

DEVELOPMENTS IN ESTATE PLANNING

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In re trust of Morris Bresel, Fry v. Mack No. A-14-922, April 5, 2016.
[Not designated for permanent publication]

The case involves a **revocable trust** created by Bresel in which his two daughters were to serve as successor cotrustees in the event of resignation, incapacity or death. The court found that Mack, one of the daughters **used her fiduciary position for she and her family's benefit**. She was ordered to repay the trust \$126,199.22 for expenditures created from false invoices. Also to repay \$31,000 for taking care of Bresel while he resided in a care facility and to repay \$120,000 to reimburse cash taken from safety deposit boxes. Affirmed except no repayment of \$120,000, because of lack of proof.

1. The case also dealt with the **settlor's capacity** to continue to **serve as trustee**. The Nebraska uniform trust code identifies capacity required to create, amend, revoke or add property to a revocable trust which is the same capacity to make a will, [Neb. Rev. Stat. § 30-3853] but there is no statutory provision for capacity to serve as trustee of a revocable trust. The court held that the trustee had duties outlined in the trust document and "the **trustee lacks capacity** when he no longer has a mental abilities to perform the financial management that the Trust requires."
2. There was an issue **when Mack became trustee**. A trustee may **accept trusteeship** "by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trust." Neb. Rev. Stat. § 30-38 57(a)(2) or by registering the trust, § 30-3857(a)(3).

3. Mack was liable for various expenditures while acting as a co-trustee. See In re Estate of Hedke, 278 Neb. 727, 773 N. W. 2d 13, (2009) except in discrete circumstances, the trustee is strictly **prohibited** from engaging in transactions that involve **self-dealing** or that otherwise involve or create a **conflict** between **trustee's fiduciary duties** and personal interests.
4. The court determined that Mack breached her duties and was liable for \$31,000 for payment she made to herself for caring for her father. Although the trust code allows for **reasonable compensation** to a trustee, Neb. Rev. Stat. § 30-3864, **unauthorized self-dealing** is a breach of the trustee's fiduciary duty to act solely in the interest of the trust. While a trustee's duty is to administer the trust solely in the interest of the beneficiaries Neb. Rev. Stat. § 30-3867 (A) a revocable trust is different, the duty is owed to the settlor rather than the beneficiaries. Neb. Rev. Stat. § 30-3855 (A) thus, the trustee owed no duty to the beneficiaries rather her fiduciary duty was owed exclusively to the settlor. See Manon v. Orr, 289 Neb. 484, 856 N.W. 2d 106 (2014).
5. The trust code provides that a court may **remove a trustee**, if "the trustee has committed a **serious breach of trust**" or "**lack of cooperation** among cotrustees substantially impairs the administration of the trust." Neb. Rev. Stat. § 30-3862 (b). Mack was removed as cotrustee.
6. The trust code empowers a court in any judicial proceeding involving the administration of the trust to award "**reasonable attorney's fees, to any party, to be paid by another party or from the trust** that is the subject to the controversy." Neb. Rev. Stat. § 30-3893. The court found that the allocation of **\$258,805.92** attorney fees from Mac to Fry was proper.
7. Mack's daughter Gurock cross appealed; as a trust **beneficiary** she was found **not to have standing**, the only real party in interest in a case involving a **revocable trust** would be the **settlor** of that trust, or perhaps one that represents that settlor's interests, for example, a court, a guardian or conservator or next friend. But plaintiffs here are contingent beneficiaries of the trust and have no real interest in the cause of action or a legal or equitable right, title, or interest in the subject matter of the controversy. § 30-3855(a).

Rafert v. Meyer, 290 Neb. 219, 859 N.W. 2d 322 (2015) is an action for breach of an irrevocable insurance trust. \$8,500,000 life **insurance policy lapsed** for non-payment. On an insurance application a false address was given by Trustee (attorney who drafted the Trust) to insurance company and notice of insurance termination not received. The trust beneficiaries were **not kept informed**. The trust instrument provided that the **trustee had no duty to pay** the insurance premiums, had no duty to notify the beneficiaries of **nonpayment** of such premiums, and had no liability for any **nonpayment**. Reversed and remanded for further proceedings.

1. Generally the trust instrument shall govern, but a trustee has a **duty** to fully **inform** the beneficiary of all material facts so that the beneficiary can protect his or her interest where necessary. Karpf v. Karpf, 240 Neb. 302, 481 N.W. 2nd 891 (1992).
2. “[A] trustee owes beneficiaries of a trust’s undivided **loyalty** and good faith, and all his acts as such trustee must be **in the interest of the [beneficiary]** and no one else.” Id at 311, 481N.W. 2nd at 897.
3. “[A] trustee shall keep the qualified beneficiaries of the trust **reasonably informed** about the administration of the trust and of the material facts **necessary** for them to **protect their interest**.” Neb. Rev. Stat. Section 30-3878(a)
4. “An exculpatory clause in a trust is invalid “unless the trustee provides that the exculpatory term is fair under the circumstances and that it’s existence and contents were **adequately communicated** to the settlor.” Section 30-3897(b).
5. “In drafting the trust, Meyer could not abrogate his duty under section 30-3805 to keep appellants reasonably informed of the material facts necessary for them to protect their interest.” [859 N. W. 2nd 339]
6. The court found that the contents of the **exculpatory clause** were **not adequately communicated** to the settlor as required under section 30-3897 (B). Meyer who drafted the trust agreement never met with the settlor to explain the terms of the trust and the respective duties of each party.
7. Also Meyer **failed to furnish annual reports** to the beneficiaries although he argued the life insurance policies would have lapsed before the annual report would have been required to be provided. “But annual reporting was a minimum requirement the ordinary administration of the trust. A reasonable person **acting in good faith and in the interest of the beneficiaries would not wait until such annual report was due before informing** the beneficiaries that the trust assets were in danger of being lost. Meyer’s duty to report the danger to the trust property became immediate when the insurers issued notices of nonpayment of the premiums. As trustee, Meyer had a **statutory duty** “to keep the qualified beneficiaries of the trust reasonably informed ... of the material facts necessary for them to protect their interests.”” Section 30-3805(b)(8). [859 N. W. 2nd 340].

