Treas. Reg. § 301.6501(d)-1(b). The request is to be filed with the same IRS center where the return was filed and should be filed after the return. *Id.* If the executor is worried that tax in addition to the amount of tax reported on income or gift tax returns may be assessed, filing a Form 4810 or similar written request will shorten the time period the executor will have to wait for certainty regarding the amount of any taxes due. Note, however, that this option is not available with respect to estate taxes.

c. New policy on issuance of closing letters for estate tax returns. A closing letter is meant to evidence that the IRS has accepted the filing of an estate tax return and that the federal estate tax liabilities are satisfied, allowing the executor of the estate to close this portion of the estate administration process. Except in certain extreme circumstances, such as fraud, substantial error based upon an established IRS position, or when a failure to reopen would be a serious administrative omission, the IRS won't reopen a case after a closing letter has been issued. Rev. Proc. 2005-32, 2005-23 I.R.B. 1206. Under previous policy, the IRS would issue a closing letter for every estate tax return filed once the IRS had determined that no further estate taxes were due. However, with an unannounced update to the *Frequently Asked Questions on Estate Taxes* section of its website on June 16, 2015, the IRS announced a new policy regarding the issuance of a closing letter after a person files an estate tax return. The new rule provides that for any estate tax return filed on or after June 1,

2015, the executor will have to formally request a closing letter from the IRS. The announcement contains a request that the closing letter not be requested until four months after the estate tax return has been filed. Thus, if the executor wants documentation of the final assessment of estate tax, he, she, or it should calendar the date four months after the estate tax return is filed and at that time should formally request a closing letter.

**3. Discharge of executor from liability.** The Internal Revenue Code does provide procedures by which the executor can be discharged from personal liability for income, gift, and estate taxes of the decedent before the statute of limitations runs for assessment and collection of the tax. Note that the discharge is limited to the executor's personal liability under 31 USC § 3713, and it does not affect the executor's liability in a representative capacity to pay the deficiency from estate assets in the executor's possession or control. The request from discharge outlined in the following paragraphs may be obtained by filing IRS Form 5495 (Request for Discharge From Personal Liability Under Internal Revenue Code Section 2204 or 6905).

a. Request for discharge from liability for income and gift taxes. Internal Revenue Code Section 6905 provides that in the case of liability for income and gift taxes, if the executor makes written application (filed after the return with respect to those taxes is made, and filed in the manner and the form as may be prescribed by Treasury Regulations) for release from personal liability for the taxes, the IRS may notify the executor of the amount of the taxes due. Once the executor pays that amount, or nine months after the IRS receives the application and if no notification is made by that date, the executor is discharged from personal liability for any deficiencies later found to be due. The executor is entitled to a receipt or writing showing the discharge. IRC § 6905(a).

b. Request for prompt determination of estate tax and discharge from liability. With respect to estate taxes, Internal Revenue Code Section 2004 provides a similar method by which the executor can request prompt determination of the taxes and discharge of the executor's personal liability. On application by the executor under Section 2204(a), the IRS must, within nine months after the application is made or the return is filed (whichever is later), notify the executor of the estate tax due. If the amount specified has been paid, or if the IRS fails to respond to the application within the nine month period, the executor is discharged from personal liability for any deficiency subsequently assessed and is entitled to a certificate attesting to the discharge. Treas. Reg. § 20.2204-1(a).

**F. Personal Liability of Executor to Creditors.**

Can the executor also be held personally liable to creditors other than the United States government for amounts that are distributed from the estate before payment of a claim? Creditors may argue that the answer is yes, based on the theory that the executor owes the creditors of a decedent's estate the same fiduciary duty that an executor owes to the distributees of a decedent's estate.<sup>19</sup>

Texas courts have issued conflicting rulings regarding whether an executor owes a fiduciary duty to the estate's creditors. Compare *FCLT Loans, L.P. v. Estate of Bracher*, 93 S.W.3d 469, 481-482 (Tex. App.—Houston [14th Dist.] 2002, *no pet.*) (holding that a relationship between a creditor and independent executor did not give rise to a fiduciary duty as a matter of law), and *Mohseni v. Hartman*, 363 S.W.3d 652, 658 (Tex. App.—Houston [1st Dist.] 2011) (holding that under the present statutory scheme, an independent executor does not hold estate property in trust for estate creditors and therefore does not owe them a fiduciary duty), with *Ertel v. O'Brien*, 852 S.W.2d 17, 20-21 (Tex. App.—Waco 1993, *writ denied*) (holding that a bank, as co-executor of estate, breached its fiduciary and statutory duties to a creditor when it failed to pay creditor's claim against the estate and instead paid itself as a creditor and other creditors), and *Ex parte Buller*, 834 S.W.2d 622, 626 (Tex. App.—Beaumont 1992, *orig. proceeding*) (holding that independent executor has a fiduciary relationship with creditors of an estate).

Although the Texas Supreme Court has not addressed the issue, in a recently published opinion, the United States Court of Appeals for the Fifth Circuit made an "Eerie guess" to determine to the best of its ability how the Texas Supreme Court would resolve the conflict between the Texas appellate courts as to whether an independent executor owes a fiduciary duty to the creditors of an estate. *U.S. v. Marshall*, 771 F.3d 854, 877-878 (5th Cir. 2014) (citing *Howe v. Scottsdale Ins. Co.*, 204 F.3d 624, 627 (5th Cir. 2000) for the proposition of the "Erie guess").

The Fifth Circuit Court ultimately agreed with the *Bracher* court's view that under Texas's statutory scheme, it is unlikely that an independent executor automatically holds the estate assets in trust for the benefit of its creditors, and accordingly, no fiduciary duty exists. *Id.* at 878. The Court distinguished *Buller* because the cases on which *Buller* based its holding did not discuss the fiduciary duty in the context of an independent administration. *Id.* Additionally, the Court did not find *Ertel* persuasive because while the *Ertel*

court stated that the executor was held to the same fiduciary standards as a trustee, it did not provide any "analysis or explanation why an independent executor's fiduciary duty to the estate should be expanded to include a duty to the estate's creditors." *Id.*

Until the Texas Supreme Court addresses the issue, there may not be a definitive answer regarding whether an executor owes fiduciary duties to the creditors of an estate and accordingly can be held personally liable to the creditors for breach of fiduciary duty. In any event, the executor should always consider any outstanding debts and liabilities before making distributions to the distributees so this does not become an issue.

**G. Non-Pro Rata Distributions.**

After the executor determines that a distribution can and should be made, the next question is what estate assets will be distributed. If a distributee is entitled to a specific piece of property or a specific sum of money under a Will, this question can be easily answered. However, if there are two or more distributees entitled to an undivided share of the decedent's estate as residuary beneficiaries under the Will or as heirs of the decedent, the executor must consider whether it is appropriate to make non-pro rata distributions of assets to the distributees.

If assets of the estate include property that was the community property of the decedent and his or her surviving spouse, another issue arises. If the distributees of the decedent's estate are persons other than the surviving spouse, will each community property asset be divided among the surviving spouse and the distributees or can some community property assets be allocated to the surviving spouse while other community property assets of equal value are allocated to the estate?

**1. Non-pro rata distributions for property other than community property.** For all property of a single person, and in the case of a married decedent, with respect to property of the decedent that was not the community property of the decedent and his or her spouse, there may be income tax implications to the distributees if the executor distributes the assets other than in a pro rata manner.

a. General rule. If an unauthorized (as described below) non-pro rata distribution is made to the distributees of an estate, the IRS has ruled that for income tax purposes, the distribution will be treated as if it were a pro rata distribution of undivided interests in the property, followed by an exchange of interests by the distributees. This deemed exchange will be taxable to

<sup>19</sup> A discussion of the executor's fiduciary duties to the distributees is discussed later in this article.

both distributees to the extent that values of the assets transferred differ from the basis of the assets. For example, assume that under the terms of a decedent's Will, his estate passes equally to child A and child B, and the Will does not authorize non-pro rata distributions. Assume further that the estate consists of two assets: a house and stock. At the decedent's date of death, the stock was worth \$100,000 and the house was worth \$110,000. At the date that the executor makes the distribution, however, each of the assets is worth \$120,000. If the executor distributes the stock to A and the house to B, the IRS takes the position that A and B each received one-half of each asset from the estate, and then "sold" one half of the asset not kept to the other distributee. For A, then, the result would be that when he "sold" his interest in the house (with a basis of \$55,000) for stock worth \$60,000, he incurred a gain of \$5,000 that should be reported on his income tax return. Likewise, when B "sold" his interest in the stock (with a basis of \$50,000) for a one-half interest in the house worth \$60,000, he incurred a \$10,000 gain that should be reported on his income tax return. *See* Rev. Rul. 69-486, 1969-2 C.B. 159.

b. When non-pro rata distributions can be made. The distribution and exchange treatment will not apply, however, if the Will expressly authorizes non-pro rata distributions or if local law expressly authorizes such distributions. In Texas, it has been stated that absent express authority in the governing instrument, an executor does not have per se authority to make non-pro rata distributions. *See Gonzalez v. Gonzalez*, 469 S.W.2d 624 (Tex. Civ. App.—Corpus Christi 1971, *writ ref'd n.r.e.*) and *McDonough v. Cross*, 40 Tex. 251 (1874). However, Texas Estates Code Section 405.008 does provide a method by which an independent executor can petition the court for a partition and distribution of the estate. If a partition is granted pursuant to a petition by an executor under that statute, presumably it would be "authorized by local law" and accordingly would not result in income tax gain to the distributees. *See In re Estate of Spinder*, 840 S.W.2d 665, 667 (Tex. Civ. App.—Eastland 1992, *no writ*), *on reh'g in part*.

c. Options available to the executor. If the executor intends to make non-pro rata distributions of property, he or she should make sure that the Will authorizes distributions in such a manner. If the Will does not authorize non-pro rata distributions, the executor may consider selling the assets and distributing cash to the distributees. Alternatively, the executor can advise the distributees of the potential income tax consequences and, if they still desire a non-pro rata distribution, ask them to sign a document

acknowledging that they are aware of the income tax consequences and consenting to the distribution. The consent may be part of an agreement wherein the distributees agree that the executor may adjust additional amounts distributed to each beneficiary in order to equalize the net amount received by each after taking into account potential income tax implications. As a third alternative, the executor may consider seeking a partition in the probate court. However, a partition is a somewhat extreme solution for what can be solved by careful drafting.

**2. Non-pro rata division of community property.** The income tax implications discussed in the foregoing section for property other than community property also must be considered with respect to distributions of the decedent's one-half interest in any community property. However, when evaluating distributions of community property owned by the decedent and the decedent's surviving spouse, an additional question arises. Can an executor and the surviving spouse agree to make tax free non-pro rata divisions of community property, so that the distributees of the decedent's estate (e.g., trusts established for the surviving spouse) own 100% of some community property assets while the surviving spouse succeeds to 100% of other community property assets of equal value?

Two 1980 Technical Advice Memoranda relying on an Internal Revenue Ruling involving similar issues in the divorce context suggest that a tax-free division is permissible in these circumstances.<sup>20</sup> A more recent ruling also seems to confirm this analysis, so long as the division is permitted by the governing instrument or by local law.<sup>21</sup>

An argument can be made that Texas law does permit a non-pro rata distribution of community property, based on Texas Estates Code Section 453.009, which states that an executor of an estate takes possession of both halves of the community property of the decedent and the decedent's spouse, and Section 360.253, which provides that when a husband or wife die leaving community property, the surviving spouse may apply to the court for a partition of the community property into "two equal moieties" between the executor and the surviving spouse. At least one court has described "equal moieties" in this circumstance to be either two groups alike in magnitude, quantity, number or degree, or two groups alike in value or quality. *Estate of Furr*, 553 S.W.2d 676, 679 (Tex. Civ. App.—Amarillo, 1977, *writ ref'd n.r.e.*). However, other commentators disagree with this analysis, and argue that a surviving spouse's community property interest is not automatically available for the purpose of a non-pro rata distribution because that property is not an asset of the estate.

<sup>20</sup> TAM 8016050; TAM 8037124 (relying on Rev. Rul. 76-83, 1976-1 CB 213, which has now been rendered obsolete in the divorce context by the enactment of Internal Revenue Code

Section 1041 expressly providing for non-recognition in the divorce context).

<sup>21</sup> *See* TAM 9422052.

Accordingly, if the assets of the estate include community property of the decedent and the surviving spouse, the executor and the surviving spouse can work together to determine whether it is desirable to allocate some community property assets to the surviving spouse and other community property assets of equal value to the estate, taking into account any income tax consequences that may result.

**H. Distributions of Income Generated By Estate Assets.**

If the estate holds income-producing assets, the executor may earn income during administration of the estate. The fiduciary accounting rules tell an executor whether a receipt is principal or income, which in turn determines which beneficiary is entitled to it. The decedent's Will and local law, not the Internal Revenue Code, control when an executor is determining whether a receipt is fiduciary accounting income. In Texas, unless the decedent's Will provides otherwise, Section 310.004 of the Texas Estates Code governs the determination and distribution of income during administration. It provides that income from estate assets will be determined according to the rules applicable to trustees under the Texas Trust Code, and will be distributed as provided by the Uniform Principal and Income Act and Subsections (b) and (c) of Section 310.004. Accordingly, if the estate assets have generated income, the executor should consult the decedent's Will and those statutes to determine what amounts of income should be distributed to the devisees and in what proportions. If the Will gives the executor the powers of a trustee under the Texas Trust Code, the executor should consider exercising the power to adjust principal and income allocations as well.

**I. Special Considerations When Making Distributions to Trusts.**

When a trustee of a trust is named as a beneficiary in a decedent's Will, the executor must take into account a whole host of additional issues when evaluating distributions to the trustee. These include, but are not limited to: determining the proper way to fund a formula bequest to a trust, determining the funding date, potential future basis adjustment, the potential of assets for appreciation, the potential for income production by assets, and income tax implications that may arise as a result of certain distributions. Although an in-depth discussion of the considerations involved in funding testamentary trusts is beyond the scope of this article, an excellent analysis of the topic can be found in Mickey Davis's article entitled Funding Testamentary Trusts, presented at the 2013 State Bar of Texas Advanced Estate Planning Strategies Course.

**J. Additional Considerations Based on Timing.**

If an executor determines that a distribution is to be made and is evaluating the timing of the distribution, the executor should be aware of certain provisions that are triggered at the expiration of certain periods of time after the decedent's death or after letters testamentary or of administration have been issued to the executor.

**1. Interest accrual beginning one year after date of death.** Pursuant to Section 116.051(3)(A) of the Texas Property Code and Section 302.002 of the Texas Finance Code, beginning on the first anniversary of the date of the decedent's death, interest is due on any specific pecuniary bequest made outright to a beneficiary at a rate of six percent (6%) per year. A specific pecuniary bequest is a bequest of a specific dollar amount. For example, "I give \$5,000 to my dog walker Sherry." If the executor has determined that a specific pecuniary bequest will be fulfilled (either in part or in its entirety), he or she should keep this anniversary in mind, and if possible and prudent, make a full or partial distribution before that date.

**2. Right to an accounting fifteen months after letters are issued.** At any time after the expiration of fifteen months from the date that letters testamentary or of administration are first issued, any person interested in the estate may demand an accounting from the independent executor. TEX. ESTS. CODE § 404.001(a). If a distributee is anxious to receive a distribution, he or she may pressure the executor by requesting an accounting. An accounting sufficient in detail to satisfy the requirements imposed by the Estates Code can take a significant amount of time and can be costly to prepare. Accordingly, if a distribution will ultimately be made, the executor may consider making a partial or full distribution before the expiration of the fifteen month period to avoid undue cost to the estate. Although a distributee's right to an accounting is not foreclosed as a result of the distribution, the distribution may be sufficient to appease the beneficiary.

**3. Petition for accounting and distribution two years after letters are issued.** In addition to the right to an accounting, Section 405.009 of the Texas Estates Code provides that at any time after the expiration of two years from the date letters testamentary or of administration are first issued, any person interested in the estate may petition the court for an accounting and distribution. The court can then order an accounting be made including the information the court considers necessary to determine whether any part of the estate should be distributed. TEX. ESTS. CODE § 405.009(a). After a hearing on the matter, the court can then order distribution of the estate assets and closing of the estate. *Id.* If two years have passed since the executor was first issued letters, he or she should keep in mind that an

action can be brought to compel an accounting, and possibly, a distribution of the assets and closing of the estate.

**K. Fiduciary Duty of the Executor.**

In addition to the considerations set out above, when making a determination regarding whether and when to make distributions to a distributee, an executor must take into account that he, she, or it is a fiduciary and holds property for the benefit of others. The fiduciary standards of an executor of an estate are the same as the fiduciary standards of a trustee.<sup>22</sup> As "trustee" of the estate's property, the executor is subject to high fiduciary standards and is subject to the duties of a fiduciary. The duty of loyalty is one of the most basic fiduciary duties, and it underlies virtually every action taken by a fiduciary. The duty of loyalty requires a fiduciary to act in the best interests of the beneficiaries above the fiduciary's own interests, while remaining fair and impartial to all of the beneficiaries.<sup>23</sup>

When considering making distributions from the estate, the executor should always be mindful of this, and should not treat distributees unfairly by withholding distributions unnecessarily or being partial to one distributee over others.

**III. DOCUMENTING THE DISTRIBUTIONS, OR "[WHAT IS A POLITE WAY TO SAY CYA?]"<sup>24</sup>**

**A. Overview.**

While often overlooked, documenting distributions from the estate can be an important part of the estate administration process.

In an independent administration, the Texas Estates Code does not mandate that the executor document distributions in a specific manner or report distributions to the court. However, in most circumstances it will behoove the executor to document his, her, or its actions with respect to distributions from the estate. In addition to completing the executor's files, the documentation may be useful in many circumstances. For example, the documentation may act to foreclose a later claim by a beneficiary that he did not receive the property to which he was entitled, or to evidence to the IRS the income tax basis of assets distributed to a trust.