Huse v. Dakota County Board of Equalization, No A-15-611 (Dec. 29, 2015)
[Not Designated for Permanent Publication]

Farm land in a **revocable trust**. Case is an appeal of assessed value as a cotrustee, not as an individual. Huse has **no personal, individual interest** in the

parcels, such that he would have standing to seek review of the valuation decision in his individual capacity. No person shall practice as an attorney, conduct or defend any action to which he is not a party. Huse was engaged in the **unauthorized practice of law**, a trustee's **duties** in connection with his or her office **do not include** the right to present argument **pro se** in the **courts**, that would be representing interests of others. The brief filed was stricken and the appeal dismissed.

In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (Neb. 2009), S-08-980,

§30-3867 (UTC 802) **Duty of loyalty**. Caution, self-dealing is the downfall of fiduciary relationships. The Trustee should **not cut checks payable to themselves** except for trustee fees. Payment to **reimburse the Trustee** raises a **self-dealing issue** that requires the Trustee to retain clear and convincing evidence of that transaction was for the benefit of the trust under the authority granted by the trust.

"The same fiduciary principles and policy concerns about the potential for fraud are present in a trust relationship. Accordingly, we will apply to trustees the same common-law rules that we have applied to attorneys in fact. So unless an exception under § 30-3867 applies, a beneficiary establishes a **prima facie case of fraud** by showing that a **trustee's transaction benefited the trustee at the beneficiary's expense**. The **burden** of going forward with evidence then **shifts to the trustee** to establish the following by clear and convincing evidence: The transaction was made under a **power expressly granted** in the trust and the clear intent of the settlor; and the transaction was in the **beneficiary's best interests**."

Wilson v. Nebraska DHHS, 272 Neb. 131, 718 N.W.2d 544 (2006)

The 1999 transfers made by Hazel to her sons were **outside the look-back** period for Medicaid eligibility when considered under either the pre-1993 Medicaid statutes or the statutes as amended in 1993. The transfers did not render Hazel ineligible for Medicaid benefits.

Medicaid Background.

The Medicaid program, 42 U.S.C. § 1396 et seq. (2000 & Supp. II 2002), was established by Congress in 1965 as a cooperative federal-state program in which the federal government reimburses states for a portion of the costs of medical care for persons in need. See *Boruch v. Nebraska Dept. of Health & Human Servs.*, 11 Neb. App. 713, 659 N.W.2d 848 (2003).

The purpose of the program is to provide medical assistance to those whose resources are insufficient to meet the costs of necessary medical care. *Pohlmann v. Nebraska Dept. of Health & Human Servs.*, 271 Neb. 272, 710 N.W.2d 639 (2006). A state is not obligated to participate in the Medicaid program; however, once it has voluntarily elected to participate, it must comply with standards and requirements imposed by federal statutes and regulations. *Id.* Nebraska has elected to participate in the Medicaid program by its enactment of Neb. Rev. Stat. § 68-1018 et seq. (Reissue 2003, Cum. Supp. 2004 & Supp. 2005), and DHHS is responsible for the administration of the Medicaid program in this state. *Pohlmann, supra*. Under federal law, a state participating in the Medicaid program must establish resource standards for the determination of eligibility. These standards must take into account only such income and resources as are available to the applicant or recipient, as determined in accordance with standards prescribed by the Secretary of the U.S. Department of Health and Human Services. *Id.*

Prior to 1986, irrevocable trusts were not considered assets in determining eligibility for Medicaid benefits. As a result, many people were receiving benefits when they had irrevocable trusts containing assets that would otherwise have made them *549 ineligible for public assistance. Many people began to take advantage of the "trust gap" in Medicaid, establishing trust funds to shield their assets. In 1986, Congress passed an amendment attempting to close the gap so that assets in certain trusts would be counted in determining whether a Medicaid applicant satisfied the maximum assets requirement. *Boruch, supra*. See § 1396a(k) (Supp. IV 1986). Congress repealed § 1396a(k) in 1993 and passed § 1396p(d), expanding the types of trusts that could be considered to preclude applicants from Medicaid eligibility. See, § 1396p (Supp. V 1993); *Pohlmann, supra*.