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, signed into law on July 31, 2015, established a new Section 6035 of the

Internal Revenue Code relating to cost basis reporting requirements. Section 6035 states that if an estate tax return is required to be filed for an estate, the executor must provide the IRS and each distributee of the estate a statement identifying the value of the property as reported on the estate tax return, and such other information as may be required by the Treasury Secretary. These statements must be filed with the IRS and provided to each distributee within 30 days of either the estate tax return filing deadline (including extensions), or after the date the return is filed, whichever is sooner. These new rules are effective immediately and apply to any estate tax return filed after July 31, 2015.<sup>25</sup> While there is currently no additional information regarding how to fulfill the requirements of Section 6035, the Treasury is expected to promulgate regulations providing guidance. Depending on that guidance, documents evidencing distributions may be a good format for providing the cost basis information required to be given to distributees pursuant to Section 6035.

Another benefit of documenting distributions is that presenting a document to a beneficiary evidencing a distribution can be an effective springboard to additional discussions about resolving any disputes between the parties and documenting agreements between the parties.

The determination of the extent and type of documentation that should be prepared to evidence distributions will differ based on the particular circumstances at hand. The documentation may consist of instruments prepared by the executor's attorney, ranging from a simple document to show proof of delivery to comprehensive agreements between the parties regarding the administration of the estate and distribution of estate property. Although not required, the process of documentation may also include permissive reports to the court which are authorized by the Texas Estates Code.

In the course of the administration of one estate, several different types of documents may be prepared to evidence distributions. For example, the distribution of a specific pecuniary amount bequeathed to an individual will probably be evidenced differently than a partial distribution to a remainder beneficiary, which will also differ from distributions to a trust for the surviving spouse of a decedent.

<sup>22</sup> See *Humane Soc. of Austin & Travis County v. Austin Nat'l Bank*, 531 S.W.2d 574, 577 (Tex.1975), cert. denied, 425 U.S. 976 (1976); *Huie v. DeShazo*, 922 S.W.2d 920, 922-23 (Tex.1996); *McLendon v. McLendon*, 862 S.W.2d 662, 670 (Tex. App.—Dallas 1993).

<sup>23</sup> See *Slay v. Burnett Trust*, 187 S.W.2d 377 (Tex. 1945).

<sup>24</sup> A Google search did not provide an acceptable answer. Accordingly, title left as is.

<sup>25</sup> Note, however, that statements that are required to be filed with IRS or furnished to beneficiaries before February 29, 2016 are delayed until February 29, 2016 pursuant to Notice 2015-57, 2015-36 IRB.

The executor's attorney should work with the executor to determine what kind of documentation is necessary and advisable with respect to each distribution made during the course of the administration.

**B. Statutory Methods to Document Distributions and Close Estate.**

The Texas Estates Code provides a few different methods by which an executor can document that distributions have been made to distributees of the estate and to close the administration of the estate. An independent executor is not required to close the independent administration of an estate through the formal methods permitted by the Texas Estates Code. TEX. ESTS. CODE § 405.012. However, in some circumstances an executor may want to take advantage of the statutory provisions to document distributions and be relieved of and discharged from his, her, or its duties as executor.

**1. Closing report and notice of closing.** When all of the known debts of the estate have been paid, or when they have been paid so far as the assets in the executor's possession will permit, when there is no pending litigation, and when the executor has distributed to the distributees of the estate all assets of the estate remaining after the payment of debts, the executor may file a closing report or a notice of closing estate with the court. TEX. ESTS. CODE § 405.004.

a. Closing report. A closing report filed by the executor shows: (1) the property of the estate that came into the executor's possession; (2) the debts that have been paid; (3) any debts still owing; (4) the estate property remaining on hand after the payment of debts; and (5) the names and addresses of the distributees to whom the remaining property of the estate has been distributed. TEX. ESTS. CODE § 405.005. The report should include signed receipts or other proof of delivery of property to the distributees named in the closing report. *Id.* The closing report must be verified by an affidavit of the executor. *Id.* If, in addition to closing the estate, the executor wishes to formally document receipt of property by the distributees, the closing report is a good option because it requires the filing of proof of delivery of the property.

b. Notice of closing estate. In 2011, the notice of closing estate was introduced as a simpler alternative to the closing report. A notice of closing estate states (1) that all debts known to exist against the estate have been paid to the extent permitted by the assets in the executor's possession; (2) that all remaining assets of the estate have been distributed; and (3) the names and addresses of the distributees of the remaining property of the estate. TEX. ESTS. CODE § 405.006. The notice of closing estate must also be verified by an affidavit of

the executor. *Id.* Much less information is required in the notice of closing estate than in the closing report, and it does not require the filing of receipts or proof of delivery to the distributees. Accordingly, the notice of closing is not a good option for an executor if one of his, her, or its primary objectives is making a public record of distributions to the distributees of the estate.

c. Effect of filing closing report or notice of closing. The independent administration of an estate will be considered closed thirty days after the date that the closing report or notice of closing estate is filed, unless an interested person files an objection within that time. TEX. ESTS. CODE § 405.007(a).

(1) The closing of an independent administration by the filing of a closing report or notice of closing estate terminates the power and authority of the independent executor. *Id.* at § 405.007(b). If an additional asset is later discovered and needs to be transferred out of the estate, this precludes the executor from later obtaining letters testamentary or letters of administration without a great deal of difficulty.

(2) Additionally, the closing of an independent administration by filing of a closing report or notice of closing estate does not relieve the executor from liability for mismanagement of the estate or from liability for any false statements contained in the report or notice. *Id.* Because these methods do not result in a discharge of the executor, in reality there are limited circumstances in which they are useful. The executor may utilize these provisions to terminate bond liabilities if a bond has been required, or in situations where the executor wants to be released from responsibility and perhaps begin the running of the statute of limitations but does not want to force the issue by seeking judicial discharge.

**2. Judicial discharge.** Before September 1, 1999, there was no formal means by which an independent executor could obtain court approval of his or her final accounting and obtain a judicial discharge. In independent administrations, courts lack much of the jurisdiction of dependent administrations. *See Rowland v. Moore*, 174 S.W.2d 248 (Tex. 1943). Accordingly, Texas Probate Code Section 149E was enacted to confirm that an independent executor may seek a judicial discharge from liability relating to the administration of the estate. That statute is now codified in Texas Estates Code Section 405.003, and provides that after an estate has been administered, if there is no further need for an independent administration of the estate, the executor may file an action under Chapter 37 of the Texas Civil Practice and Remedies Code for declaratory judgment seeking to discharge the executor from any liability involving matters relating to the past



administration of the estate for those matters that have been fully and fairly disclosed.<sup>26</sup>

a. Service of citation to beneficiaries. Each beneficiary of the estate must be personally served with citation of the action unless the beneficiary has waived the issuance and service of citation. TEX. ESTS. CODE § 405.003(b). Thus, the executor is effectively initiating a lawsuit against the beneficiaries of the estate, although in the form of a declaratory judgment action.

b. Accounting may be required. The court may require the executor to file a final accounting that includes any information the court considers necessary to adjudicate the executor's request for a discharge of liability. *Id.* at § 405.003(c). Although this provision is permissive, it is unlikely that a court would grant the relief requested without the information provided in a final accounting. Once the final accounting is provided, the court may audit, settle, or approve the accounting. *Id.* Preparation of the final accounting with appropriate detail and supporting documentation is often time consuming and costly.

c. Requirement of distribution on or before filing of action. On or before filing the action, the executor must distribute to the beneficiaries any property of the estate that remains in the hands of the executor after the payment of debts, except for a reasonable reserve of assets that the executor may retain in a fiduciary capacity pending court approval of the final account. *Id.* at § 405.003(d). Of course, this reserve should take into account the cost and expense of the pending action as well as the remaining administration of the estate.

d. Pros and cons of obtaining a judicial discharge. Seeking a judicial discharge forces resolution of dealings during the administration of the estate and related complaints that are disclosed in the accounting, and it offers the executor some comfort regarding the extent of his, her, or its liability. Although the preparation of the accounting may help mitigate issues regarding undisclosed information, the judicial discharge does not release the executor if the accounting contained false information or if there is undisclosed material information. The proceeding also does not discharge the executor from personal liability for federal tax liabilities. Furthermore, an action for discharge of an executor is often time consuming and costly. The legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge are paid from the estate, except as ordered by the court. *Id.* § 405.003(e). However, the executor will be personally liable to

refund any amount of the fees, expenses or other costs that the court does not approve as a proper charge. *Id.*

**3. Informal closing of the estate.** As stated previously, the means discussed above for formally closing an estate administration are not required in an independent administration. It has long been the law in Texas that the administration of an estate can be concluded without formal action when the steps needed to conclude the administration of an estate have been taken. In the words of one court, "Since the closing procedures provided by [the Texas Estates Code] are not mandatory, the final distribution of an estate's assets after all debts and claims against the estate are paid results in the closing of the estate." *Interfirst Bank-Houston, N.A. v. Quintana Petroleum Corp.*, 699 S.W.2d 864, 874 (Tex. App.—Houston [1st Dist.] 1985, writ *ref'd n.r.e.*).

### C. Receipts.

The simplest form of documentation authorized by the Texas Estates Code to evidence a distribution is a receipt. Texas Estates Code Section 405.002(a) states that an executor is not required to deliver tangible or intangible personal property to a distributee until the distributee has signed a receipt or other proof of delivery of the property. A receipt may be prepared as a stand-alone document, or it may be included as a provision in a document evidencing additional agreements and representations by the distributee or as part of a broader agreement between multiple parties in the estate proceeding.

**1. Parties to receipt.** Typically the only party who signs a simple receipt is the distributee who receives the property. The distributee should always sign in the capacity in which he or she receives the property. For example, the signature block on a receipt for a trustee receiving property to hold in trust should not just reflect the trustee's name, but should read "[Trustee], as Trustee of the [Trust]".

When a receipt is included as part of a broader document evidencing additional agreements between parties, the document is commonly structured so that more than one person signs the instrument. The executor and other distributees and beneficiaries of the estate may also be included as parties in these more involved agreements.

**2. Form of receipt.** Many transfers of property will generate documentation that can serve as a receipt. For example, if the executor writes a check to a beneficiary, the cancelled check can serve as a receipt. Transfers of publicly traded stocks and bonds and wire transfers of cash will be documented by the financial

<sup>26</sup> Note that the specific relief can be found in Sections 37.004 and 37.005 of the Texas Civil Practice and Remedies Code.

institutions or transfer agents who effectuate the transfers. However, some items, such as household goods and personal effects, won't have any documentation to show receipt except for that created by the executor or his or her counsel for signature by the distributee. Even if other records may provide documentation of delivery of the property, the executor may want a formal receipt signed by the distributee in a form that can be filed with the probate court. The receipt will often include a heading in the style of the probate case, will recite facts regarding the estate and the distribution(s) to which the distributee is entitled, and will include a statement of receipt by the distributee similar to the following:

*By signing below, [Distributee] acknowledges receipt from [Executor], as Independent Executor of the Estate of [Decedent], Deceased, a distribution [in the amount of \_\_\_\_\_ and \_\_\_\_\_/100 dollars (\$\_\_\_\_\_)] OR the property described as follows: \_\_\_\_\_, which has been delivered to him/her/the person whose name appears below, as [representative of] [Distributee].*

As mentioned previously and as discussed in further detail below, in addition to the plain language of the receipt, executors will frequently include additional provisions that reflect agreements between the parties. In such circumstances, the receipt may just be one provision in a much broader document. Examples of fairly simple receipts can be found in **Exhibits A and E** attached hereto.

**3. No receipt for real property.** The statute that authorizes the requirement of a receipt only applies to tangible or intangible personal property, and accordingly does not include real property. However, a recorded deed should be sufficient proof of delivery of real property. While the executor cannot compel a distributee to sign a receipt for real property, he or she is not prohibited from asking for one.

**4. Filing receipts.** There is no requirement that a receipt be filed in the probate court. The executor may decide not to file the receipt and just keep it with the estate records. However, the receipt can be filed if the executor wants it to be a part of the formal records of the probate proceeding, or as part of a closing report or an action for a judicial discharge of the executor.

**5. Benefits of receipts.** Receipts signed by distributees are a flexible and economical way to document distributions from the estate. The statutorily authorized methods to document distributions as part of closing an estate can only be used when the administration of the estate is complete and result in the termination of the power and authority of the executor. Receipts, on the other hand, can be obtained at various

times during the administration, and have no effect on the continuing administration of the estate.

#### **D. Agreements Regarding Distribution of Estate Assets.**

Separate and apart from receipts which just document that a distribution has been made, an executor may wish to enter into a formal agreement with a distributee regarding what property is going to be distributed or how a specific distribution will be made. These types of distribution agreements are especially useful to document non-pro rata funding of testamentary gifts, to document non-pro rata divisions of community property, or to document the parties' agreement that the assets will be distributed other than as provided in the decedent's Will. Additionally, agreements may be used to identify and document the settlement of claims of the distributee or other parties to the estate proceeding.

An executor may not compel a distributee to sign an agreement regarding distribution of estate assets as a condition to receipt of the property. TEX. ESTS. CODE § 405.002(b). However, it is often beneficial for all parties involved to document the agreements between them regarding the distributions.

**1. Parties to the agreement.** Unlike a simple receipt, where the only person who typically signs is the distributee, in more involved agreements regarding distribution of estate assets, additional parties may sign the final instrument. In many cases, more than one distributee or all of the distributees may be included. In most instances, the executor will also be a party to the agreement. Frequently, beneficiaries other than the actual distributee will also sign. For example, the distributee entering into the agreement may be the trustee of a trust, but the underlying beneficiaries of the trust may be parties to the agreement as well because they are consenting to actions taken by the executor or trustee, are releasing the executor from liabilities, are making representations to the other parties, or otherwise. If one person is serving in multiple capacities (e.g., as executor, trustee, individually as a beneficiary, as next friend of a minor beneficiary, etc.), it should be clear that the person is signing the agreement in each of his or her separate capacities.

In some instances it may be desirable for minor, incapacitated, unborn, or unascertained beneficiaries to participate in these distribution agreements. This issue commonly arises when a trust is receiving property of a decedent's estate, since trusts are commonly drafted to benefit broad classes of people. However, these parties may not be available or may not have capacity to enter into distribution agreements. In such circumstances, it is common for a parent to enter into an agreement on behalf of his or her minor children. Section 115.013(c)

of the Texas Trust Code provides that "if there is no conflict of interest and [if] no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend." Another alternative is to apply for the appointment of a guardian of the estate or a guardian ad litem for such persons. Section 115.014(c) of the Texas Trust Code allows a guardian ad litem to "consider general benefit accruing to the living members of a person's family" when acting on a person's behalf. This ability to look at the benefits to the entire family may be helpful in the context of distribution agreements.

**2. Format of agreements regarding distribution of estate assets.** Formal agreements regarding distribution of estate assets often are structured like contracts, and are much longer than simple receipts. These documents may be formatted and styled so that they can be filed with the probate court if necessary.

a. Identification of parties. Because several parties may be involved, some of whom are serving in more than one capacity, the instrument may include a separate provision wherein all of the parties are listed in each of the capacities in which they are entering into the agreement.

b. Defined terms. Because these types of agreements are typically longer and more detailed, they often include a section defining terms that will be used frequently so that a full definition does not have to be used each time the term appears.

c. Recitals. The recitals contained in these agreements will frequently involve more detail than the recitals contained in receipts. The facts and circumstances underlying the agreement may be set out in great detail, disagreements and claims between the parties may be explained, and the basis for the resolutions and the agreements to follow may be outlined.

d. Formal agreements. The formal agreements of the parties will be specifically set out in the instrument. These agreements may include covenants relating to the form that distributions will take or the actual assets that will be distributed, releases, indemnifications, refunding agreements, and consents and ratifications to specific action taken by parties. Several provisions commonly included are discussed in greater detail later in this article.

e. Representations and warranties. The agreement often includes a section containing specific representations and warranties by each of the parties. In addition to the representations and warranties actually made, a statement that each party is disclaiming reliance on representations and warranties other than those

expressly stated in the instrument may be included. An important representation that is often specifically included is a statement that each party has knowledge of all relevant and material information and facts or is specifically waiving and releasing any right to obtain or demand any additional information.

**3. Funding agreements.** One of the most common types of distribution agreements is a funding agreement, which is a written agreement that serves as the basis for funding a trust. Frequently, these instruments are created in connection with funding tax-planned gifts to trusts created for the benefit of a decedent's surviving spouse. When marital or bypass trusts are created for the benefit of a surviving spouse, it is common for community property assets of the decedent and the surviving spouse to be divided in a non-pro rata manner among the surviving spouse and the trust(s). Such a non-pro rata division requires participation by the executor, the trustee(s) of the trust(s), and the surviving spouse.

Although the funding agreement does not itself serve as a conveyance if a tax issue later arises, it may prove helpful at the death of the surviving spouse to establish to the IRS that the marital and bypass trusts were properly funded, and that post-death changes in value were considered and appropriately allocated. This agreement can be prepared in the form of an instrument that can be recorded in the probate proceedings of the first decedent's estate, although it is not necessary to do so. Provisions acknowledging receipt of the distributions, in addition to other agreements between the parties (such as releases and other agreements outlined in further detail below) may also be included as part of the funding agreement.

a. Funding spreadsheet. In order to determine the total value of the assets to be distributed to a trust, a funding spreadsheet may be prepared in Excel or another similar program. The funding spreadsheet typically reflects the value of probate and non probate assets owned at the date of death, the value of assets held by the executor as of the funding date, the changes that have occurred in assets since the date of death (e.g., consolidation of accounts, establishment of estate accounts, and sale of assets), and the division of the assets between the surviving spouse and the trust(s) being funded. Of course, if there are other distributees, the funding spreadsheet reflects the interests passing to those distributees as well. This type of document is a helpful tool when calculating divisions of property and is often the starting point for funding recommendations made by an attorney to the executor. If a formal funding agreement is prepared, the funding spreadsheet can be attached to the agreement as an exhibit.

b. Funding memorandum. Depending upon the executor's sophistication and experience in retitling assets, once the funding agreement has been finalized and signed, he or she may need detailed instructions regarding the steps to be taken to effectuate the terms of the agreement. These instructions may be given in informal correspondence or during meetings between the executor and counsel. However, it is often beneficial for the executor to be given directives in the form of a detailed letter or memo of instruction. The memo or letter can serve as a checklist to determine which steps required to transfer the assets have been taken and what additional action items still remain.