Section 1396p(d)(3)(B) states, in relevant part:

In the case of an irrevocable trust (I) if there are any circumstances under which payment from the trust **could be made** to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income (I) to or for the benefit of the individual, shall be considered income of the individual, and (II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

If an institutionalized individual disposes of assets for less than fair market value on or after the look-back date specified by federal law, the individual is ineligible for medical assistance for a period of time. See § 1396p(c)(1)(A). Section 1396p(c)(1)(B) states:

(I) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) of this section, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to (I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan[.]

In other words, the look-back period is calculated from the date that an institutionalized individual applies for Medicaid assistance. The look-back period is generally 36 months, except for a 60-month look-back period for payment from a revocable trust, see § 1396p(d)(3)(A)(iii), or portions of an irrevocable trust not payable to the individual, see § 1396p(d)(3)(B)(ii).

Congress specified that the 1993 amendment to the Medicaid act applies only to trusts established after August 10, 1993, the effective date of the enactment. *Boruch v. Nebraska Dept. of Health & Human Servs.*, 11 Neb. App. 713, 659 N.W.2d 848 (2003). The Nebraska *550 regulation implementing the extended look-back periods is located at 469 Neb. Admin. Code, ch. 4 § 005.03A (2001), which states, "[t]o determine if a client or his/her spouse deprived himself/herself of a resource to qualify for medical assistance, the worker shall look back 36 months. The worker shall look back 60 months in cases of a trust or annuity." To the extent that state regulations conflict with the federal statutes, the federal provisions prevail. See, *Reames v. Oklahoma ex rel. OK Health Care*, 411 F.3d 1164 (10th Cir.2005); *Ramey v. Reinertson*, 268 F.3d 955 (10th Cir.2001); *Pohlmann v. Nebraska Dept. of Health & Human Servs.*, 271 Neb. 272, 710 N.W.2d 639 (2006). Although § 005.03(A) purports to apply a 60-month look-back period to all trust assets, federal law requires us to consider whether a 36 or 60-month look-back applies to the trust assets at issue in this case.

[Note, the 60 month look back now applies to all transfers.]

Types of Trusts Which Are Disqualifying Resources

If the Medicaid applicant contributes to trust (**self funded**) and the trust is **irrevocable** if there are any circumstance of benefit to the applicant or spouse, all the

trust corpus is a **disqualifying Medicaid resource**, no matter that it is a discretionary trust. If the trust is self-funded irrevocable with **no benefit to the applicant or spouse**, it still is a transfer [gift] subject to the **60 month look-back** rule. The following are Nebraska cases dealing with trusts counted as disqualifying Medicaid resources

1. A **revocable** trust is a **disqualifying** Medicaid resource regardless of source of funding.
2. A **discretionary** third-party trust funded by **third party** assets (i.e. parent for child) is **not** a **disqualifying** Medicaid resource for the Medicaid applicant.
3. A **support** third-party trust funded by **third party** assets is a Medicaid resource to the extent of the **maximum amount of support available**.
4. A **discretionary support trust is a disqualifying Medicaid resource** to the extent of the maximum amount of support available. [Trustee has discretion to pay support, maintenance, health and education.]
 - a. Betty L. Thorson v. NDHHS, 274 Neb. 322 (2007). Good history of Medicaid trust resource rules. A 1989 **irrevocable self-funded trust** giving independent trustee discretion to supplement government programs benefits. Case decided that trust was a Medicaid resource because "**any discretion to distribute** assets [to Medicaid applicant] is sufficient."
 - b. Ruth Pohlmann v. NDHHS, 271 Neb. 272 (2006). Testamentary Trust from Husband 1982 Marital Trust - all net income - power of appointment in wife for principal (never funded). Family Discretionary Trust - all net income and discretionary principal distributions. Funded in 2002. **Any circumstance test** only relates to **self settled trust**, not testamentary trust. Failure to elect against will creating a transfer was not before court.
 - c. Ronald D. Boruch v. NDHHS, 11 Neb. App. 713 (2003). November 6, 1993 irrevocable trust - use and possession of real estate and annual income for life. History of Medicaid trust resources was reviewed. If one creates an irrevocable trust after June 9, 1993 with own funds and is a trust beneficiary or can **benefit under any circumstances** the trust corpus is counted in the determination of Medicaid eligibility. **Any circumstance test trumps** need to use **look back** period.
 - d. Iris A. Doksansky v. Norwest Bank Nebraska, N.A. 260 Neb. 100 (2000). Discretionary Support Trust - attempt to garnish trust to pay son's child support. Held child support due by son was not part of the support to be provided to son therefore not a Medicaid resource. Look to support mandate in trust to determine if the discretionary trust is a support trust.

- e. Same trust: Iris A. Smith v. Richard D. Smith, 246 Neb. 193 (1994), "We find that In re Will of Sullivan 144 Neb. 36, 12 N.W.2d 148 (1943) does not stand for the proposition that in all cases the dependents of a beneficiary of a discretionary support trust can compel a trustee to make payments for their benefit. We interpret the case to mean that the trustee of a **discretionary support trust can be compelled to carry out the purposes of the trust in good faith.**"
5. William Hoesly v. State of Nebraska, Department of Social Services, 243 Neb. 304 (1993). **Renunciation** of a bequest with intention to continue to qualify for Medicaid is a **disqualifying** resource.
6. Failure of a spouse to **elect against a will** is a disqualifying Medicaid resource. NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES Manual Letter #2-2014 Rev. January 1, 2014, 21-001.01 example 27
7. NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES Manual Letter #62-2014 Rev. July 8, 2014,

"Where a trust includes the assets of another person or persons as well as the assets of the client and/or his/her spouse, the rules in this section apply only to the portion of the trust attributable to the assets of the client and/or the client's spouse.