**4. Family settlement agreements.** Another type of agreement regarding the distribution of estate assets is typically referred to as a family settlement agreement. Family settlement agreements are often used in circumstances when the distributees of an estate have agreed to a distribution of estate property other than as provided in the decedent's Will, or to resolve disputes arising between distributees regarding their respective interests in the estate. The availability of a family settlement agreement is based on the principle that at a decedent's death, the decedent's property vests immediately in the devisees under the decedent's Will or in the decedent's heirs at law. *See* TEX. ESTS. CODE §§ 101.001, 101.003. Since the distributees could, by transfers made immediately after the distribution from the estate, divide the property as they wish, it has been stated that there is no reason why they may not divide the property by agreement before they receive it in the regular course of the administration of the estate. *In re Estate of Webb*, 266 S.W.3d 544, 551 (Tex. Civ. App.—Fort Worth 2008, *pet. denied*). These agreements are generally favored in Texas because Texas courts support the policy of preventing disputes and resolutions through voluntary settlement procedures. *See* TEX. CIV. PRAC. & REM. CODE § 154.002; *Stringfellow v. Early*, 40 S.W.871, 874 (Tex. Civ. App. 1897, *writ dismissed*). With the recent changes in the estate tax laws, a growing reason that distributees of an estate wish to enter into family settlement agreements is to avoid the funding of trusts created in the decedent's Will. Because of the relatively recent increase in the federal estate tax exclusion amount to \$5,000,000,<sup>27</sup> it is sometimes the case that trusts created in a decedent's Will for the purpose of minimizing estate tax no longer have any foreseeable estate tax benefit. Although there are other benefits to testamentary trusts such as creditor protection, many surviving spouses do not want to go through what is seen as the hassle of funding and administering these trusts. Family settlement

agreements are often utilized as an alternative to seeking judicial termination of the trusts.

A detailed discussion regarding family settlement agreements is outside of the scope of this article. Fortunately, however, an article was presented on that topic at the Estate Planning and Probate Drafting Course organized by the Texas State Bar last year. For an excellent discussion regarding drafting settlement agreements, see Brown, Drafting and Enforcing Settlement Agreements, State Bar of Texas Estate Planning and Probate Drafting, (2014). For informative discussions regarding the possibility and implications of not funding testamentary trusts, see Davis, Funding Testamentary Trusts, State Bar of Texas Advanced Estate Planning Strategies Course (2013); Strug, To Fund . . . Or Not To Fund: What To Do With The Bypass Trust, State Bar of Texas Advanced Estate Planning and Probate Course (2014); and Mobley, How to Not Fund the Testamentary Trust, State Bar of Texas Estate Planning and Probate Drafting Course (2014).

**E. Provisions That Can Be Included With Receipts and Agreements Regarding Distribution of Estate Assets.**

There is no one-size-fits all receipt or agreement regarding distribution of estate assets. They are as unique as each estate. The assets distributed, the type of distribution being made, the parties involved in the distribution, the information available to the parties, the claims asserted by the parties, and the level of comfort and trust between the parties will all influence the content of a document prepared in relation to distributions from the estate. When drafting a receipt or other agreement that will be presented to a distributee for signature, any one or more of the following provisions may be included.

**1. Releases and indemnity agreements.** Releases and indemnity agreements are some of the most common provisions to be included with receipts and distribution agreements.

a. Releases. Generally, a release surrenders legal rights or obligations between the parties to an agreement. It operates to extinguish any claim or cause of action as effectively as would a prior judgment between the parties and is an absolute bar to institute a proceeding on the released matter. *Dresser Industries, Inc. v Page Petroleum, Inc.*, 853 S.W.2d 505, 508 (Tex. 1993). Accordingly, a release from a distributee is very attractive to an executor. However, an executor is not permitted to require a waiver or release from the distributee as a condition of delivery of property to a

<sup>27</sup> This amount is adjusted annually for inflation after 2010. For decedents dying in 2015, it is \$5,430,000.

distributee. TEX. ESTS. CODE § 405.002(b). Accordingly, while the executor can always present a release for signature by the distributee, the executor cannot withhold the distribution if the distributee declines to sign the release.

b. Indemnity agreements. An indemnity agreement is a promise to recompense or hold the indemnitee harmless against either existing and/or future liability. *Dresser Industries, Inc.*, at 508. The agreement creates a potential cause of action in the indemnitee against the indemnitor. *Id.* In other words, an indemnity agreement serves as a type of insurance policy for the indemnitee, transferring risk of loss to the indemnitor in with respect to the claims covered in the indemnity agreement.

c. Fair notice requirements. If a release or an indemnity agreement relieves the executor in advance of liability for its own negligence, the fair notice requirements of the express negligence doctrine and conspicuousness will apply. *See id.* at 509.

(1) The express negligence doctrine states that a party seeking indemnity from the consequences of that party's own negligence must express that intent within the four corners of the contract. *Id.* at 508. Accordingly, if the release or indemnity is intended to cover the negligence of the executor, language to that effect should be explicitly included in the language of the release and/or indemnity provision.

(2) The conspicuous requirement mandates that something must appear on the face of the contract to attract the attention of a reasonable person when he looks at it. *Id.* Language in capital letters, language in contrasting type or color, and language in an extremely short document is conspicuous. *Id.* Thus, when drafting release and indemnity provisions to be included in a receipt or distribution agreement, the executor's attorney should modify those provisions so that they stand out from the rest of the text of the document.

d. Enforceability. In order for a release to be enforceable, the distributee must have knowledge of the facts and circumstances that form the basis of the release. A release, like any contract, is subject to being found void on grounds of fraud or material misrepresentation. *See Williams v. Glash*, 789 S.W.2d 261 (Tex. 1990). An argument can also be made that there is no consideration for a release or indemnification in the context of an estate administration. *See MacDonald v. Carroll*, 783 S.W.2d 286 (Tex. App.—Dallas 1990, *writ denied*) ("A release and acceptance of benefits thereunder for an undisputed, liquidated and vested property right in an estate is without legal

consideration."). *See also Farrell v. Cogley*, 146 S.W.315, 318 (Tex. Civ. App.—San Antonio, 1912, *writ ref'd*).

As noted before, an executor is generally entitled to seek a judicial discharge for his or her actions during the administration pursuant to Texas Estates Code Section 405.003. The process of obtaining a discharge can be expensive and time consuming, and the expense of obtaining the discharge is typically borne by the estate. Therefore, an argument can be made that forbearance by the executor from seeking a judicial discharge is adequate consideration for the release or indemnity agreement. The forbearance and its nature as consideration should be recited in the agreement.

e. Examples. If there are specific known claims that are being released or indemnified, those should be set out in as much detail as possible. The following are examples of broad and relatively generic release and indemnity provisions.

(1) Release:

**[DISTRIBUTEE] HEREBY FOREVER RELEASES AND DISCHARGES [EXECUTOR], AS INDEPENDENT EXECUTOR OF THE ESTATE OF [DECEDENT], DECEASED, AND EACH OF [HIS/HER/ITS] PREDECESSORS, SUCCESSORS, AND AFFILIATES OF AND FROM ANY AND ALL CLAIMS RELATED TO [DISTRIBUTEE'S] INTEREST IN THE ESTATE, INCLUDING ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OF [EXECUTOR], AS INDEPENDENT EXECUTOR.**

**THE RELEASES HEREIN ARE INTENDED TO BE GLOBAL RELEASES OF ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION THAT [DISTRIBUTEE] NOW HAS OR MAY HAVE AGAINST [EXECUTOR], AS INDEPENDENT EXECUTOR OF THE ESTATE OF [DECEDENT], DECEASED WITH RESPECT TO THE CLAIMS DESCRIBED ABOVE AND ARE TO BE INTERPRETED LIBERALLY TO PROVIDE MAXIMUM PROTECTION FOR [EXECUTOR], AS INDEPENDENT EXECUTOR OF THE ESTATE OF [DECEDENT], DECEASED.**

(2) Indemnity agreement:

**[DISTRIBUTEE] HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS [EXECUTOR], AS INDEPENDENT EXECUTOR OF THE ESTATE OF [DECEDENT], DECEASED, AND [HIS/HER/ITS] SUCCESSORS AND ASSIGNS AGAINST ALL CLAIMS (INCLUDING TAXES OF EVERY**

***KIND AND CHARACTER), DEMANDS, SUITS, JUDGMENTS, COSTS, EXPENSES, ACCOUNTANT'S FEES, ATTORNEYS' FEES, AND TO ALL LOSSES AND DAMAGES OF EVERY KIND AND CHARACTER THAT MAY BE MADE AGAINST [EXECUTOR], AS INDEPENDENT EXECUTOR, THE ESTATE, OR THE ASSETS OF THE ESTATE, ARISING OR TO ARISE BY REASON OF THE DISTRIBUTIONS PREVIOUSLY MADE, THE DISTRIBUTIONS MADE HEREINAFTER, OR OUT OF [HIS/HER/ITS] ADMINISTRATION OF THE ESTATE, INCLUDING ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OF [EXECUTOR], AS INDEPENDENT EXECUTOR.***

**2. Covenants not to sue.** In connection with any releases or indemnities included in the agreement, it may be advisable to include a covenant of the parties not to sue. Beyond just the release and indemnification of any claims, the covenant not to sue is an affirmative agreement not to institute any court action that relates to the same. This provision is often included when a party to the agreement may seem especially litigious. An example of a covenant not to sue is as follows:

*[Distributee] hereby covenants not to bring any claim, demand, proceeding, lawsuit, action, or cause of action of any kind in any court, tribunal or any judicial or quasi-judicial forum, whether by way of direct action, counterclaim, cross-claim, interpleader or otherwise, for any demands, liabilities, losses, damages, costs, fees, expenses or other loss of any kind, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, whether in contract, tort, any form of ordinary negligence or gross negligence, breach of fiduciary duty, mismanagement, self-dealing, failure to provide accountings and/or fully disclose information relating to the Estate or its assets, or other actions or inactions of [Executor], as Independent Executor of the Estate of [Decedent], Deceased, which [Distributee] may have against [Executor], as Independent Executor of the Estate of [Decedent], Deceased, arising out of the actions or omissions of [Executor], as Independent Executor of the Estate of [Decedent], Deceased, relating to, connected with, associated with, or which may impact the Estate of [Decedent], Deceased, the assets of the Estate of [Decedent], Deceased, or the administration by [Executor], as Independent Executor of the Estate of [Decedent], Deceased, of the Estate of [Decedent], Deceased.*

**3. Refunding agreements.** An equally important yet sometimes overlooked provision is a refunding agreement. In a refunding agreement, the distributee agrees to refund to the executor that amount of the property distributed which is necessary to satisfy claims for additional taxes, expenses, or liabilities later asserted against the decedent or the estate. The executor may feel that a refunding agreement is unnecessary because a creditor's lien follows the property of the estate, but including a refunding agreement also imposes a contractual obligation on the distributee if a creditor is seeking payment from or asserting liability by the executor. Additionally, including an explicit refunding agreement in the document may put the distributee on notice that the amounts distributed are still subject to the estate's liabilities and make him or her think twice before spending or otherwise disposing of the amount distributed. The refunding agreement will not do the executor any good unless the distributee still has the distributed assets (or other assets with which to fund his or her obligations) when the refund is requested. If the executor is genuinely concerned that additional liability may be assessed, the best course of action may be to wait to make the distribution until he or she is more confident that all of the liabilities have been satisfied or that he or she knows the extent of the liabilities.

An example of a general refunding agreement is set forth below:

*To the extent of the distributions made hereinafter and the property previously distributed from the Estate of [Decedent], Deceased, to [Distributee], [Distributee] agrees, upon demand, to make appropriate refund to the then serving personal representative of the Estate (or as otherwise agreed to by the parties) in the event and to the extent that it is at any time determined that an excess distribution of income or principal has been made (whether by reason of claims against the estate or the decedent for (i) taxes, penalties, and interest of any and every kind which may be claimed by the United States of America, (ii) expenses, (iii) the claims of any other person for any liability or asserted liability, or (iv) other charges), or for any other reason.*

**4. Agreement that distributee is no longer an interested person.** The Texas Estates Code describes an "interested person" or "person interested" in the estate as an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered, and anyone interested in the welfare of an incapacitated person, including a minor. TEX. ESTS. CODE § 22.018. Accordingly, any distributee of an estate has an interest in and standing with respect to the estate. If a distribution is made of all of the property

that a distributee is entitled to receive, that person no longer has a property interest in the estate. Thus, if a distribution has completely satisfied the amounts due to the distributee, a statement can be included to that effect in the receipt or other instrument, with an acknowledgement by the distributee that he or she is no longer an interested person and is waiving any further issuance and service of citation. This will be helpful, for example, if the executor later seeks a judicial discharge, because any distributee who has waived issuance and service of citation will not need to be served in the proceeding. An agreement to this effect may be worded as follows:

*[Distributee] acknowledges that the amount received is in full satisfaction of the bequest to which [he/she/it] is entitled under the Will, and accordingly, [Distributee]: (i) agrees that [he/she/it] is no longer an Interested Person in the Estate as defined in Texas Estates Code Section 22.018 and further action may proceed without participation by [Distributee] and (ii) hereby waives issuance and service of citation in any future action in this cause.*

**5. Specific consents.** A distributee's consent to specific action taken by the executor can also be included in the receipt or distribution agreement. For example, a provision may be included wherein the distributee consents to and ratifies payment of an amount of compensation to the executor or consents to the distribution of estate assets in a particular manner. An example of consent to the payment of compensation to the executor may be set out as follows:

*[Distributee] agrees that \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) is reasonable compensation to be paid to [Executor], as Independent Executor of the Estate of [Decedent], Deceased, and wishes to consent to and ratify the payment of the fee to [Executor], as Independent Executor of the Estate of [Decedent], Deceased.*

#### **IV. COMMUNICATIONS WITH NON-CLIENTS, OR "CLE ETHICS HOURS!"**

Generally, any documentation that is prepared to evidence distributions from an estate will be prepared by the executor's attorney. Pursuant to best practices, the attorney's engagement will only be with the executor, and will not extend to representation of the distributees of the estate.

In *Barcelo v. Elliott*, 923 S.W.2d 575 (Tex. 1996), the Texas Supreme Court established a bright-line privity

rule which denies a cause of action to all beneficiaries whom an attorney does not represent. *Barcelo*, at 578-579. However, this is only the case if the attorney successfully establishes that the beneficiaries are not his or her clients. For example, in *Vinson & Elkins v. Moran*, 946 S.W.2d 381 (Tex. App.—Houston [14th Dist.] 1997, *pet. dismiss'd by agr.*), a law firm represented the co-executors of an estate, but the beneficiaries of the estate sued the law firm and overcame the privity barrier when they successfully proved that an attorney-client relationship existed between them and the law firm as well, based on communications between them.

The executor's attorney should be mindful of all of this when communicating with distributees regarding distributions and when presenting documentation for signature by the distributees. The Texas Disciplinary Rules of Professional Conduct provide guidelines with respect to communicating with a non-client.<sup>28</sup>

##### **A. Distributee represented by counsel.**

If the distributee is represented by counsel, the attorney for the executor should not communicate with the distributee unless the executor's attorney has the consent of the distributee's attorney to do so. *See* TDRPC 4.02(a). The executor's attorney should instead direct all correspondence and communication to the distributee's attorney.

##### **B. Unrepresented distributee.**

For the most part, the distributees of the estate will not have hired their own attorneys to represent them with respect to their interest in the estate. If the distributee is not represented by counsel, when communicating with the distributee or presenting documentation to the distributee, the attorney must make clear that he or she represents the executor in connection with the matter, and does not represent the distributee. When dealing with a person who is not represented by counsel, an attorney shall not state or imply that the attorney is disinterested but should make clear that the attorney represents the executor. *See* TDRPC 4.03. Furthermore, when the attorney knows or reasonably should know that the unrepresented person misunderstands the attorney's role in the matter, the attorney must make reasonable efforts to correct the misunderstanding. *Id.* In all correspondence with a non-client distributee, it would be wise to include a statement similar to the following:

*[As I have communicated to you previously,] I represent [Executor] in [his/her] capacity as Independent Executor of the Estate of [Decedent],*

<sup>28</sup> Hereinafter, all references to the Texas Disciplinary Rules of Professional Conduct shall be abbreviated as "TDRPC." The TDRPC can be found here:

[https://www.texasbar.com/AM/Template.cfm?Section=Grievance\\_Info\\_and\\_Ethics\\_Helpline&Template=/CM/ContentDisplay.cfm&ContentFileID=96](https://www.texasbar.com/AM/Template.cfm?Section=Grievance_Info_and_Ethics_Helpline&Template=/CM/ContentDisplay.cfm&ContentFileID=96).



*Deceased in connection with this matter. Although [he/she] has asked that I communicate with you, I do so as [his/her] counsel. If for any reason you feel that you need to be represented by counsel in this matter, I encourage you to retain an attorney of your choice.*

Furthermore, in any documentation presented to the distributee for signature, it would be wise to include representations by the distributee as follows:

*[Distributee] hereby represents that [he/she] is adequately represented by competent counsel of [his/her] choosing in connection with the execution and delivery of [this Agreement] and in any and all matters relating thereto or, if [he/she] is not represented by counsel, [he/she] has been given the opportunity to retain counsel and has declined to do so.*

*[Distributee] hereby stipulates, represents and warrants that [Lawyer(s)], and the law firm of [Law Firm], solely represent [Executor], as the Independent Executor of the Estate of [Decedent], Deceased, and do not and have never represented [him/her] and have not provided [him/her] legal advice or services or made any representations to [him/her].*

**C. No false statements of material fact or law.**

Of course, an attorney should not knowingly make a false statement of material fact or law to a third party. TDRPC 4.01(a). Additionally, an attorney should not fail to disclose material facts to a third party when disclosure is required in order to avoid assisting a criminal or fraudulent act by a client. *Id.* at 401(b). These rules would apply to documents that the attorney may prepare on behalf of the executor for signature by the distributee or when the executor's attorney is speaking with a distributee regarding signing such a document.

While the law is clear that non-clients cannot sue an attorney for legal malpractice, in *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, 1991 S.W.2d 787 (Tex. 1999), the Texas Supreme Court held that the absence of an attorney-client relationship does not preclude a third party from suing an attorney for negligent misrepresentation under Section 552 the Restatement (Second) of Torts. The Court explained that under that cause of action, liability is limited to situations in which the attorney who provides the

information to the non-client is aware of the non-client and intends that the non-client rely on the information. *Id.* at 794. The Court went on to clarify that an attorney may avoid or minimize the risk of liability to a non-client by setting forth (1) limitations as to whom a representation is directed and who should rely on it, or (2) disclaimers as to the scope and accuracy of the factual investigation or assumptions forming the basis of the representation itself. *Id.*

Accordingly, to avoid a claim of negligent misrepresentation by a distributee, the executor's attorney should include a statement similar to the following in documentation presented to the distributee for signature:

*[Distributee] hereby stipulates, represents and warrants that in executing this document, [he/she] has relied upon [his/her] her own judgment and/or the advice of [his/her] own attorneys, and further, that [he/she] has not been induced to sign or execute this document by promises, agreements or representations not expressly stated herein, and [he/she] has freely and willingly executed this document and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by [Executor], as the Independent Executor of the Estate of [Decedent], Deceased (the "Independent Executor") or by the Independent Executor's attorneys or other affiliates.*

**V. EXAMPLES, OR "PART WHERE THE AUTHOR GETS TO BE CREATIVE."<sup>29</sup>**

Because documentation prepared to evidence distributions will be different in each estate, the best way to illustrate the use of such documentation is in the context of specific estates. For purposes of these examples, assume that each decedent's estate is being administered in Texas.

**A. Decedent: Anthony John "Tony" Soprano.<sup>30</sup>**

It turns out that Tony Soprano did not die in that last episode. Instead, he outlived his wife Carmela, and died of a heart attack. Pursuant to Tony's Will, his friend<sup>31</sup> Silvio Dante is appointed as the Independent Executor of Tony's estate. Tony's Will provides for a specific bequest of \$2,500 to Episcopal High School in Kearny, New Jersey. The Will further provides that after the payment of any debts, liabilities, and taxes, the residue

boss in important meetings both within the boss' crime family and with other crime families)

<sup>29</sup> Unfortunately for the reader, this author is not very creative. Fortunately for the reader, this author watches a lot of TV.

<sup>30</sup> HBO's *The Sopranos*, currently available on HBO GO.

<sup>31</sup> (Read: consigliere, who is an adviser or counselor to the boss, with the additional responsibility of representing the



of Tony's estate passes in equal shares to his children, Meadow Soprano and Anthony John "A.J." Soprano, Jr.

**1. Simple receipt.** After determining the extent of Tony's estate and most of the debts, liabilities, and taxes, Silvio decides to make the distribution to Episcopal High School. Along with the check, Silvio sends the Receipt attached hereto as **Exhibit A** for execution by a representative of the school. The Receipt is a simple document acknowledging receipt of the funds. It also includes a statement acknowledging that the amount received is in full satisfaction of the amounts due under the Will, and states that accordingly, Episcopal High School agrees that it is no longer an interested person in the estate and waives the issuance and service of any citation in the proceeding.

**2. Receipt and refunding agreement.** Silvio has paid most of Tony's known liabilities, and no estate tax is due, but Silvio is concerned that there might be outstanding income tax liability in addition to the tax that was reported on Tony's final Form 1040. Silvio filed IRS Form 4810 (Request for Prompt Assessment Under Internal Revenue Code Section 6501(d)) requesting that income taxes be assessed within eighteen months, but the eighteen month period has not elapsed. However, Meadow has been inquiring about her portion of the estate. She is impatient and has stated that if no distribution is made, she may demand an accounting. Silvio decides to make a partial distribution to Meadow, but wants to make sure that he will be able to get the amount back if additional tax liability is assessed. Accordingly, through his attorney, Silvio makes the distribution to her, and requests that she sign the Receipt and Refunding Agreement attached as **Exhibit B**. The Receipt and Refunding Agreement recites facts regarding the administration, includes a receipt, and also contains a refunding agreement wherein Meadow agrees that she will refund the amount of the distribution necessary to pay taxes and liabilities. Silvio's attorney advises Meadow that he does not represent her but she has the right to independent counsel.

**3. Receipt, release, consent and refunding agreement.** The IRS assessed additional income tax, which Silvio paid. All of Tony's known liabilities have now been paid, and Silvio is finishing up the administration of the estate. Tony's Will provides that Silvio is entitled to receive fair and reasonable compensation for his services, so together with his attorney, Silvio determines a reasonable amount of compensation. Although he doesn't need Meadow and AJ to approve the payment of compensation, he would like written confirmation that they consent to the

amount. Silvio determines an amount to be retained in the estate for purposes of future estate administration expenses, and then calculates the amount to be distributed to each of Meadow and AJ. Through his attorney, Silvio delivers this amount to each of them, and requests that they each sign a Receipt, Release, Consent, and Refunding Agreement. The document provided to Meadow is attached hereto as **Exhibit C**.<sup>32</sup> The Receipt, Release, Consent, and Refunding Agreement again recites facts regarding the administration, includes a receipt, and contains a refunding agreement. It also provides that Meadow consents to the payment of executor's compensation to Silvio, and releases Silvio from claims associated with the distribution and all causes of action Meadow may have with respect to the estate. Silvio's attorney advises Meadow and AJ that he does not represent them but that each of them have the right to independent counsel.

**B. Decedent: Camille Braverman.**<sup>33</sup>

After her husband Zeek's death, Camille travels the world, painting and enjoying life. Unfortunately, on a trip back from Spain, her plane crashes. Her oldest and most responsible child, Adam, is appointed as Independent Executor of her estate pursuant to the terms of her Will. Camille's Will makes specific bequests of some personal items to her children and grandchildren, and then after the payment of debts, liabilities, and taxes, leaves the residue of her estate in equal shares to her four children, Adam, Sarah, Julia, and Crosby, subject to the terms of separate lifetime trusts for their respective benefits. Each child is named as the trustee of his or her own trust.

**1. Consent, release, and refunding agreement.** Adam is very efficient and identifies all of the assets and pays all known debts and liabilities promptly. He holds a family meeting, informing each of his siblings of the assets of the estate, the liabilities paid, the possible unknown liabilities, and the steps remaining to complete the administration. After speaking with his siblings, he reluctantly agrees that he will pay himself compensation in accordance with the Will, and agrees that he will determine an amount to be retained in the estate for future administration expenses and will distribute the balance of the assets in the estate to the trustees. Shortly after the meeting, Adam contacts the attorney representing him as Independent Executor to tell her that the meeting went well, and that he is going to start distributing assets. The attorney recommends that a document be prepared for signature by the remainder beneficiaries. Although Adam trusts that his siblings would refund any amounts necessary and would never

<sup>32</sup> The document provided to AJ is similar except for the reference to a previous distribution.

<sup>33</sup> NBC's *Parenthood*, Seasons 1-5 currently available on Netflix, and Season 6 currently available on NBC.com.

bring suit against him, his practical side wins out and he agrees. The Consent, Release, and Refunding Agreement attached hereto as **Exhibit D** is circulated to all of the distributees for execution.

**2. Receipts.** Adam's siblings, individually and in their capacities as trustees, each sign the Consent, Release, and Refunding Agreement and begin taking the steps necessary to open accounts for each of their trusts (obtaining EINs, providing required documentation to financial institutions, etc.). Julia is the first to get everything in order. Adam distributes her portion to accounts set up for the trust for her benefit, and delivers the Receipt attached hereto as **Exhibit E** for her signature. As distributions are made to the trusts for his other siblings, similar receipts are prepared and signed.

**C. Decedent: Eric Taylor.**<sup>34</sup>

Coach Taylor dies at a ripe old age in his favorite armchair watching football. His wife, Tami Taylor, is appointed as the Independent Executor of his estate. His Will is a fairly standard tax-planned Will that leaves his interest in the household goods and personal effects and his interest in any of Tami's retirement plans to Tami outright, and then gives a gift of the marital deduction amount to the Marital Trust and the remainder of his estate to the Bypass Trust. The value of his estate is insufficient to fund the gift to the Marital Trust. All of the property owned by Coach Taylor at his death was community property of Coach and Tami.

**1. Agreement regarding distribution of estate assets.** Tami is ready to fund the Bypass Trust and determines that a non-pro rata division of community property is advisable. Tami's attorney prepares a funding spreadsheet to determine which assets, and in what amounts, will pass to Tami, individually, and which will pass to the Bypass Trust. The Agreement Regarding Distribution of Estate Assets attached hereto as **Exhibit F** is prepared for Tami's signature in her individual capacity, as Independent Executor, and as Trustee of the Bypass Trust. The funding spreadsheet is attached as an exhibit to the Agreement.

**2. Funding memo.** After the Agreement Regarding Distribution of Estate Assets is signed, Tami's attorney prepares the memorandum attached hereto as **Exhibit G** which outlines the steps that Tami will have to take to effectuate the allocation of assets in accordance with the Agreement Regarding Estate

Assets. Tami's attorney assists her with the funding as needed.

**D. Decedent: George Oscar Bluth**<sup>35</sup>

George Oscar Bluth dies after an unfortunate accident with a cornballer.<sup>36</sup> Although he and his wife Lucille had a tumultuous relationship, they remained married for the duration of his life. His Will (consisting of a Will and first codicil thereto) is a fairly standard tax-planned Will that leaves his interest in the household goods and personal effects and his interest in any of Lucille's retirement plans to Lucille outright, and then gives a gift of the marital deduction amount to Lucille and the remainder of his estate to the Family Trust. At his death, the value of George's estate is much smaller than it was when his Will was drafted. His interest in many assets passes to Lucille outright via valid rights of survivorship and beneficiary designations, and therefore are not subject to the terms of the Will and are not available to fund the Family Trust. Additionally, most of his probate assets also pass outright to Lucille under the terms of the Will. When all is said and done, relatively little value is available to fund the Family Trust.

**1. Family settlement agreement.** If at all possible, Lucille would like to avoid funding the Family Trust. Lucille discusses her options with the attorney who represents her as executor of the estate. They discuss judicial termination versus termination pursuant to an agreement between all of the beneficiaries of the Family Trust. However, after evaluating the distribution provisions of the Family Trust as well as the advantages of a trust, Lucille decides that she, in her capacity as trustee, can distribute all of the assets that would otherwise pass to the Family Trust to herself, individually, for her health, support, and maintenance. To avoid expense and inconvenience, she determines that the distribution can be made directly to her from the estate. Although as the trustee she has discretion to make the distribution, her attorney advises her that she should discuss it with her children Michael, Lindsay, and Gob, since they are current secondary and remainder beneficiaries of the Family Trust.<sup>37</sup> Michael, Lindsay, and Gob agree that a distribution is proper, and the Family Settlement Agreement attached hereto as **Exhibit H** is circulated to all of the parties for execution.

**E. Decedent: Philip Banks.**<sup>38</sup>

Philip is the innocent victim of a shootout in West Philadelphia while he is there visiting his sister-in-law.

to be the biological son of his twin brother Oscar. You should really watch the show.

<sup>38</sup> NBC's *Fresh Prince of Bel-Air*. Available on DVD (someone needs to start streaming this show immediately).

<sup>34</sup> NBC's *Friday Night Lights*, available now on Netflix.

<sup>35</sup> Fox's (Seasons 1-3) and Netflix's (Season 4) *Arrested Development*. All seasons available now on Netflix.

<sup>36</sup> Watch the show.

<sup>37</sup> The Will specifically excludes George's adopted Korean son Annyong, and his "son" Buster, who actually turned out

His son Carlton is appointed as Independent Executor of his estate. His Will provides for several specific bequests, including a bequest to his longtime employee Geoffrey of \$10,000, to be used to purchase an annuity with terms as set out in the Will. The Will leaves the residue of his estate in equal shares to his four children, Carlton, Hilary, Ashley, and Nicky, subject to the terms of separate lifetime trusts for their respective benefits. Carlton, Hilary, and Ashley are each named as the trustee of the trusts for their respective benefits. Ashley is named as the trustee of the trust for Nicky's benefit. One of the larger assets in Philip's estate is his law practice, and it takes quite a while for Carlton to transfer Philip's law practice.

**1. Consent, receipt, and release.** Carlton diligently tries to find an annuity company that will issue an annuity structured as provided in Philip's Will, but is not able to find one that is economically feasible. After consulting with his attorney and discussing it with Geoffrey, he decides to make the distribution of \$10,000 to Geoffrey outright, rather than using it to purchase an annuity. Because the distribution is made more than a year after Philip's death, interest has accrued on the pecuniary bequest. The Consent, Receipt, and Release attached hereto as **Exhibit I** is drafted and presented to Geoffrey for his signature. In the document, Geoffrey consents to the distribution to him outright rather than in the form of an annuity, provides a receipt for the amount received, releases Carlton from any claims with respect to the distribution, and acknowledges that the distribution fully satisfies the amount due to him under the Will. It also states that accordingly, he agrees that he is no longer an interested person in the estate and waives the issuance and service of any citation.

**2. Consent, receipt, and release for trust distribution.** None of the trustees have established bank accounts for the trusts yet because Carlton is still in the process of administering the estate and no distributions have been made to the trustees. However, Nicky's college tuition becomes due, and Nicky does not want to take out a loan to pay for it if at all possible. He requests a distribution from Ashley, as trustee of the trust for his benefit. Ashley in turn speaks with Carlton requesting a distribution from the estate. Carlton determines that he can make a partial distribution to the trusts. Because a penalty will be incurred if the tuition is not paid immediately, Carlton, Ashley, and Nicky agree that the distribution from Nicky's trust will be made directly from the estate to Nicky. Although the Will allows Carlton to make distributions to trust

beneficiaries during administration of the estate, because Ashley is named as the trustee of Nicky's trust, he wants her to sign off on documentation regarding the distribution as well. Accordingly, the Consent, Receipt, and Release attached hereto as **Exhibit J** is prepared and circulated to Ashley and Nicky for their signatures. Once the other trustees set up their trust accounts, the portions of the partial distribution attributable to the other trusts are distributed to the trustees with simple receipts.

## **VI. CONCLUSION, OR "THIS IS THE END."**

On a list containing the steps in an estate administration, "distribute estate assets" may just be one item. In reality, however, the distribution process is rarely that simple. Distributions may be made at varying times throughout the administration. With respect to each individual distribution from the estate, the executor of an estate should be careful to evaluate directives in the Will regarding distributions, if any, as well as any other considerations involved in the estate administration or with respect to the particular distribution.

Once an executor has determined that a distribution can and should be made, it may be tempting to make the distribution as quickly as possible, and in that context it is easy to forget to document the distribution. However, documenting distributions can be an important part of the process, and can provide a medium for the parties to enter into additional agreements or to resolve claims regarding the estate administration.

There is no one-size-fits all document for evidencing distributions. Receipts or agreements regarding distribution of estate assets can be prepared to address the specific issues at hand when the distributions are made. While this flexibility provides great opportunities, it also requires the drafting attorney to affirmatively consider all of the matters that should be addressed in any document that is prepared regarding the distribution. At the conclusion of the administration, while not required, an executor may also wish to formally document the distributions that have been made with the probate court in a closing report or as part of an action for judicial discharge. The executor's attorney should work with the executor to determine the necessary and advisable documentation with respect to each distribution made during the course of an estate administration.

**EXHIBIT A**

NO. \_\_\_\_\_

ESTATE OF \_\_\_\_\_ § IN THE PROBATE COURT NO. \_\_\_\_\_  
 ANTHONY JOHN SOPRANO, § OF  
 DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**RECEIPT**

**WHEREAS**, the Will of Anthony John Soprano, Deceased ("**Decedent**"), dated \_\_\_\_\_, (the "**Will**"), was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued to Silvio Dante, as Independent Executor (the "**Independent Executor**") of the Estate of Anthony John Soprano, Deceased (the "**Estate**") on that same date; and

**WHEREAS**, Section \_\_\_\_ of the Will directs that the sum of two thousand five hundred and no/100 dollars (\$2,500.00) in cash or other property is to be given to Episcopal High School, located in Kearny, New Jersey; and

**WHEREAS**, the Independent Executor now desires to distribute that amount to Episcopal High School.

**NOW THEREFORE**, by signing below, Episcopal High School acknowledges receipt from the Independent Executor of the above bequest in the amount of two thousand five hundred and no/100 dollars (\$2,500.00), which has been delivered to the person whose name appears below, as representative of Episcopal High School.

Episcopal High School further acknowledges that the amount received is in full satisfaction of the bequest to which it is entitled under the Will, and accordingly, Episcopal High School: (i) agrees that it is no longer an Interested Person in the Estate as defined in Texas Estates Code Section 22.018 and further action may proceed without participation by Episcopal High School and (ii) hereby waives issuance and service of citation in any future action in this cause.

IN TESTIMONY WHEREOF, witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EPISCOPAL HIGH SCHOOL

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
 COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, as \_\_\_\_\_ of EPISCOPAL HIGH SCHOOL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 Notary Public in and for Said State

**EXHIBIT B**

NO. \_\_\_\_\_

ESTATE OF	§	IN THE PROBATE COURT NO. _____
	§	
ANTHONY JOHN SOPRANO,	§	OF
	§	
DECEASED	§	_____ COUNTY, TEXAS

**RECEIPT AND REFUNDING AGREEMENT**

**WHEREAS**, the Will of Anthony John Soprano, Deceased ("**Decedent**"), dated \_\_\_\_\_, (the "**Will**"), was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued to Silvio Dante, as Independent Executor (the "**Independent Executor**") of the Estate of Anthony John Soprano, Deceased (the "**Estate**") on that same date; and

**WHEREAS**, the Will provides that after the distribution of specific gifts and payment of debts, expenses, and taxes, the remaining property of the Estate is to be distributed in equal shares to Meadow Soprano and Anthony John Soprano, Jr.; and

**WHEREAS**, the period has not yet expired within which the United States of America can collect income taxes and/or estate taxes against the Decedent or the Estate, and other liabilities could be asserted against the Estate during the period of administration; and

**WHEREAS**, Meadow Soprano is desirous of obtaining an immediate distribution of a portion of her share of the Estate in accordance with the terms of the Will; and

**WHEREAS**, the Independent Executor is willing to make a partial distribution at this time as provided in this Receipt and Refunding Agreement (the "**Agreement**").