"2-009.07A6f(2)(a) Payment Can Be Made From Trust

The following applies when payment **may be made to the individual** and/or the individual's **spouse** under the terms of the trust:

1. Payments from income, or from the corpus, made **to or for the benefit** of the client and/or the client's spouse are treated as **income** to the client.
2. If there are **any circumstances** under which payment from the **trust corpus** could be made to or for the benefit of the client and/or the client's spouse, the portion of the corpus from which payment to or for the benefit of the client or the client's spouse could be made **must be considered a resource** available to the client.
3. Any portion of the **corpus that could be paid** to or for the benefit of the client and/or the client's spouse is treated as an **available resource**.
4. Payments from income or from the corpus that are **not made** to or for the benefit of the **client** and/or the client's **spouse** are treated **as transfers of assets** for less than fair market value. Payments are considered to be made

to the individual when any amount from the trust, including an amount from the corpus, or income produced by the corpus, is **paid directly** to the individual **or** to someone acting **on his/her behalf**, e.g., a guardian or legal representative."

8. Also see Discretionary Trusts, Support Trusts, Discretionary Support Trusts, Spendthrift Trust and Special Needs Trust under the Nebraska Uniform Trust Code, **Nebraska Law Review**, Volume 86, Number 2 page 231 2007 (use Casemaker).
9. Medicaid Qualified Income Trusts (**Miller Trust**) which include Medicaid reimbursement after death from the trust are disqualifying resource in Nebraska. Iowa and Colorado allow Miller Trusts.

Current Status of Medicaid Reimbursement Waiver Under LB 72

Purpose of LB 72 is to enhance the recovery of Medicaid benefits from revocable trusts after the death of the settlor and to establish a system to give DHHS notice in non-probate inheritance tax proceedings. Stopping the use of **self funded trusts** for Medicaid qualification is a non-existing target. :

1. A common scenario to avoid probate is a revocable grantor trust. The Trustor dies and a successor trustee takes over per the terms of the trust, § 30-3860(c)(1). Our best practice for years is an **Affidavit of Successor** that monuments the death, the creation of the trust, the terms of the trust creating trustee succession, real estate involved (for purposes of recording the document) acceptance of the successor trustee to serve as a trustee and personal jurisdiction over the Trustees. In January this form was accepted by DHHS to release information to me as attorney for the trustee that no Medicaid benefits were paid to the decedent. The June 9, 2016 letter from Jon Sterns DHHS closes this door.
2. Now the attached Application for Order resolves the release of DHHS information to the trustee (and attorney) of no prior Medicaid benefits under a court order authorization to receive such information. A probate proceeding may be simpler to understand as we proceed deeper.
3. Somehow upon the death of the Trustor, the successor trustee of the revocable grantor trust has to **establish that he/she is the successor trustee**. I suggest an **Affidavit of Succession**, as I have been using for years, is a best practice. The affidavit identifies the trust, the current trustee, need for a successor trustee, the trust terms of succession of trustee, identification of the successor trustee, acceptance of the trusteeship, accepting court's jurisdiction of the court and affirming the trust. Add a legal description for any real estate owned by the trust.
4. How often will a **Judge** making a decision on the validity of the Trust and the proper succession of Trustees require a full hearing with notice?

5. I often **distribute** a portion of the **revocable grantor trust** long before the inheritance tax is due. Without an inheritance tax petition and no probate, how is the filing of the Application for Order to ask and receive waiver of Medicaid reimbursement, to be handled by the court? A probate case or an inheritance tax case? Remember that **distributions** from a revocable trust to family are **not to be made** after the death of the Trustor **until DHHS confirms** that there were no Medicaid Benefits to be recovered by providing a waiver.

“After the death of the trustor occurring after August 30, 2015, a **trustee** of a revocable trust which has become irrevocable by reason of the death of the trustor **shall not transfer trust** property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medicaid reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate.

The Department of Health and Human Services **may, upon application of a trustee, waive the restriction** on transfers established by this subsection in cases in which the department determines that either there is no medicaid reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medicaid reimbursement. **If there is no medicaid reimbursement due**, the department **shall waive** the restriction within **sixty days** after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if available upon reasonable investigation, the name and social security number of the trustor's spouse if such spouse is deceased.” § 30-3880(c), § 30-3881(b) and § 30-3882(d)

6. What is to be **done with a DHHS waiver**? I suggest that it is to be filed with the court that issued the Order that the trustee is receive Medicaid information. Will this public recording become a breach HIPAA federal law as an unauthorized disclosure of Medicaid/Non-Medicaid benefits? Also, consider recording the DHHS waiver against the real estate in the trust to calm down future title insurance demands or file a Real Estate Certificate to link the Medicaid waiver to the real estate title.