**NOW THEREFORE**, Meadow Soprano hereby acknowledges receipt of a partial distribution of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00), and in consideration of the immediate distribution of said partial distribution without waiting for the expiration of the period allowed by law for the collection of the aforementioned federal income and/or estate taxes and liabilities, does hereby agree to refund such amounts as may be necessary to satisfy any claims of the United States of America for additional taxes, penalties, and interest of any and every kind which may be claimed by the United States of America and the claims of any other person for any liability or asserted liability against the Decedent or the Estate; but the liability of Meadow Soprano by virtue of this Agreement shall be limited to the amount being distributed to her.

Meadow Soprano hereby stipulates, represents and warrants that \_\_\_\_\_, and the law firm of \_\_\_\_\_, solely represent the Independent Executor of the Estate, and do not and have never represented her and have not provided her legal advice or services or made any representations to her. Further, Meadow Soprano hereby represents that she is adequately represented by competent counsel of her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto or, if she is not represented by counsel, she has been given the opportunity to retain counsel and has declined to do so.

Meadow Soprano further hereby stipulates, represents and warrants that in executing this Agreement, she has relied upon her own judgment and/or the advice of her own attorneys, and further, that she has not been induced to sign or execute this document by promises, agreements or representations not expressly stated herein, and she has freely and willingly executed this document and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by the Independent Executor or by his attorneys or other affiliates.

IN TESTIMONY WHEREOF, witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Meadow Soprano

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared Meadow Soprano known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for Said State

**EXHIBIT C**

NO. \_\_\_\_\_

ESTATE OF	§	IN THE PROBATE COURT NO. ____
	§	
ANTHONY JOHN SOPRANO,	§	OF
	§	
DECEASED	§	_____ COUNTY, TEXAS

**RECEIPT, RELEASE, CONSENT, AND REFUNDING AGREEMENT**

**WHEREAS**, the Will of Anthony John Soprano, Deceased ("**Decedent**"), dated \_\_\_\_\_, 20\_\_\_\_, (the "**Will**"), was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued to Silvio Dante, as Independent Executor (the "**Independent Executor**") of the Estate of Anthony John Soprano, Deceased (the "**Estate**") on that same date; and

**WHEREAS**, the Will provides that after the distribution of specific gifts and payment of debts, expenses, and taxes, the remaining property of the Estate is to be distributed in equal shares to Meadow Soprano and Anthony John Soprano, Jr.; and

**WHEREAS**, A previous distribution in the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_.00) was made to Meadow Soprano by the Independent Executor; and

**WHEREAS**, the period has not yet expired within which the United States of America can collect income taxes and/or estate taxes against the Decedent or the Estate, and other liabilities could be asserted against the Estate during the period of administration; and

**WHEREAS**, Meadow Soprano is desirous of obtaining an immediate distribution of the remainder of her share of the Estate in accordance with the terms of the Will; and

**WHEREAS**, the Independent Executor is willing to make the distribution at this time as provided in this Receipt, Release, Consent and Refunding Agreement (the "**Agreement**"); and

**WHEREAS**, Section \_\_\_\_\_ of the Will provides that the Independent Executor shall be entitled to receive fair and reasonable compensation for his services and the Independent Executor has determined that a reasonable fee for his services is \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_.00), and the Independent Executor has paid that amount to himself from the Estate; and

**WHEREAS**, Meadow Soprano agrees that \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_.00) is reasonable compensation to be paid to the Independent Executor and wishes to consent to and ratify the payment of the fee to the Independent Executor; and

**WHEREAS**, approximately \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_.00) is being retained in the Estate account for purposes of payment of future estate administration expenses, including legal fees, prospective income and/or estate tax liability, accountant's fees, and other miscellaneous fees and if, after the aforementioned administration expenses have been paid, there are any funds remaining in the Estate account, those funds will be distributed in accordance with the terms of the Will; and

**WHEREAS**, the Independent Executor could institute a declaratory judgement action for judicial discharge in relation to his administration of the Estate pursuant to Texas Estates Code Section 405.003, but the Independent Executor and Meadow Soprano desire to mutually settle all matters regarding the administration of the Estate without the cost and delay associated with court action.

**NOW THEREFORE:**

Meadow Soprano acknowledges receipt of a distribution of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00), which constitutes the remainder of her share of the Estate in accordance with the terms of the Will (excluding any amount which may remain after the payment of future estate administration expenses, including legal fees, prospective income tax liability, accountant's fees, and other miscellaneous fees).

Meadow Soprano, in consideration of the immediate distribution of said distribution without waiting for the expiration of the period allowed by law for the collection of the aforementioned federal income and/or estate taxes and liabilities, does hereby agree to refund to the Independent Executor such amounts as may be necessary to satisfy any claims of the United States of America for additional taxes, penalties, and interest of any and every kind which may be claimed by the United States of America and the claims of any other person for any liability or asserted liability against the Decedent or the Estate, but the liability of Meadow Soprano by virtue of this Agreement shall be limited to the to the amount of the distributions made hereinafter and the property previously distributed to her from the Estate.

Meadow Soprano hereby agrees that the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) is reasonable compensation for the Independent Executor and consents to and ratifies the payment of the fee to the Independent Executor.

Meadow Soprano, in consideration of the forbearance of the Independent Executor to seek a judicial discharge pursuant to Texas Estates Code Section 405.003, hereby releases the Independent Executor as follows:

**MEADOW SOPRANO HEREBY GRANTS TO SILVIO DANTE, AS INDEPENDENT EXECUTOR OF THE ESTATE, A FULL RELEASE OF ANY AND ALL CLAIMS ASSOCIATED WITH THIS DISTRIBUTION AND ALL CAUSES OF ACTION OF EVERY KIND SHE MAY POSSESS WITH RESPECT TO THE ESTATE OF ANTHONY JOHN SOPRANO, DECEASED, INCLUDING ANY CLAIMS THAT MAY ARISE AS THE RESULT OF THE NEGLIGENCE OF SILVIO DANTE, AS INDEPENDENT EXECUTOR OF THE ESTATE.**

**THE RELEASES HEREIN ARE INTENDED TO BE GLOBAL RELEASES OF ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION THAT THE RELEASING PARTIES NOW HAVE OR MAY HAVE AGAINST THE RELEASED PARTY WITH RESPECT TO THE CLAIMS DESCRIBED ABOVE AND ARE TO BE INTERPRETED LIBERALLY TO PROVIDE MAXIMUM PROTECTION FOR THE RELEASED PARTY.**

Meadow Soprano hereby stipulates, represents and warrants that she has been provided a fair and reasonable disclosure of the assets comprising the Estate and voluntarily and expressly waives all right to disclosure beyond any disclosures provided; and either personally or through her independently retained attorneys, has fully investigated to her satisfaction all facts surrounding the Estate and its administration, and is fully satisfied with the terms and effects of this Agreement.

Meadow Soprano hereby stipulates, represents and warrants that \_\_\_\_\_, and the law firm of \_\_\_\_\_, solely represent the Independent Executor of the Estate, and do not and have never represented her and have not provided her legal advice or services or made any representations to her. Further, Meadow Soprano hereby represents that she is adequately represented by competent counsel of her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto or, if she is not represented by counsel, she has been given the opportunity to retain counsel and has declined to do so.



IN TESTIMONY WHEREOF, witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Meadow Soprano

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared Meadow Soprano, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for Said State

**EXHIBIT D**

NO. \_\_\_\_\_

ESTATE OF § IN THE PROBATE COURT NO. \_\_\_\_  
CAMILLE BRAVERMAN, § OF  
DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**CONSENT, RELEASE, AND REFUNDING AGREEMENT**

This Consent, Receipt, Release, and Refunding Agreement (this "**Agreement**") is entered into by and among the Parties as defined in this Agreement.

**Article 1: Parties**

The Parties to this Agreement are defined as follows:

1.1 "**Adam**" shall refer to Adam Braverman, Individually, as sole Independent Executor of the Estate of Camille Braverman, Deceased, and as Trustee of the Camille Braverman Descendant's Trust for the benefit of Adam Braverman.

1.2 "**Sarah**" shall refer to Sarah Braverman, Individually, and as Trustee of the Camille Braverman Descendant's Trust for the benefit of Sarah Braverman.

1.3 "**Julia**" shall refer to Julia Braverman-Graham, Individually, and as Trustee of the Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham.

1.4 "**Crosby**" shall refer to Crosby Braverman, Individually, and as Trustee of the Camille Braverman Descendant's Trust for the benefit of Crosby Braverman.

**Article 2: Definitions**

2.1 The terms "**Affiliate**" or "**Affiliates**" shall include such persons, employees, assigns, trustees, attorneys, accountants, agents, heirs and spouse (including a former or future spouse), as may be applicable.

2.2 The term "**Decedent**" shall refer to Camille Braverman, Deceased.

2.3 The term "**Effective Date**" shall refer to the date the last Party signs this Agreement.

2.4 The term "**Estate**" shall refer to and include all probate properties, real or personal, however and whenever acquired, and any income therefrom, which belong to the Estate of Camille Braverman and which pass under her Will.

2.5 The term "**Independent Executor**" shall refer to Adam, as sole Independent Executor of the Estate.

2.6 The terms "**the Parties**" or "**the Parties hereto**" shall collectively refer to Adam, Sarah, Julia, and Crosby and the term "**Party**" refers to each of them.

2.7 The terms "**Predecessor**" or "**Predecessors**" shall refer to any person or entity serving prior in time to the person in question.

2.8 The terms "**Successor**" or "**Successors**" shall refer to the heirs, devisees, descendants, legatees, executors, appointees under any power of appointment, personal representatives, successor trustees, and any successors of a Successor or Successors.

2.9 The term "**Will**" shall refer to the Last Will and Testament of Camille Braverman dated \_\_\_\_\_, 20\_\_\_\_, which was admitted to Probate in Cause No. \_\_\_\_\_ in \_\_\_\_\_ County Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas.

2.10 The term "**Adam's Trust**" shall refer to the Camille Braverman Descendant's Trust for the benefit of Adam Braverman.

2.11 The term "**Sarah's Trust**" shall refer to the Camille Braverman Descendant's Trust for the benefit of Sarah Braverman.

2.12 The term "**Julia's Trust**" shall refer to Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham.

2.13 The term "**Crosby's Trust**" shall refer to Camille Braverman Descendant's Trust for the benefit of Crosby Braverman.

2.14 The term "**the Beneficiaries**" shall collectively refer to Adam, Individually, and as Trustee of Adam's Trust; Sarah, Individually, and as Trustee of Sarah's Trust; Julia, Individually, and as Trustee of Julia's Trust; and Crosby, Individually, and as Trustee of Crosby's Trust. The term "**Beneficiary**" shall refer to any one of the foregoing.

### **Article 3: Recitals**

3.1 Decedent died on \_\_\_\_\_, 20\_\_\_\_. The Decedent's Will was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued the Independent Executor on that same date. A true and correct copy of the Will is attached hereto as **Exhibit A**.<sup>39</sup>

3.2 The Independent Executor has satisfied the various specific bequests provided for in the Will and the only distributions left to be made are distributions of the remaining property of the Decedent.

3.3 Section \_\_\_\_ of the Will provides that after the distribution of specific gifts and payment of debts, expenses, and taxes, the remaining property of the Decedent is to be distributed in equal shares to (i) Adam, subject to the terms of Adam's Trust, (ii) Sarah, subject to the terms of Sarah's Trust, (iii) Julia, subject to the terms of Julia's Trust, and (iv) Crosby, subject to the terms of Crosby's Trust.

3.4 Adam is currently serving as the Trustee of Adam's Trust, Sarah is currently serving as Trustee of Sarah's Trust, Julia is currently serving as the Trustee of Julia's Trust, and Crosby is currently serving as the Trustee of Crosby's Trust.

3.5 Section \_\_\_\_ of the Will provides that the Independent Executor shall be entitled to receive fair and reasonable compensation for his services.

3.6 The Independent Executor has determined that reasonable compensation for his services is \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00), and the Independent Executor has paid that amount to himself from the Estate;

3.7 The period has not yet expired within which the United States of America can collect income taxes and/or estate taxes against the Decedent or the Estate and other liabilities could be asserted against the Estate during the period of administration.

3.8 The Beneficiaries are desirous of obtaining an immediate distribution of the remainder of their respective shares of the Estate in accordance with the terms of the Will.

3.9 The Independent Executor now desires to distribute the majority of the rest of Decedent's remaining property pursuant to the terms of the Will, less the amount retained in the Estate as described below.

3.10 The Parties understand the Independent Executor could institute a declaratory judgement action for judicial discharge in relation to his administration of the Estate pursuant to Texas Estates Code Section 405.003, but the Parties desire to mutually settle all matters regarding the administration of the Estate without the cost and delay associated with court action.

3.11 Approximately \_\_\_\_\_ and no/100 dollars (\$\_\_\_\_\_.00) is being reserved in the Estate's bank account for purposes of payment of future estate administration expenses including legal fees and accountant's

<sup>39</sup> Note that while not included as part of this sample document, a copy of the Will would be attached to the Agreement as Exhibit A.

fees. After the aforementioned administration expenses have been paid, the remaining funds will be distributed in equal shares to Adam's Trust, Sarah's Trust, Julia's Trust, and Crosby's Trust.

3.12 Adam, in his capacity as Independent Executor, desires to evidence of record the transfer of the remaining property of the Estate, in accordance with the terms of the Will, and by the terms of this Agreement.

#### **Article 4: Agreement**

For and in consideration of the premises, the mutual covenants and the terms hereunder, the sufficiency of which consideration is hereby mutually acknowledged, the Parties to this Agreement hereby agree as follows:

4.1 **Compensation.** The Parties agree that \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) is reasonable compensation for the Independent Executor and consent to and ratify the payment of the fee to the Independent Executor from the Estate.

4.2 **Distributions.** The Parties agree that once this Agreement is fully executed by all Parties and the Independent Executor has received the fully executed Agreement, the Independent Executor will distribute all but the amount reserved by the Estate in accordance with the terms of the Will. The recipient of each share will be responsible for payment of any income taxes attributable to the distribution. Upon receipt of his or her share, each Beneficiary agrees to execute a receipt.

4.3 **Judicial Discharge.** The Independent Executor agrees that he will not institute a declaratory judgement action for judicial discharge in relation to his administration of the Estate pursuant to Texas Estates Code Section 405.003.

4.4 **Refund.** To the extent of the distributions made hereinafter and the property previously distributed from the Estate to each Beneficiary, each Beneficiary agrees, upon demand, to make appropriate refund to the then serving personal representative of the Estate (or as otherwise agreed to by the Parties) in the event and to the extent that it is at any time determined that an excess distribution of income or principal has been made (whether by reason of claims against the Estate or the Decedent for (i) taxes, penalties, and interest of any and every kind which may be claimed by the United States of America, (ii) expenses, (iii) the claims of any other person for any liability or asserted liability, or (iv) other charges), or for any other reason.

**4.5 Release. EACH BENEFICIARY HEREBY FOREVER RELEASES AND DISCHARGES ADAM, AS INDEPENDENT EXECUTOR, AND EACH OF HIS PREDECESSORS, SUCCESSORS, AND AFFILIATES, OF AND FROM ANY AND ALL CLAIMS RELATED TO THE BENEFICIARY'S INTEREST IN THE ESTATE, INCLUDING THE CLAIMS THAT MAY ARISE AS THE RESULT OF THE NEGLIGENCE OF ADAM, AS INDEPENDENT EXECUTOR.**

**THE RELEASES HEREIN ARE INTENDED TO BE GLOBAL RELEASES OF ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION THAT THE RELEASING PARTIES NOW HAVE OR MAY HAVE AGAINST THE RELEASED PARTY WITH RESPECT TO THE CLAIMS DESCRIBED ABOVE AND ARE TO BE INTERPRETED LIBERALLY TO PROVIDE MAXIMUM PROTECTION FOR THE RELEASED PARTY.**

**4.6 Indemnification. EACH BENEFICIARY, JOINTLY AND SEVERALLY, AGREES TO INDEMNIFY AND HOLD HARMLESS ADAM, AS INDEPENDENT EXECUTOR, AND HIS SUCCESSORS AND ASSIGNS, FROM ALL LIABILITIES, CLAIMS (INCLUDING TAXES OF EVERY KIND AND CHARACTER), DEMANDS, SUITS, JUDGMENTS, COSTS, EXPENSES, ACCOUNTANT'S FEES, ATTORNEYS' FEES, AND TO ALL LOSSES AND DAMAGES OF EVERY KIND AND CHARACTER THAT MAY BE MADE AGAINST HIM, THE ESTATE, OR THE ASSETS OF THE ESTATE, ARISING OR TO ARISE BY REASON OF THE DISTRIBUTIONS PREVIOUSLY MADE, THE DISTRIBUTIONS MADE HEREINAFTER, OR OUT OF HIS ADMINISTRATION OF THE ESTATE, INCLUDING ANY CLAIMS THAT MAY ARISE AS THE RESULT OF THE NEGLIGENCE OF ADAM, AS INDEPENDENT EXECUTOR.**

**4.7 Representations and Warranties.**

a. Each Party hereby stipulates, represents and warrants to each of the other Parties, as follows:

(i) That he or she is fully competent and has the full authority to enter into this Agreement in the capacity or capacities indicated herein.

(ii) That he or she is the current legal and beneficial owner of all of the claims released hereby, as well as the claims asserted by him or her orally or in written form with respect to any claims he or she could have brought with respect to matters covered by this Agreement;

(iii) That the terms and provisions of this Agreement are valid, binding and enforceable as against himself or herself, any such Party's Successors and Affiliates;

(iv) That he or she is adequately represented by competent counsel of his or her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto or, if he or she is not represented by counsel, he or she has been given the opportunity to retain counsel and has declined to do so;

(v) That \_\_\_\_\_, and the law firm of \_\_\_\_\_, solely represent Adam, in his capacity as Independent Executor, and do not and have never represented any other Party and have not provided any other Party legal advice or services or made any representations to any other Party;

(vi) That in executing this Agreement, each Party has relied upon his or her own judgment and/or the advice of his or her own attorneys, and further, that he or she has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, and he or she has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party, or by such Party's Affiliates;

(vii) That he or she voluntarily and knowingly enters into this Agreement with full understanding of the binding legal consequences;

(viii) That such Party has been provided a fair and reasonable disclosure of the assets comprising the Estate and voluntarily and expressly waives all right to disclosure beyond any disclosures provided; and either personally or through his or her independently retained attorneys, has fully investigated to his or her satisfaction all facts surrounding the Estate and its administration, and is fully satisfied with the terms and effects of this Agreement;

(ix) That such Party either (1) has knowledge of all relevant and material information and facts and has been fully informed, including, in some instances, by advice of counsel, concerning the existence of potential claims of any other Party including other additional affirmative or defensive claims arising from all matters known to him or her and arising during the period of negotiations leading to and culminating in the execution by him or her of this Agreement, in order for him or her to make an informed and considered decision to enter into this Agreement, and/or (2) specifically and, in some instances, after advice of counsel, is waiving and releasing: (a) any right to obtain or demand any additional information, and (b) any obligation of any other Party;

(x) That such Party acknowledges and agrees that the benefits of foregoing potential court action regarding the matters in this Agreement, and the agreements herein and the mutual release of claims of the Parties constitutes good and valuable consideration for this Agreement, the receipt and sufficiency of which is hereby acknowledged and confessed.

b. Each Party understands and agrees that each other Party has relied upon these representations and warranties in entering into this Agreement.

**4.8 Miscellaneous Provisions.**

a. This Agreement constitutes a full and complete agreement between the parties and each Party acknowledges that his execution of this Agreement was not based upon any consideration not recited herein. The terms of this Agreement are contractual and not merely a recital. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective Affiliates and Successors.

b. Each Party, at the request of any other Party, shall execute where necessary from time to time such other documents as may be reasonably necessary to accomplish the intent of this Agreement.

c. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all which together shall constitute a single instrument. This Agreement shall only be binding when one or more counterparts hereof, individually or taken together, shall bear all signatures of the Parties hereto reflected hereon as signatories.

d. This Agreement is fully performable in \_\_\_\_\_ County, Texas, and the various rights and obligations of the Parties shall be governed pursuant to the laws of the State of Texas. \_\_\_\_\_ County, Texas shall be the appropriate and exclusive venue for any suit arising out of this Agreement and the construction of the Will and the various rights and obligations of the Parties.

e. This written Agreement represents the final agreement among the Parties hereto and may not be contradicted by evidence of prior or contemporaneous oral or written agreements between or among one or more of the Parties hereto. Each Party waives any and claims that he or she was fraudulently induced to enter into this Agreement.

f. If any part of this Agreement, or the application thereof to any Party, proves to be or becomes invalid or unenforceable under any applicable law, such part shall be deemed modified to the extent necessary to render such part valid and enforceable, and if such part may not be so modified, it shall be severed and shall not affect the remainder of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
ADAM BRAVERMAN, Individually, in his capacity as sole Independent Executor of the Estate of Camille Braverman, Deceased, and in his capacity as Trustee of the Camille Braverman Descendant's Trust for the benefit of Adam Braverman

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This Consent, Receipt, Release, and Distribution Agreement was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Adam Braverman, Individually, in his capacity as sole Independent Executor of the Estate of Camille Braverman, Deceased, and in his capacity as Trustee of the Camille Braverman Descendant's Trust for the benefit of Adam Braverman.

\_\_\_\_\_  
Notary Public in and for Said State

---

SARAH BRAVERMAN, Individually and in her capacity as Trustee of the Camille Braverman Descendant's Trust for the benefit of Sarah Braverman

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This Consent, Receipt, Release, and Distribution Agreement was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Sarah Braverman, Individually and in her capacity as Trustee of the Camille Braverman Descendant's Trust for the benefit of Sarah Braverman.

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Notary Public in and for Said State

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Julia Braverman-Graham, Individually and in her capacity as Trustee of the Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This Consent, Receipt, Release, and Distribution Agreement was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Julia Braverman-Graham, Individually and in her capacity as Trustee of the Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham.

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Notary Public in and for Said State

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CROSBY BRAVERMAN, Individually and in his capacity as  
Trustee of the Camille Braverman Descendant's Trust for the benefit  
of Crosby Braverman

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This Consent, Receipt, Release, and Distribution Agreement was acknowledged before me on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_, by Crosby Braverman, Individually and in his capacity as Trustee of the Camille Braverman  
Descendant's Trust for the benefit of Crosby Braverman.

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Notary Public in and for Said State



**EXHIBIT E**

NO. \_\_\_\_\_

ESTATE OF § IN THE PROBATE COURT NO. \_\_\_\_  
CAMILLE BRAVERMAN, § OF  
DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**RECEIPT**

**WHEREAS**, the Last Will and Testament of Camille Braverman, Deceased ("**Decedent**"), dated \_\_\_\_\_, (the "**Will**"), was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued to Adam Braverman, as sole Independent Executor (the "**Independent Executor**") of the Estate of Camille Braverman, Deceased (the "**Estate**") on that same date; and

**WHEREAS**, Section \_\_\_\_ of the Will provides that after the distribution of specific gifts and payment of debts, expenses, and taxes, the remaining property of the Decedent is to be distributed in equal shares to each of Adam Braverman, Sarah Braverman, Julia Braverman-Graham, and Crosby Braverman, subject to the terms of the trusts created in the Will for their respective benefit; and

**WHEREAS**, the remainder beneficiaries of the Estate entered into that certain Consent, Release, and Refunding Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "**Agreement**"); and

**WHEREAS**, Julia Braverman-Graham is currently serving as Trustee of the Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham; and

**WHEREAS**, the Independent Executor now desires to make a distribution to Julia Braverman-Graham, as Trustee of the Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham pursuant to the Agreement; and

**WHEREAS**, this distribution is a partial distribution. Pursuant to the Agreement, the Independent Executor is retaining property in the Estate for purposes of payment of future estate administration expenses including legal fees and accountant's fees. After the aforementioned administration expenses have been paid, the remaining funds will be distributed in accordance with the Will.

**NOW THEREFORE**, by signing below, Julia Braverman-Graham, as Trustee of the Camille Braverman Descendant's Trust for the benefit of Julia Braverman-Graham, acknowledges receipt from the Independent Executor of the assets listed on **Exhibit E-1** attached hereto, which have been delivered to her by the Independent Executor.

IN TESTIMONY WHEREOF, witness this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Julia Braverman-Graham, as Trustee of the Camille Braverman  
Descendant's Trust for the benefit of Julia Braverman-Graham



**Exhibit E-1**

	<b>Asset</b>	<b>Value at Transfer</b>
1.	250 shares of common stock in The Luncheonette, Inc.	\$49,117.73
2.	100 Shares of Berkley Charter Schools, Inc.	\$78,763.86
3.	5% limited partnership interest in Hank's Photographs, LP	\$22,386.55
4.	50 shares of common stock of Green Energy, Inc.	\$56,308.91
12.	Cash	\$10,000
	<b>TOTAL:</b>	<b>\$216,577.05</b>

**EXHIBIT F**

NO. \_\_\_\_\_

ESTATE OF § IN THE PROBATE COURT NO. \_\_\_\_\_  
ERIC TAYLOR, § OF  
DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**AGREEMENT REGARDING DISTRIBUTION OF ESTATE ASSETS**

This is an Agreement Regarding Distribution of Estate Assets is entered into by and between Tami Taylor, individually, as sole Independent Executor of the Estate of Eric Taylor, Deceased, and as sole Trustee of the Eric Taylor Bypass Trust.

**RECITALS**

The following facts form the basis for this agreement:

1. Eric Taylor (the "**Decedent**") died on \_\_\_\_\_, 20\_\_\_\_. Decedent was survived by his wife Tami Taylor ("**Tami**").
2. The Will of Eric Taylor dated \_\_\_\_\_ (the "**Will**") was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_, in \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_. Tami was appointed as sole Independent Executor (the "**Independent Executor**") of the Estate of Eric Taylor, Deceased (the "**Estate**") and qualified in that capacity on the same date. A true and correct copy of the Will is attached hereto as **Exhibit F-2**.<sup>40</sup>
3. All property belonging to the Estate was the community property of the Decedent and Tami.
4. Section \_\_\_\_ of the Will makes a specific gift to Tami of Decedent's jewelry, pictures, photographs, works of art, books, household furniture and furnishings, pets, clothing, automobiles, boats, recreational vehicles and equipment, club memberships, burial plots, and articles of household or personal use or ornament of all kinds.
5. Section \_\_\_\_ of the Will makes a gift of Decedent's interest in Tami's employee or self-employed benefit plans and individual retirement accounts to Tami.
6. Section \_\_\_\_ of the Will makes a gift of the residuary estate to the Trustee of the Eric Taylor Bypass Trust (the "**Bypass Trust**") to be administered as provided in Article \_\_ of the Will.
7. Section \_\_\_\_ of the Will appoints Tami as sole Trustee of the Bypass Trust (the "**Trustee**").
8. The community property of the Estate and of Tami is to be equally divided, with certain assets assigned to the Estate, and certain other assets of approximately equal value assigned to Tami, in a nontaxable exchange as provided in Revenue Ruling 76-83, 1976-1 C.B. 213.

<sup>40</sup>Note that while not included as part of this sample document, a copy of the Will would be attached to the Agreement as Exhibit F-2.

9. Pursuant to the Will and certain beneficiary designations for non-probate assets, the Decedent's former one-half of the community property passed to Tami and the Bypass Trust. The value of the Estate was insufficient to fund the gift of the marital deduction amount to the Marital Deduction Trust made in Section \_\_\_\_ of the Will.

10. Tami, individually, and in her capacities as Independent Executor and Trustee, desires to evidence of record the transfer of all property of the Estate, both real and personal, in accordance with the terms of the Will, all valid rights of survivorship and beneficiary designations for non-probate assets, and this Agreement, effective as of \_\_\_\_\_.

**AGREEMENT**

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

1. Tami, individually and as Independent Executor, does hereby agree that in accordance with the Funding Spreadsheet attached hereto as **Exhibit F-1**, the property listed on **Schedule A** attached hereto and incorporated herein by this reference shall either be retained by or distributed, transferred, and conveyed to Tami, individually, representing both Tami's retained one-half community property interest in any community property and the gifts to Tami under Sections \_\_\_\_ and \_\_\_\_ of the Will and all valid rights of survivorship and beneficiary designations for non-probate assets.

2. Tami, individually, as Independent Executor and as Trustee, does hereby agree that in accordance with the Funding Spreadsheet attached hereto as **Exhibit F-1**, the property listed on **Schedule B** attached hereto and incorporated herein by this reference, shall either be retained by or distributed, transferred, and conveyed to the Trustee of the Bypass Trust (EIN: \_\_\_\_ - \_\_\_\_\_) in full and complete satisfaction of the gift under Section \_\_\_\_ of the Will.

3. The assets partitioned to the Bypass Trust herein remain subject to any and all remaining enforceable debts of the Estate. To the extent of the distributions made hereinafter and the property previously distributed from the Estate to Tami or to the Trustee of the Bypass Trust, Tami, individually and as Trustee, agrees, upon demand, to make appropriate refund to the then serving personal representative of the Estate (or as otherwise agreed to by the parties) in the event and to the extent that it is at any time determined that an excess distribution of income or principal has been made (whether by reason of claims against the Estate or the Decedent for (i) taxes, penalties, and interest of any and every kind which may be claimed by the United States of America, (ii) expenses, (iii) the claims of any other person for any liability or asserted liability, or (v) other charges) or for any other reason.

4. The assets are conveyed effective as of the close of business on \_\_\_\_\_, 20\_\_\_\_, and any income earned and any change in value or in form of any asset after that date shall inure to the benefit of the transferee of the asset as set forth herein.

**5. TAMI, INDIVIDUALLY AND AS TRUSTEE, HEREBY FOREVER RELEASES AND DISCHARGES TAMI, AS INDEPENDENT EXECUTOR, AND EACH OF HER PREDECESSORS, SUCCESSORS, AND AFFILIATES, OF AND FROM ANY AND ALL CLAIMS RELATED TO HER INTEREST IN THE ESTATE, INCLUDING ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OF TAMI, AS INDEPENDENT EXECUTOR.**

**THE RELEASES HEREIN ARE INTENDED TO BE GLOBAL RELEASES OF ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION THAT THE RELEASING PARTIES NOW HAVE OR MAY HAVE AGAINST THE RELEASED PARTY WITH RESPECT TO THE CLAIMS DESCRIBED ABOVE AND ARE TO BE INTERPRETED LIBERALLY TO PROVIDE MAXIMUM PROTECTION FOR THE RELEASED PARTY.**

7. TAMI, INDIVIDUALLY AND AS TRUSTEE, HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS TAMI, AS INDEPENDENT EXECUTOR, AND HER SUCCESSORS AND ASSIGNS, AGAINST ALL CLAIMS (INCLUDING TAXES OF EVERY KIND AND CHARACTER), DEMANDS, SUITS, JUDGMENTS, COSTS, EXPENSES, ACCOUNTANT'S FEES, ATTORNEYS' FEES, AND TO ALL LOSSES AND DAMAGES OF EVERY KIND AND CHARACTER THAT MAY BE MADE AGAINST HER, THE ESTATE OR THE ASSETS OF THE ESTATE, ARISING OR TO ARISE BY REASON OF THE DISTRIBUTIONS PREVIOUSLY MADE, THE DISTRIBUTIONS MADE HEREINAFTER, OR OUT OF HER ADMINISTRATION OF THE ESTATE, INCLUDING ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OF TAMI, AS INDEPENDENT EXECUTOR.

6. Tami, individually, as Independent Executor, and as Trustee, at the request of any other party, shall execute where necessary from time to time such other documents as may be reasonably necessary to more fully and effectively consummate the transfers contemplated by this Agreement.

7. This Agreement constitutes a full and complete agreement between the parties and each party acknowledges that her execution of this Agreement was not based upon any consideration not recited herein. This Agreement shall be binding upon the parties and their respective heirs, legal representatives, executors, administrators, successor and assigns.

8. Each of the parties hereby stipulates, represents and warrants to each of the other parties that \_\_\_\_\_, and the law firm of \_\_\_\_\_, solely represent Tami, in her capacity as Independent Executor of the Estate, and do not and have never represented any other party and have not provided any other party legal advice or services or made any representations to any other party.

9. Each party hereby stipulates, represents and warrants to each of the other parties that in executing this Agreement, each party has relied upon her own judgment and/or the advice of her own attorneys, and further, that she has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, and she has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other party, or by such party's attorneys or other affiliates.

10. This Agreement shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have executed this agreement as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
TAMI TAYLOR, Individually, in her capacity as sole Independent Executor of the Estate of Eric Taylor, Deceased, and in her capacity as sole Trustee of the Eric Taylor Bypass Trust

STATE OF \_\_\_\_\_

§

COUNTY OF \_\_\_\_\_

§

§

This Agreement Regarding Distribution of Estate Assets was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Tami Taylor, Individually, in her capacity as sole Independent Executor of the Estate of Eric Taylor, Deceased, and in her capacity as sole Trustee of the Eric Taylor Bypass Trust.