Forms in Appendix

1. **Affidavit** and Agreement Confirming Title in Successor Trustees
2. **Application** for Order Regarding Notice to the Nebraska Department of Health and Human Services of the Filing of a Stand Alone Petition for Determination of Inheritance Tax per LB72, § 77-2018.02(6)
3. **Order** (§ 77-2018.02(6)) granting authority for the Trustee (and Attorney) to ask and receive Medicaid waiver or statement of Medicaid lien.
4. **Notice** to the Nebraska Department of Health and Human Services of the Filing of a Stand Alone Petition for Determination of Inheritance Tax
5. **Certificate** of Mailing of the Notice to the Nebraska Department of Health and Human Services Pursuant to § 77-2018.02 (6)
6. Nebraska Department of Health and Human Services Estate Recovery -- Waiver of Restriction on **Transfer Authorization** for Disclosure of Protected Health Information. Request the form from DHHS at the following email (dhhs.medicaidstaterecovery@nebraska.gov)
7. **Letter** to DHHS listing the documents delivered to DHHS. Scanned PDF documents may be emailed: dhhs.medicaidstaterecovery@nebraska.gov
8. Copy of **DHHS form letter** acknowledging receipt of notice of death and DHHS waiver of the statutory restriction on transfer of trust property.
9. **Proposal for the Distribution and Termination of Trust**
10. **Release**, and Discharge of Trustee by Qualified Beneficiary of Trust

THE FUTURE, Comments on LB 1103 that was not adopted but Medicaid reimbursement is a continuing legislative topic after an amendment to LB 1103 had been negotiated

1. Mom adds son's **name** to home/farm as **joint tenants**, that is a **completed gift** to be noted on the deed. [Don't forget the **gift tax return**.] Possession is retained so a copy of the deed must be delivered to DHHS. A **lien is filed** by DHHS when Mom **applies** for Medicaid [could be a violation of HIPAA privacy rules].
 - a. Does the 60 month look back start with filing of deed or termination of possession?
 - b. Is this a gift of one-half so the lien is only on one-half following the gift of one-half. Mom's retained one-half not gifted is not subject to lien because it was not a gift with retained interest?
 - c. Does it matter, upon Mom's death the DHHS will foreclose on Mom's half she retains.
 - d. If Dad continues to live in the house will the lien apply since it exempt property?

- e. Confusing!
- f. Add the element of a trust or entity such as a family LLC or family corporation and we will have the pleasure of DHHS interpreting the documents, claiming liens on land and possibly LLC units or corporation stock. When do the liens apply when real estate is in trust or entities owned by related parties. DHHS will surely draft regulations that will clear all this up.

Details dredged out of Amendment 2394 of LB 1103.

- 2. **ALL RELATED PARTY DEEDS REQUIRE NOTICE TO DHHS:** All deeds need a statement on the deed that the Grantee is or is not a Transferee, [page 23, line 4], that is a **related party** as defined for inheritance tax rate 1% or 13% rate, [page 19, line 26] excepting spouse and children under 21 [page 20, line 4]. **Entities** that are over 50% owned by related parties are a Transferee. If Grantee is not a Transferee case closed unless there is fraud, [page 23, line 6]. If Grantee is Transferee, nothing needs to be done unless there is retained power (such as a life estate), then a copy of the deed needs to be mailed to DHHS. There is **no lien unless Grantor applies** for Medicaid benefits then DHHS records the Medicaid lien. Deeds prior to effective date are grand fathered as exempt, [page 20, line 12].
- 3. **RETAINED LIFE ESTATE DEEDS:** Bottom line there is a potential Medicaid **lien** only against deeds with retained life estates only taking effect **when a application is filed** for Medicaid. With no Medicaid application, therefore no lien the land gifted to a child can be conveyed but will the new owner be faced with a lien against their newly acquired property? Clearly if the child retains the land subject to a life estate there will be the **potential of a lien** against the land as long as his parents the grantor & spouse are alive even if there is no Medicaid.
- 4. The end result is that **gifts to related parties with a retained life estate will no longer be a viable tool.**
- 5. **Danger:** the use of the term **retained life estate** is an over simplification LB 1103 includes gifts that are "**subject to rights, actual or constructive possession, or powers retained by the transferor**" [page 20, line 15] as determined by DHHS.
- 6. **SIXTY MONTH LOOK BACK:** There is **no reference** to a 60 month look back exclusion, except: "This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal government." [page 29, line 8].
- 7. **NOTICE OF ENTITY TRANSFERS:** The term Transferee includes entities **controlled by related parties** owning or with an option to acquire more than 50%, [page 19, line 28]. The term Transferee includes irrevocable trust that has related

parties as beneficiaries, [page 20, line 2]. I am not sure how this fits to the scheme of things. The Transferee reference is a part of the statute that relates to liens.