\_\_\_\_\_  
Notary Public in and for Said State

**Schedule A**

**ASSETS TO TAMI TAYLOR, INDIVIDUALLY**

<b>Item</b>	<b>Approximate Value as of __/__/20__</b>
<b>No. Description</b>	
1. Cash and securities held in Dillon Investments Account No. xxxx1234, styled Tami Taylor.	\$1,937,636.62
2. 1999 Chevrolet Tracker 4x4, VIN No. xxxxxxxxxxxxxx5678	\$1,678.00
3. 2001 Jeep Grand Cherokee, VIN No. xxxxxxxxxxxxxx9101	\$3,548.00
4. Household goods and personal effects	\$100,000.00
5. Lot One (1), in Block Two (2) of DILLON HEIGHTS, SECTION THREE (3), an addition in Hopkins County, Texas, according to the map or plat thereof recorded in Volume 111, Page 222, of the Map Records of Hopkins County, Texas, commonly known as 123 Football Road, Dillon, Texas 12345.	\$233,121.00
6. Cash held in Panther Nation Checking Account No. xxxxxx1121, styled Tami Taylor.	\$9,812.33
7. 47.34% of the value of the securities held in Dillon Investments Account No. xxxx3141, styled Eric Taylor and Tami Taylor- Tenants in Common.	\$1,219,003.23
<b>TOTAL</b>	<u><u>\$3,504,799.18</u></u>

**Schedule B**

**ASSETS TO THE ERIC TAYLOR BYPASS TRUST**

<b>Item</b>		<b>Approximate</b>
<b>No.</b>	<b>Description</b>	<b>Value as of</b>
		<b>___/___/20___</b>
1.	Cash held in Dillon Investments Account No. xxxx3141, styled Eric Taylor and Tami Taylor- Tenants in Common.	\$105,869.66
2.	52.66% of the value of the securities held in Dillon Investments Account No. xxxx3141, styled Eric Taylor and Tami Taylor- Tenants in Common.	\$1,356,066.91
	<b>TOTAL</b>	<b><u>\$1,461,936.57</u></b>



Schedule F-1

Exhibit F-1 - Estate of Eric Taylor-Funding Spreadsheet  
Funding Recommendation as of \_\_\_\_\_, 20\_\_

	Value on Date of Death _____, 20__	Estate's 1/2 Community Property Interest	Tami's 1/2 Community Property Interest	Estate's Share Going Outright to Tami Per Will and Benef. Desig.	Estate's Share Going to Bypass Trust Per Will	Value on Date of Funding _____, 20__	Estate's 1/2 Community Property Interest	1 Outright to Tami From Estate	2 Swapped From Estate/ET to Tami	3 Tami's Community Property Interest	4 Total C.P. Interest and Transfers from Estate to Tami	5 Bypass Trust	6 Swapped From Tami to Estate/ET	7 Total Being Funded Into Bypass Trust
<b>ASSETS:</b>														
<b>Real Property</b>														
1 Lot One (1), in Block Two (2) of DILLON HEIGHTS, SECTION THREE (3), an addition in Hopkins County, Texas, according to the map or plat thereof recorded in Volume 111, Page 222, of the Map Records of Hopkins County, Texas, commonly known as 123 Football Road, Dillon, Texas 12345	168,000.00	84,000.00	84,000.00	0.00	84,000.00	233,121.00	116,560.50	0.00	116,560.50	116,560.50	233,121.00	swapped	0.00	0.00
<b>Total Real Property:</b>	168,000.00	84,000.00	84,000.00	0.00	84,000.00	233,121.00	116,560.50	0.00	116,560.50	116,560.50	233,121.00	0.00	0.00	0.00
<b>Stocks and Bonds</b>														
1 Securities held in Dillon Investments Account No. xxxxx3141, styled Eric Taylor and Tami Taylor-Tenants in Common.	616,233.04	308,116.52	308,116.52	0.00	308,116.52	2,575,070.13	1,287,535.07	0.00	0.00	1,219,003.23	1,219,003.23	1,287,535.07	88,531.84	1,356,068.91
<b>Total Stocks and Bonds:</b>	616,233.04	308,116.52	308,116.52	0.00	308,116.52	2,575,070.13	1,287,535.07	0.00	0.00	1,219,003.23	1,219,003.23	1,287,535.07	88,531.84	1,356,068.91
<b>Cash &amp; Cash Equivalents</b>														
1 Cash held in Panther Nation Bank Checking Account No. xxxxx1121, styled Tami Taylor	6,993.87	3,496.94	3,496.94	0.00	3,496.94	9,812.33	4,906.17	0.00	4,906.17	4,906.17	9,812.34	swapped	0.00	0.00
2 Cash held in Dillon Investments Account No. xxxxx3141, styled Eric Taylor and Tami Taylor-Tenants in Common	60,778.18	30,389.09	30,389.09	0.00	30,389.09	105,896.66	52,934.83	0.00	0.00	52,934.83	0.00	52,934.83	52,934.83	105,896.66
<b>Total Cash and Cash Equivalents:</b>	67,772.05	33,886.03	33,886.03	0.00	33,886.03	115,881.99	57,841.00	0.00	4,906.17	4,906.17	9,812.34	52,934.83	52,934.83	105,896.66
<b>Miscellaneous Property</b>														
1 Cash and securities held in Dillon Investments IRA Account No. xxxxx1234, styled Tami Taylor	1,740,678.09	873,339.05	873,339.05	0.00	873,339.05	1,937,936.62	968,818.31	968,818.31	0.00	0.00	1,937,936.62	0.00	0.00	0.00
2 1996 Chevrolet Tracker 4x4, VIN No. xxxxxxxxxxxx6878	1,678.00	839.00	839.00	0.00	839.00	1,678.00	839.00	839.00	0.00	0.00	1,678.00	0.00	0.00	0.00
3 2001 Jeep Grand Cherokee, VIN No. xxxxxxxxxxxx9101	3,548.00	1,774.00	1,774.00	0.00	1,774.00	3,548.00	1,774.00	1,774.00	0.00	0.00	3,548.00	0.00	0.00	0.00
4 Household goods and personal effects	100,000.00	50,000.00	50,000.00	0.00	50,000.00	100,000.00	50,000.00	50,000.00	0.00	0.00	100,000.00	0.00	0.00	0.00
<b>Total Miscellaneous Property:</b>	1,851,904.09	925,952.05	925,952.05	0.00	925,952.05	2,042,862.62	1,021,431.31	1,021,431.31	0.00	0.00	2,042,862.62	0.00	0.00	0.00
<b>Total Assets:</b>	2,703,905.18	1,351,954.59	1,351,954.59	426,002.55	426,002.55	4,966,735.74	2,483,367.88	1,021,431.31	121,466.67	2,361,901.21	3,504,795.19	1,340,469.90	121,466.67	1,461,936.57

Check Total Estate Balances (Columns 4, 7) 4,866,735.75  
 Check Total Being Distributed by Estate (Columns 1, 2, 5) 2,483,367.88  
 Percentage of DI Securities to Tami 47.34%  
 Percentage of DI Securities to BT 52.66%

**EXHIBIT G**

**Garrity & Collette, PLLC**

Attorneys At Law

123 State Champions Road  
Dillon, Texas 12345

**MEMORANDUM**

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**TO:** Tami Taylor, as Independent Executor of the  
Estate of Eric Taylor, Deceased (the "**Estate**")

---

**FROM:** Garrity & Collette, PLLC

---

**DATE:** [DATE]

---

**RE:** Distribution of the Estate and funding of the  
Bypass Trust

---

As we discussed, this memorandum is intended as a "step-by-step" checklist for your use in implementing the Agreement Regarding Distribution of Estate Assets for your husband's estate which you signed on \_\_\_\_\_, 20\_\_ (the "**Funding Agreement**"). As you know, the Funding Agreement documents the asset allocations made between you and the Eric Taylor Bypass Trust (the "**Trust**"). The allocation of these assets is made effective as of the funding date, \_\_\_\_\_, 20\_\_. As a result, any asset sold, dividend paid, or other change in any asset made since that date will need to be reviewed so that we can ensure that the division of assets is made effective as of \_\_\_\_\_, 20\_\_.

Specifically, the following steps should be taken:

**Assets Passing To Tami Taylor, Individually:**

1. Your Dillon Investments IRA Account No. xxxx1234 will remain in your name. You should review the beneficiary designation for your IRA to ensure that it is payable to the persons to whom you would like it to pass at your death.
2. The title to the 1999 Chevrolet Tracker should be located and retitled in your name. If this vehicle has been sold, you should insure that the sales proceeds are deposited into your account.
3. The title to the 2001 Jeep Grand Cherokee Sedan should be located and retitled in your name. If this vehicle has been sold, you should insure that the sales proceeds are deposited into your account.
4. There is nothing for you to do to retitle the household goods and personal effects. They are transferred to you by your taking possession of them. Again, however, if any of these items has been sold, the sales proceeds should be transferred to you.
5. Enclosed is a deed for your signature to transfer the real property located at 123 Football Road, Dillon, Texas 12345 to you, individually. Please sign the deed before a Notary Public and return the original to us for filing in the real property records. After the deed is fully executed and filed, the property will be fully transferred to you.
6. The Panther Nation Checking Account No. xxxxxx1121, titled Tami Taylor, will remain in your name. No

further action needs to be taken with respect to that account.

7. 47.34% of the value of the securities held in Dillon Investments Account No. xxxx3141, styled Eric Taylor and Tami Taylor- Tenants in Common, should be transferred from that account to a brokerage account solely in your name. This transfer equalizes the values that are distributed in accordance with the Funding Agreement. Your representative at Dillon Investments can assist you with this transfer. Please let me know if you would like us to coordinate with him or her to accomplish this step.

**Assets Passing to the Bypass Trust:**

1. All of the cash and 52.66% of the value of the securities held in Dillon Investments Account No. xxxx3141 should be transferred from that account to a brokerage account in your name as Trustee of the Eric Taylor Bypass Trust. A new brokerage account should be opened in the name of the Trust to receive these assets. Your representative at Dillon Investments can assist you with this transfer. Please let me know if you would like us to coordinate with him or her to accomplish this step.

A federal Taxpayer I.D. (an "EIN") for the Trust will be required to open the brokerage account. To that end we are enclosing a Form SS-4 (Application for EIN) for your signature. Please sign the SS-4 where indicated and return it to us. We can then obtain the EIN electronically.

I hope that you find this memorandum helpful in outlining the steps that you need to take to complete the funding of the Bypass Trust and distribution of the estate. As always, if you have any questions during the process, please feel free to give me a call. Once all of the steps outlined in this memorandum have been completed, please let me know so that I can mark my files accordingly.

**EXHIBIT H**

NO. \_\_\_\_\_

ESTATE OF § IN THE PROBATE COURT NO. \_\_\_\_  
§  
GEORGE OSCAR BLUTH, § OF  
§  
DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**FAMILY SETTLEMENT AGREEMENT**

This Family Settlement Agreement ("this **Agreement**") is made and entered into by and among the Parties as defined in this Agreement.

**Article 1: Parties**

The Parties to this Agreement are defined as follows:

1.1 "**Lucille**" shall refer to Lucille Bluth, individually, as Independent Executor of the Estate of George Oscar Bluth, as Trustee of the George Oscar Bluth Family Trust, and as a beneficiary of the Estate of George Oscar Bluth and of the George Oscar Bluth Family Trust.

1.2 "**Michael**" shall refer to Michael Bluth, individually and as a current secondary and remainder beneficiary of the George Oscar Bluth Family Trust.

1.3 "**Lindsay**" shall refer to Lindsay Bluth, individually and as a current secondary and remainder beneficiary of the George Oscar Bluth Family Trust.

1.4 "**Gob**" shall refer to George Oscar Bluth, II, individually and as a current secondary and remainder beneficiary of the George Oscar Bluth Family Trust.

**Article 2: Definitions**

2.1 The terms "**Affiliate**" or "**Affiliates**" shall include such persons, employees, assigns, trustees, attorneys, accountants, agents, heirs and spouse (including a former or future spouse), as may be applicable.

2.2 The term "**Decedent**" shall refer to George Oscar Bluth, Deceased.

2.3 The term "**Effective Date**" shall refer to the date the last Party signs this Agreement.

2.4 The term "**Estate**" shall refer to and include all probate properties, real or personal, however and whenever acquired, and any income therefrom, which belong to the Estate of George Oscar Bluth and which pass under his Will.

2.5 The term "**Family Trust**" shall refer to the George Oscar Bluth Family Trust created under the Will.

2.6 The term "**Independent Executor**" shall refer to Lucille, as Independent Executor of the Estate.

2.7 The terms "**the Parties**" or "**the Parties hereto**" shall collectively refer to Lucille, Michael, Lindsay, and Gob and the term "Party" refers to each of them.

2.8 The terms "**Predecessor**" or "**Predecessors**" shall refer to any person or entity serving prior in time to the person in question.

2.9 The terms "**Successor**" or "**Successors**" shall refer to the heirs, devisees, descendants, legatees, executors, appointees under any power of appointment, personal representatives, successor trustees, and any successors of a Successor or Successors.

2.10 The Term "**Trustee**" shall refer to Lucille, as Trustee of the Family Trust.

2.11 The term "**Will**" shall refer collectively to the Last Will and Testament of George Oscar Bluth dated \_\_\_\_\_, 20\_\_ and the First Codicil to the Last Will and Testament of George Oscar Bluth dated \_\_\_\_\_, 20\_\_, which were admitted to Probate in Cause No. \_\_\_\_\_ in \_\_\_\_\_ County Probate Court No. \_\_\_ of \_\_\_\_\_ County, Texas. A true and correct copy of the Will is attached hereto as **Exhibit A**.<sup>41</sup>

### **Article 3: Recitals**

3.1 Decedent died on \_\_\_\_\_, 20\_\_\_. The Decedent's Will was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_ and Letters Testamentary were issued to the Independent Executor on that same date.

3.2 Much of Decedent's property was distributed to Lucille in accordance with beneficiary designations, right of survivorship provisions, and other contractual beneficiary designations, and therefore was not subject to the provisions of the Will. The assets that comprise the Estate and which are subject to the terms of the Will are represented on the Inventory, Appraisalment, and List of Claims prepared with regard to the Estate.

3.3 Section \_\_\_ of the Will makes a specific gift to Lucille of Decedent's jewelry, pictures, photographs, works of art, books, household furniture and furnishings, pets, clothing, automobiles, boats, recreational vehicles and equipment, club memberships, burial plots, and articles of household or personal use or ornament of all kinds.

3.4 Section \_\_\_ of the Will makes a gift of Decedent's interest in Lucille's employee or self-employed benefit plans and individual retirement accounts to Lucille.

3.5 Section \_\_\_ of the Will makes a gift of the marital deduction amount to Lucille. However, the value of the Estate is insufficient to fund that bequest.

3.6 Section \_\_\_ of the Will makes a gift of the residuary estate to the Trustee of the Family Trust to be administered as provided in Article \_\_\_ of the Will.

3.7 Lucille, individually, and in her capacities as Independent Executor and as Trustee, desires to evidence of record the transfer of all property of the Decedent, both real and personal, in accordance with the terms of the Will, all valid rights of survivorship and beneficiary designations for non-probate assets and this Agreement, effective as of the Effective Date.

3.8 Section \_\_\_ of the Will provides that with regard to the Family Trust, the Trustee shall distribute to Lucille as much of the income and principal of the Family Trust as is necessary to provide for her health, support and maintenance, and shall distribute income and principal in order to maintain Lucille, to the extent reasonably possible, in accordance with the standard of living to which she was accustomed at the time of the Decedent's death.

3.9 Section \_\_\_ of the Will provides that to the extent that it would not jeopardize distributions to Lucille, the Trustee may distribute to Michael, Lindsay, and Gob, individually, as much of the income and principal of the Family Trust as is necessary to provide for their health, support and maintenance.

3.10 At Lucille's death, Section \_\_\_ provides that any assets remaining in the Family Trust will pass to Michael, Lindsay, and Gob, in equal shares.

3.11 After taking into consideration the funds reasonably available to her from all other sources, Lucille, as Trustee, has determined that a distribution to herself, as the primary beneficiary of the Family Trust, of the amount being distributed from the Estate to the Family Trust is an amount necessary to provide for her health, support, and maintenance, and wishes to make a distribution to herself of that amount.

3.12 For simplicity, and to preserve time and resources, the Family Trust will not be funded, and the distribution from the Estate that would otherwise be made to the Family Trust will be made directly to Lucille, individually.

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<sup>41</sup>Note that while not included as part of this sample document, a copy of the Will would be attached to the Agreement as Exhibit A.

3.13 The Parties understand that absent this Agreement, the Trustee could institute court action to confirm the propriety of this distribution, but the Parties would rather mutually settle this matter without the cost and delay associated with court action.

#### **Article 4: Agreements**

For and in consideration of the premises, the mutual covenants and the terms hereunder, the sufficiency of which consideration is hereby mutually acknowledged, the Parties to this Agreement hereby agree as follows:

4.1 **Assets Allocated to Lucille.** Lucille, individually and as Independent Executor, does hereby agree that the property listed on **Schedule A** attached hereto and incorporated herein by this reference shall either be retained by or distributed, transferred, and conveyed to Lucille, individually, in full and complete satisfaction of the gifts to her under the Will and all valid rights of survivorship and beneficiary designations for non-probate assets, or as her one-half interest in property formerly owned by Lucille and the Decedent as community property.

4.2 **Assets Allocated to the Family Trust.** Lucille, individually, as Independent Executor, and as Trustee, does hereby agree that the property listed on **Schedule B** attached hereto and incorporated herein by this reference, shall be allocated to the Family Trust in full and complete satisfaction of the gift under Section \_\_\_ of the Will.

4.3 **Distribution from the Family Trust.** Lucille, as Trustee, has determined that the property listed on the attached **Schedule B** which has been allocated to the Family Trust and which would otherwise be distributed, transferred, and conveyed to Lucille, as Trustee of the Family Trust, shall be distributed, transferred, and conveyed directly to Lucille, individually, as the primary beneficiary of the Family Trust, for her health, support and maintenance.

4.4 **Agreement Regarding Distribution.** The Parties agree that the distribution made to Lucille individually pursuant to Section 4.3 above is proper under the terms of the Family Trust.

4.5 **Agreement to Refund.** The assets partitioned to the Family Trust herein and distributed to Lucille remain subject to any and all remaining enforceable debts of the Estate. To the extent of the distributions made hereinafter and the property previously distributed from the Estate to Lucille or to the Family Trust, Lucille agrees, upon demand, to make appropriate refund to the then serving personal representative of the Estate (or as otherwise agreed to by the Parties) in the event and to the extent that it is at any time determined that an excess distribution of income or principal has been made (whether by reason of claims against the Estate or the Decedent for (i) taxes, penalties, and interest of any and every kind which may be claimed by the United States of America, (ii) expenses, (iii) the claims of any other person for any liability or asserted liability, or (v) other charges) or for any other reason.

4.6 **Mutual Release.** **EACH PARTY HEREBY FOREVER RELEASES AND DISCHARGES EACH OTHER PARTY, AND EACH OF THEIR PREDECESSORS, SUCCESSORS AND AFFILIATES OF AND FROM ANY AND ALL CLAIMS RELATED TO (I) THE PARTY'S INTEREST IN THE ESTATE, (II) THE PARTY'S INTEREST IN THE FAMILY TRUST, (III) THE EXECUTOR'S ADMINISTRATION OF THE ESTATE, AND (IV) THE TRUSTEE'S ADMINISTRATION OF THE FAMILY TRUST, INCLUDING ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OF ANY OTHER PARTY.**

**THE RELEASES HEREIN ARE INTENDED TO BE GLOBAL RELEASES OF ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION THAT THE RELEASING PARTIES NOW HAVE OR MAY HAVE AGAINST THE RELEASED PARTY WITH RESPECT TO THE CLAIMS DESCRIBED ABOVE AND ARE TO BE INTERPRETED LIBERALLY TO PROVIDE MAXIMUM PROTECTION FOR THE RELEASED PARTY.**

4.7 **Indemnity.** **EACH PARTY, JOINTLY AND SEVERALLY, AGREES TO INDEMNIFY AND HOLD HARMLESS LUCILLE, AS INDEPENDENT EXECUTOR AND AS TRUSTEE, AND HER RESPECTIVE SUCCESSORS AND ASSIGNS, FROM ALL LIABILITIES, CLAIMS (INCLUDING TAXES OF EVERY KIND AND CHARACTER), DEMANDS, SUITS, JUDGMENTS, COSTS, EXPENSES, ACCOUNTANT'S FEES, ATTORNEYS' FEES, AND TO ALL LOSSES AND DAMAGES OF EVERY KIND AND CHARACTER THAT MAY BE MADE AGAINST HER, THE ESTATE OR THE ASSETS OF THE ESTATE, THE TRUST OR THE ASSETS OF THE TRUST, ARISING OR TO ARISE BY REASON OF THE DISTRIBUTIONS PREVIOUSLY MADE, THE DISTRIBUTIONS MADE HEREINAFTER, OR OUT OF**

**HER ADMINISTRATION OF THE ESTATE OR THE TRUST, INCLUDING ANY CLAIMS ARISING OUT OF THE NEGLIGENCE OF LUCILLE, AS INDEPENDENT EXECUTOR OR AS TRUSTEE.**

**4.8 Representations and Warranties.**

a. Each Party hereby stipulates, represents and warrants to each of the other Parties, as follows:

(i) That he or she is fully competent and has the full authority to enter into this Agreement in the capacity or capacities indicated herein.

(ii) That he or she is the current legal and beneficial owner of all of the claims released hereby, as well as the claims asserted by him or her orally or in written form with respect to any claims he or she could have brought with respect to matters covered by this Agreement;

(iii) That the terms and provisions of this Agreement are valid, binding and enforceable as against himself or herself, any such Party's Successors and Affiliates;

(iv) That he or she is adequately represented by competent counsel of his or her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto or, if he or she is not represented by counsel, he or she has been given the opportunity to retain counsel and has declined to do so;

(v) That \_\_\_\_\_, and the law firm of \_\_\_\_\_, solely represent Lucille, in her capacity as Independent Executor, and do not and have never represented any other Party and have not provided any other Party legal advice or services or made any representations to any other Party;

(vi) That in executing this Agreement, each Party has relied upon his or her own judgment and/or the advice of his or her own attorneys, and further, that he or she has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, and he or she has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party, or by such Party's Affiliates; and

(vii) That he or she voluntarily and knowingly enters into this Agreement with full understanding of the binding legal consequences;

(viii) That such Party has been provided a fair and reasonable disclosure of the assets comprising the Estate and voluntarily and expressly waives all right to disclosure beyond any disclosures provided; and either personally or through his or her independently retained attorneys, has fully investigated to his or her satisfaction all facts surrounding the Estate and its administration, and is fully satisfied with the terms and effects of this Agreement;

(ix) That such Party either (1) has knowledge of all relevant and material information and facts and has been fully informed, including, in some instances, by advice of counsel, concerning the existence of potential claims of any other Party including other additional affirmative or defensive claims arising from all matters known to him or her and arising during the period of negotiations leading to and culminating in the execution by him or her of this Agreement, in order for him or her to make an informed and considered decision to enter into this Agreement, and/or (2) specifically and, in some instances, after advice of counsel, is waiving and releasing: (a) any right to obtain or demand any additional information, and (b) any obligation of any other Party;

(x) That such Party acknowledges and agrees that the benefits of foregoing potential court action regarding the matters in this Agreement, and the mutual release of claims of the Parties constitutes good and valuable consideration for this Agreement, the receipt and sufficiency of which is hereby acknowledged and confessed.

b. Each Party understands and agrees that each other Party has relied upon these representations and warranties in entering into this Agreement.

4.9 Miscellaneous Provisions.

a. This Agreement constitutes a full and complete agreement between the parties and each Party acknowledges that his or her execution of this Agreement was not based upon any consideration not recited herein. The terms of this Agreement are contractual and not merely a recital. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective Affiliates and Successors.

b. Each Party, at the request of any other Party, shall execute where necessary from time to time such other documents as may be reasonably necessary to accomplish the intent of this Agreement.

c. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all which together shall constitute a single instrument. This Agreement shall only be binding when one or more counterparts hereof, individually or taken together, shall bear all signatures of the Parties hereto reflected hereon as signatories.

d. This Agreement is fully performable in \_\_\_\_\_ County, Texas, and the various rights and obligations of the Parties shall be governed pursuant to the laws of the State of Texas. \_\_\_\_\_ County, Texas shall be the appropriate and exclusive venue for any suit arising out of this Agreement and the construction of the Will and the various rights and obligations of the Parties.

e. This written Agreement represents the final agreement among the Parties hereto and may not be contradicted by evidence of prior or contemporaneous oral or written agreements between or among one or more of the Parties hereto. Each Party waives any and claims that he or she was fraudulently induced to enter into this Agreement.

f. If any part of this Agreement, or the application thereof to any Party, proves to be or becomes invalid or unenforceable under any applicable law, such part shall be deemed modified to the extent necessary to render such part valid and enforceable, and if such part may not be so modified, it shall be severed and shall not affect the remainder of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement as of the \_\_\_\_ day of \_\_\_\_\_  
20\_\_.

\_\_\_\_\_  
LUCILLE BLUTH, Individually; as Independent Executor of the  
Estate of George Oscar Bluth, Deceased; as Trustee of the George  
Oscar Bluth Family Trust; as a beneficiary of the Estate of George  
Oscar Bluth, Deceased; and as a beneficiary of the George Oscar  
Bluth Family Trust

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared LUCILLE BLUTH, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public of Said State



\_\_\_\_\_  
MICHAEL BLUTH, Individually and as a current secondary and  
remainder beneficiary of the George Oscar Bluth Family Trust

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared MICHAEL BLUTH, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public of Said State

\_\_\_\_\_  
LINDSAY BLUTH, Individually and as a current secondary and  
remainder beneficiary of the George Oscar Bluth Family Trust

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared LINDSAY BLUTH, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public of Said State

---

GEORGE OSCAR BLUTH, II, Individually and as a current  
secondary and remainder beneficiary of the George Oscar Bluth  
Family Trust

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared GEORGE OSCAR BLUTH, II, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Notary Public of Said State

**Schedule A**

**ASSETS TO LUCILLE BLUTH, INDIVIDUALLY**

<b>Item No.</b>	<b>Description</b>	<b>Value</b>
1.	An undivided one-half interest in Lot Fifteen (15), in Block One (1) of SUDDEN VALLEY, Section Two (2), an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 111, Page 222, of the Map Records of Harris County, Texas, commonly known as 123 Model Home, Houston, Texas 12345. <b>(Lucille's one-half interest)</b>	\$110,000.00
2.	An undivided one-half interest in the cash held in Kissing Cousins National Bank Personal Sterling Advantage Account No. xxxxxx1234, styled Lucille Bluth and George Oscar Bluth. <b>(Lucille's one-half interest)</b>	\$39.54
3.	An undivided one-half interest in the cash held in There's Always Money in the Banana Stand Checking Account No. xxxxx5678, styled Lucille Bluth and George Oscar Bluth. <b>(Lucille's one-half interest)</b>	\$10,548.79
4.	An undivided one-half interest in the cash held in There's Always Money in the Banana Stand Money Market Savings Account No. xxxxxx9101, styled Lucille Bluth and George Oscar Bluth. <b>(Lucille's one-half interest)</b>	\$4,550.16
5.	An undivided one-half interest in the life insurance with The Bluth Company Life Insurance Group Policy No. 1121314 on the life of Lucille Bluth. <b>(Lucille's one-half interest)</b>	\$1,088.11
6.	Securities held in Alliance of Magicians IRA Account No. xxxx1234, styled Lucille Bluth. <b>(Lucille's one-half interest and Decedent's one-half interest per Will)</b>	\$280,783.33
7.	Rubber chicken collection <b>(Lucille's one-half interest and Decedent's one-half interest per Will)</b>	\$258.72
8.	Various antique furs <b>(Lucille's one-half interest and Decedent's one-half interest per Will)</b>	\$11,000.00
9.	Household goods and personal effects <b>(Lucille's one-half interest and Decedent's one-half interest per Will)</b>	\$75,000.00
10.	Life insurance with Caged Wisdom Insurance Company Policy No. 12345 on the life of George Oscar Bluth; beneficiary Lucille Bluth. <b>(Lucille's one-half interest and Decedent's one-half interest per beneficiary designation)</b>	\$10,365.36
11.	Cash held in Blue Man Group Credit Union Account No. xxx-xx9876, styled Lucille Bluth and George Oscar Bluth – with rights of survivorship. <b>(Lucille's one-half interest and Decedent's one-half interest per right of survivorship)</b>	\$308.31
12.	Securities held in Blue Man Group Credit Union Account No. xxx-xx9876, styled Lucille Bluth and George Oscar Bluth – with rights of survivorship. <b>(Lucille's one-half interest and Decedent's one-half interest per right of survivorship)</b>	\$95,683.11
13.	Securities held in Alliance of Magicians Account No. xxxxx2076, styled George Oscar Bluth and Lucille Bluth JTWROS. <b>(Lucille's one-half interest and Decedent's one-half interest per right of survivorship)</b>	\$291,571.76

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14.	Sweat Lodge System of Texas survivor's annuity, Account. No. xxxxx5160, styled George Oscar Bluth ( <b>Lucille's one-half interest and Decedent's one-half interest per beneficiary designation</b> )	\$18,278.00
	<b>TOTAL</b>	<b>\$823,216.47</b>

**Schedule B**

**ASSETS TO LUCILLE BLUTH, AS TRUSTEE OF THE  
GEORGE OSCAR BLUTH FAMILY TRUST**

The following property, which otherwise would be distributed, transferred, and conveyed to Lucille Bluth, as Trustee of the George Oscar Bluth Family Trust, shall be distributed, transferred, and conveyed outright to Lucille Bluth, individually as the primary beneficiary of the George Oscar Bluth Family Trust:

<b>Item No.</b>	<b>Description</b>	<b>Value</b>
1.	An undivided one-half interest in Lot Fifteen (15), in Block One (1) of SUDDEN VALLEY, Section Two (2), an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 111, Page 222, of the Map Records of Harris County, Texas, commonly known as 123 Model Home, Houston, Texas 12345.	\$110,000.00
2.	An undivided one-half interest in the cash held in Kissing Cousins National Bank Personal Sterling Advantage Account No. xxxxxx1234, styled Lucille Bluth and George Oscar Bluth.	\$39.54
3.	An undivided one-half interest in the cash held in There's Always Money in the Banana Stand Checking Account No. xxxxx5678, styled Lucille Bluth and George Oscar Bluth.	\$10,548.78
4.	An undivided one-half interest in the cash held in There's Always Money in the Banana Stand Money Market Savings Account No. xxxxxx9101, styled Lucille Bluth and George Oscar Bluth.	\$4,550.16
5.	An undivided one-half interest in the life insurance with The Bluth Company Life Insurance Group Policy No. 1121314 on the life of Lucille Bluth.	\$1,088.11
	<b>TOTAL</b>	<b>\$126,226.59</b>

**EXHIBIT I**

NO. \_\_\_\_\_

ESTATE OF § IN THE PROBATE COURT NO. \_\_\_\_\_  
§  
PHILIP BANKS, § OF  
§  
DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**CONSENT, RECEIPT, AND RELEASE**

**WHEREAS**, the Will of Philip Banks, Deceased ("**Decedent**"), dated \_\_\_\_\_, 20\_\_\_\_, (the "**Will**"), was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued to Carlton Banks, as Independent Executor (the "**Independent Executor**") of the Estate of Philip Banks, Deceased (the "**Estate**") on that same date; and

**WHEREAS**, Section \_\_\_\_ of the Will directs that a specific bequest in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) is to be used to purchase an annuity for the benefit of Geoffrey Butler ("**Geoffrey**") which would pay Geoffrey in quarter-annual payments an amount calculated on his life expectancy at the time of the Decedent's death that would completely pay out the annuity at the end of Geoffrey's calculated life expectancy; and

**WHEREAS**, after researching various annuities, the Independent Executor has determined that purchasing an annuity for Geoffrey would be uneconomical, and that it is therefore in the best interest of Geoffrey and of the Estate to distribute this specific bequest outright to Geoffrey; and

**WHEREAS**, pursuant to Section 116.051(3)(A) of the Texas Property Code and Section 302.002 of the Texas Finance Code, beginning on the first anniversary of the date of the Decedent's death, interest is due on the bequest to Geoffrey at a rate of six percent (6%) per year, bringing the total amount due to Geoffrey to Ten Thousand Three Hundred Fifty and 00/100 Dollars (\$10,350.00); and

**WHEREAS**, the Independent Executor now desires to distribute that amount to Geoffrey.

**NOW THEREFORE,**

By signing below, Geoffrey consents to the payment of the bequest to him outright rather than in the form of an annuity, and acknowledges receipt from the Independent Executor of the distribution in the amount of Ten Thousand Three Hundred Fifty and 00/100 Dollars (\$10,350.00).

Geoffrey acknowledges that the Independent Executor will report Three Hundred Fifty and 00/100 Dollars (\$350.00) of the foregoing distribution as interest, and that such amount may constitute taxable income to Geoffrey.

**BY SIGNING BELOW, GEOFFREY HEREBY GRANTS TO THE INDEPENDENT EXECUTOR A FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS AND CAUSES OF ACTION OF EVERY KIND WITH RESPECT TO THIS DISTRIBUTION.**

Geoffrey acknowledges that the amount received is in full satisfaction of the bequest to which he is entitled under the Will, and accordingly, Geoffrey: (i) agrees that he is no longer an Interested Person in the Estate as defined in Texas Estates Code Section 22.018 and further action may proceed without participation by him and (ii) hereby waives issuance and service of citation in any future action in this cause.

IN TESTIMONY WHEREOF, witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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GEOFFREY BUTLER

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared GEOFFREY BUTLER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Notary Public in and for Said State

**EXHIBIT J**

NO. \_\_\_\_\_

ESTATE OF § IN THE PROBATE COURT NO. \_\_\_\_\_  
§  
PHILIP BANKS, § OF  
§  
DECEASED § \_\_\_\_\_ COUNTY, TEXAS

**CONSENT, RECEIPT, AND RELEASE**

**WHEREAS**, the Will of Philip Banks, Deceased ("**Decedent**"), dated \_\_\_\_\_, 20\_\_\_\_, (the "**Will**"), was admitted to Probate in Cause No. \_\_\_\_\_ in Probate Court No. \_\_\_\_ of \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_\_\_ and Letters Testamentary were issued to Carlton Banks, as Independent Executor (the "**Independent Executor**") of the Estate of Philip Banks, Deceased (the "**Estate**") on that same date; and

**WHEREAS**, the Will provides that after the distribution of specific gifts and payment of debts, expenses, and death taxes, twenty-five percent (25%) of the remaining property of the Decedent is to be distributed to Nicholas Andrew Michael Shawn Nathan Wanyá Banks ("**Nicky**"), subject to the terms of the Descendant's Trust f/b/o Nicholas Andrew Michael Shawn Nathan Wanyá Banks ("**Nicky's Trust**"); and

**WHEREAS**, the Independent Executor now desires to make a partial distribution of the Decedent's remaining property pursuant to the Will totaling \$60,000.00, with such amount to be distributed among all of the remainder beneficiaries under the Will. After the completion of the administration of the Estate and after the administration expenses have been paid, the remaining Estate assets will be distributed in accordance with the terms of the Will; and

**WHEREAS**, twenty-five percent (25%) of \$60,000.00 is \$15,000.00, and accordingly, a distribution of that amount would be made to the Trustee of Nicky's Trust; and

**WHEREAS**, the Will names Ashley Banks as Trustee of Nicky's Trust ("**Trustee**"); and

**WHEREAS**, the terms of Nicky's Trust are found in Article \_\_ of the Will, and Section \_\_ of the Will provides that with respect to Nicky's Trust, the Trustee may distribute to Nicky so much or all of the income and principal of the trust as the Trustee determines to be appropriate to provide for Nicky's continued health, maintenance, support, and education; and

**WHEREAS**, the Trustee has determined that a distribution of \$15,000.00 is an amount necessary to provide for Nicky's health, maintenance, support, and education, and wishes to make a distribution to Nicky from Nicky's Trust in that amount; and

**WHEREAS**, for simplicity, and to preserve time and resources, the Independent Executor, the Trustee, and Nicky have agreed that the \$15,000.00 distribution from the Estate that would otherwise be made first to the Trustee and then to Nicky will instead be made directly from the Estate to Nicky.

**NOW THEREFORE:**

By signing below, the Trustee hereby consents to the outright distribution of \$15,000.00 from the Estate to Nicky. **THE TRUSTEE HEREBY GRANTS TO THE INDEPENDENT EXECUTOR A FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS AND CAUSES OF ACTION OF EVERY KIND WITH RESPECT TO THIS DISTRIBUTION.**

By signing below, Nicky hereby consents to the outright distribution of \$15,000.00 of cash to him from the Estate, and acknowledges receipt from the Independent Executor of the distribution in the amount of \$15,000.00 of cash which has been delivered to him. **NICKY HEREBY GRANTS TO THE INDEPENDENT EXECUTOR A**



**FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS AND CAUSES OF ACTION OF EVERY KIND WITH RESPECT TO THIS DISTRIBUTION.**

[Anticipate that the Trustee and/or her attorney may request an inclusion of a release in her favor by Nicky as well.]

The Trustee and Nicky each hereby stipulate, represent and warrant that \_\_\_\_\_, and the law firm of \_\_\_\_\_, solely represent the Independent Executor of the Estate, and do not and have never represented any other party and have not provided any other party legal advice or services or made any representations to any other party.

The Trustee and Nicky each further hereby stipulate, represent and warrant that in executing this document, he or she has relied upon his or her own judgment and/or the advice of his or her own attorneys, and further, that he or she has not been induced to sign or execute this document by promises, agreements or representations not expressly stated herein, and he or she has freely and willingly executed this document and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other party, or by such party's attorneys or other affiliates.

IN TESTIMONY WHEREOF, witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
ASHLEY BANKS, in her capacity as Trustee of the Descendant's Trust f/b/o Nicholas Andrew Michael Shawn Nathan Wanyá Banks

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared ASHLEY BANKS, in her capacity as Trustee of the of the Descendant's Trust f/b/o Nicholas Andrew Michael Shawn Nathan Wanyá Banks, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for Said State

\_\_\_\_\_  
NICHOLAS ANDREW MICHAEL SHAWN NATHAN WANYÁ BANKS

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared NICHOLAS ANDREW MICHAEL SHAWN NATHAN WANYÁ BANKS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for Said State