- a. I assume the **liens** are on **real estate**, or are the liens against the transferred **entity** [partnership, LLC, corporation or trust]?
 - i. If the lien is against the entity will a **notice** need to be **recorded** against the real estate owned by the entity **every time a share of stock** or other ownership is **transferred** in the entity that the gift is or is not a related party transfer the same as the notice required on all deeds?
 - ii. Is the notice to be on the document transferring the ownership interest?
 - iii. What information will DHHS require?
- b. Does LB 1103 relate to **only transfers of real estate** to related party entities or does it also include **transfers of ownership of the entities**?
 - i. I suggest an **amendment to limit LB 1103 to only transfers of real estate and not transfers of the entity ownership when an entity owns real estate.**
 - ii. I suggest an **amendment to LB 1103 eliminating notice** on documents **transferring entities** indicating that the transfer **is or is not a gift to a related party**. Further notice of the gift of an interest in an entity owning land will not be required to be recorded against the real estate at the court house.
8. Initially Medicaid **reimbursement** is to be **collected** before any portion of the estate is enjoyed or transferred, including assets transferred through **joint tenancy, tenancy in common, survivorship, conveyance of a remainder interest, retention of a life estate or of an estate for a period of time, living trust**, or other arrangement by which value or possession is transferred to or realized by the beneficiary of the conveyance or transfer. Including **insurance policies or annuities** with retained incidents of ownership or power to designate beneficiaries and any **pension rights or completed retirement plans or accounts**. [Amend 68-010(4)(a)(ii)]
9. **TRUSTS:** It appears that all **transfers of real estate or an entity owning real estate to irrevocable trusts** "subject to rights, actual or constructive possession, or powers retained by the transferor" [page 20, line 15] will be subject the **notice on the deed** as well as subject to a lien the same as if a reserved life power is created on the deed.

- a. How does this work? DHHS staff will need to review all trusts in which real estate is deeded to the trust and determine if notice is required and if a lien may be created. Will this include an irrevocable trust with sprinkling income to self and spouse? How does this work with the spouse as a beneficiary of the trust? Does the exclusion of spouse as a Transferee [page 20 line 4] include the spouse as a beneficiary under an irrevocable trust?
10. **Death Certificates** are to have on the certificate a **notice** of unresolved claims or unsettled issues regarding Medicaid reimbursement before they are issued.
11. Medicaid Liens on Real Estate is **inequitable approach** unless there are liens on all property, including personal property and intangible property. If the legislature intends to close the transfer of assets in order to qualify for Medicaid, such an approach should cover all assets, just not real estate. Place a freeze on the transfer of all bank accounts, securities and tangible personal property until DHHS issues a release. To focus just on real estate is an **affront to the family farm** industry in Nebraska where gifts to the next generation of farmers are the norm in **succession planning**.
12. **HIPAA medical disclosure** rules are the bane of Medicaid recovery legislation. While a Medicaid recipient or their spouse is alive their medical information, such as receiving Medicaid benefits is not to be disclosed. Liens will create a disclosure. The answer is to have potential liens apply to everyone. This approach creates a harsh unreasonable penalty on all family transfers where Medicaid benefits are not received. This is a bureaucratic nightmare impressed on all to stop a few from gifting assets to family and applying for Medicaid within the sixty month look back period. A strict Medicaid application process should be an adequate screen. The goal should be to not unreasonably interfere with the transfer of assets upon death where there has been no receipt of Medicaid benefits.

APPENDIX

Forms

1. **Affidavit** and Agreement Confirming Title in Successor Trustees
2. **Application** for Order Regarding Notice to the Nebraska Department of Health and Human Services of the Filing of a Stand Alone Petition for Determination of Inheritance Tax per LB72, § 77-2018.02(6)
3. **Order** (§ 77-2018.02(6)) granting authority for the Trustee (and Attorney) to ask and receive Medicaid waiver or statement of Medicaid lien.
4. **Notice** to the Nebraska Department of Health and Human Services of the Filing of a Stand Alone Petition for Determination of Inheritance Tax
5. **Certificate** of Mailing of the Notice to the Nebraska Department of Health and Human Services Pursuant to § 77-2018.02 (6)
6. Nebraska Department of Health and Human Services Estate Recovery -- Waiver of Restriction on **Transfer Authorization** for Disclosure of Protected Health Information. Request the form from DHHS at the following email (dhhs.medicaidstaterecovery@nebraska.gov)
7. **Letter** to DHHS listing the documents delivered to DHHS. Scanned PDF documents may be emailed: dhhs.medicaidstaterecovery@nebraska.gov
8. Copy of **DHHS form letter** acknowledging receipt of notice of death and DHHS waiver of the statutory restriction on transfer of trust property.
9. **Proposal for the Distribution and Termination of Trust**
10. **Release, and Discharge of Trustee by Qualified Beneficiary of Trust**

VARIABLE(NAME Trust**)
DATED VARIABLE(date of trust**)

AFFIDAVIT AND AGREEMENT
CONFIRMING TITLE IN SUCCESSOR TRUSTEES

State of Nebraska, County of VARIABLE(AckCounty**), ss:

COME NOW, the undersigned, being duly sworn, depose and state that they knew the Decedent and that the following information is true and correct:

- 1. VARIABLE(Settlor) created a revocable grantor trust known as theVARIABLE(NAME Trust**) dated VARIABLE(date of trust**), appointing herself as trustee.
2. The following described real estate was conveyed to VARIABLE(Settlor) as Trustee of the VARIABLE(NAME Trust**)dated VARIABLE(date of trust**), to-wit:

LEGAL

- 3. VARIABLE(Settlor)died on VARIABLE(date of death**) a resident of VARIABLE(County-State**), Nebraska. Upon her death the VARIABLE(NAME Trust**)dated VARIABLE(date of trust**) became irrevocable.
4. ARTICLE 1, NAME OF TRUST AND PARTIES, Section 1.3 Successor Trustee on page One (1) of the VARIABLE(NAME Trust**) provides:

Successor Trustee:

- 5. VARIABLE(Spouse**), surviving spouse of VARIABLE(Settlor), hereby agrees that he will serve as Co-Trustee of the VARIABLE(NAME Trust**).
6. VARIABLE(1Successor**), daughter/son of VARIABLE(Settlor), hereby agrees that she/he will serve as Co-Trustee of the VARIABLE(NAME Trust**).
7. Each of the undersigned hereby acknowledge that the Trust is in good standing and they are authorized under the laws of the State of Nebraska to serve as Co-Trustees and by this document accept the position as a Successor Co-Trustee of the VARIABLE(NAME Trust**), and the trusts contained therein. VARIABLE(Spouse**) and VARIABLE(1Successor**) acknowledge the principal place of administration of the trust is Fillmore County, in the State of Nebraska and hereby personally submit to the jurisdiction of the Courts of the State of Nebraska.

FURTHER Affiants saith not.

Dated: _____, 2016

VARIABLE(Spouse**)

VARIABLE(1Successor**)

Subscribed and sworn to before me on VARIABLE(Date Signed**).

Notary Public

IN THE COUNTY COURT OF [COUNTY COURT NAME] COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF

[NAME OF DECEDENT], Deceased.

Date of Death: [Decedent's date of death].

CASE # PR 16 - XX

**APPLICATION FOR ORDER
REGARDING NOTICE TO THE
NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES
OF THE FILING OF A STAND
ALONE PETITION FOR
DETERMINATION OF
INHERITANCE TAX PER LB72,
§77-2018.02(6)**

The Estate and Trust of [Name of Decedent] moves the Court for an Order granting [Name of Trustee(s)], [Co]-Trustees of the [Name of Trust] dated [Date of Trust including any amendments], authority as [Co]-Trustees to ask for and receive from the Nebraska Department of Health and Human Services [DHHS] the Medicaid waiver of lien claim and/or statement of Medicaid lien as required under Neb. Rev. Stat. §77-2018.02(6) (enacted by LB 72, 2015 Legislative Session); and, further, to provide in such Order that all required notice, cover letter, and certificate of service may be submitted and signed by their attorney of record, [Name of Attorney] and the information to be released by DHHS be given to the attorney of record.

Applicant shows the Court that decedent died after August 30, 2015, the effective date of the statute; was over age 55 on date of death; and that due to a conflict in wording between federal law and Neb. Rev. Stat. §77-2018.02(6) it is necessary to obtain a Court order granting the Successor Trustee(s) authority to file the required notice, cover letter, and certificate of service and to receive the Medicaid waiver of lien claim and/or statement of Medicaid lien.

[NAME OF TRUSTEE(S), [CO]-TRUSTEES OF THE
[NAME OF TRUST] DATED [DATE OF TRUST
INCLUDING ANY AMENDMENTS], Petitioners

By:

Frank C. Heinisch, Bar #11788
Heinisch & Lovegrove Law Office, PC LLO
179 North 9th Street
Geneva, NE 68361
(402) 759-3122
Frank@hllawoffice.com
Attorney for the Petitioners

IN THE COUNTY COURT OF [COUNTY COURT NAME] COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF

[NAME OF DECEDENT], Deceased.

Date of Death: [Decedent's date of death].

CASE # PR 16 - xx

ORDER
(§77-2018.02(6))

IT IS HEREBY ORDERED that [Name of Trustee(s)], [Co]-Trustees of the [Name of Trust] dated [Date of Trust including any amendments], are hereby granted authority as [Co]-Trustees to ask for and receive from the Nebraska Department of Health and Human Services [DHHS] the Medicaid waiver of lien claim and/or statement of Medicaid lien as required under Neb. Rev. Stat. §77-2018.02(6) (enacted by LB 72, 2015 Legislative Session).

IT IS FURTHER ORDERED that all required notice, cover letter, and certificate of service to Nebraska Department of Health and Human Services and the Court may be submitted and signed by the attorney of record for said Trustee, [Name of Attorney] and the information to be released by DHHS be given to the attorney of record.

Dated and signed _____, 2016.

BY THE COURT

County Judge

IN THE COUNTY COURT OF [COUNTY COURT NAME] COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF

[NAME OF DECEDENT], Deceased.

Date of Death: [Decedent's date of death].

CASE # PR 16 - XX

**NOTICE TO THE NEBRASKA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES OF THE
FILING OF A STAND ALONE
PETITION FOR DETERMINATION
OF INHERITANCE TAX**

TO:

Nebraska Department of Health and Human Services
Attn: Estate Recovery
P.O. Box 95026
Lincoln, NE 68509

You are hereby notified that a Petition for Determination of Inheritance Tax in the above-captioned estate was filed in the County Court in the above-captioned case on [Date Petition for Determination of Inheritance Tax was filed with the Court] when there has not been a filing of a formal probate proceeding, an informal probate proceeding, a formal determination of heirs in intestacy, an informal determination of heirs in intestacy, a special administration, an ancillary probate proceeding or any other proceeding under Chapter 30, Articles 24 or 25 of the Nebraska Statutes.

You are further notified that an Order has been entered by the [County Court Name] County Court giving the Co-Trustees through the Trustees' attorney authority to ask for and receive from the Nebraska Department of Health and Human Services the Medicaid waiver of lien and/or statement of Medicaid lien as required under Neb. Rev. Stat. §77-2018.02(6), a copy of which Order is being served on you along with this Notice.

Under the Nebraska Supreme Court Rules §6-1464 a social security number is not able to be filed and thus the decedent's social security number and that of the decedent's spouse, if any, are sent in a separate cover letter which is not being filed with this Court.

[Name of Trustee(s) of the [NAME OF TRUST] dated [Date of Trust and dates of amendments (if any):

By:

Frank C. Heinisch, Bar #11788
Heinisch & Lovegrove Law Office, PC LLO
179 North 9th Street
Geneva, NE 68361
(402) 759-3122
Frank@hllawoffice.com
Attorney for the Petitioners

IN THE COUNTY COURT OF [COUNTY COURT NAME] COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE OF

[NAME OF DECEDENT], Deceased.

Date of Death: [Decedent's date of death].

CASE # PR 16 - XX

**CERTIFICATE OF MAILING OF
THE NOTICE TO THE NEBRASKA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES PURSUANT
TO §77-2018.02 (6)**

I hereby certify that on [date Order and Notice mailed to DHHS], a true and correct copy of:

1. The Order of the [County Court Name] County Court giving the Co-Trustees through the Co-Trustee's attorney authority to ask for and receive from the Nebraska Department of Health and Human Services the Medicaid waiver of lien and/or statement of Medicaid lien as required under Neb. Rev. Stat. §77-2018.02(6);
2. The Notice to the Nebraska Department of Health and Human Services pursuant to §77-2018.02(6) of the filing of a Petition for Determination of Inheritance Tax in the above-captioned estate

was mailed by regular United States first class mail to the Department addressed as follows:

Nebraska Department of Health and Human Services
Attn: Estate Recovery
P.O. Box 95026
Lincoln, NE 68509

In addition I hereby certify that a separate cover letter containing the decedent's Social Security number, and if available upon reasonable investigation, the decedent's spouse's Social Security number, was sent to the department at the above address and that the Social Security number or Social Security numbers were not included in the notice filed with the court under Nebraska Supreme Court rule §6-1464.

Frank C. Heinisch, Bar #11788
Heinisch & Lovegrove Law Office, PC LLO
179 North 9th Street
Geneva, NE 68361
(402) 759-3122
Frank@hllawoffice.com

Nebraska Department of Health and Human Services
Estate Recovery -- Waiver of Restriction on Transfer
Authorization for Disclosure of Protected Health Information



This authorization is submitted to find out if any Medicaid reimbursement is due. On behalf of the trustor, I freely and voluntarily give permission for DHHS to release this information about the trustor to me. I understand that I am not required to disclose the trustor's social security number, though disclosure may make it easier or quicker for information to be provided.

Please attach a copy of the legal authority to act for the trustor, such as court-issued letters of appointment.

Trustor Name (Last, First, Middle Initial)			Trustor's Social Security Number		
Trustor's Date of Birth		Trustor's Date of Death		The information to be released pursuant to this authorization is limited to records or information from or in the possession or control of DHHS.	
My Name (Last, First, Middle Initial)			Disclose to: (if to someone other than me)		
Address			Address:		
City	State	Zip	City	State	Zip

This authorization (unless revoked earlier in writing) shall terminate on _____.
(must have date or event filled in)

By signing this authorization, I acknowledge that the information to be released may include material that is protected by federal or state law, including benefit or enrollment information. My signature authorizes release of this information. I also understand that this authorization may be revoked at any time by submitting a written request in accordance with the then current DHHS Notice of Privacy Practices, and it will be honored with the exception of information that has already been released.

Federal law requires us to inform you that DHHS will not condition payment or eligibility for benefits on whether this authorization is signed. Information used or disclosed pursuant to the authorization may be subject to disclosure by the recipient and may no longer be protected by law.

Signature of Authorized Representative	Printed Name	Date
Authorized Representative: <input type="radio"/> Personal Representative <input type="radio"/> Special Administrator <input type="radio"/> Other (be specific) _____		

Please have your signature notarized if this form is being submitted by someone else for you.

Subscribed and sworn to before me on this _____ day of _____, 20____.

Notary Public

August 31, 2016

Nebraska Department of Health and Human Services
Medicaid and Long-Term Care
Attn: Estate Recovery
P.O. Box 95026
Lincoln, NE 68509-5026

RE: The Estate of [Name of Estate/Trust]

Dear Sir/Madam:

Pursuant to Nebraska Stat. § 77-2018.02, enclosed is a copy of the Notice to the Nebraska Department of Health and Human Services of the filing of a Petition for Determination of Inheritance Tax in the Estate of [Name of Decedent] outside of any proceeding under Chapter 30, Article 24 or 25 of the Nebraska Statutes. I am further providing a copy of the Order entered by the County Court granting the Trustee(s) through the undersigned as their attorney of record to ask for and receive from the Nebraska Department of Health and Human Services the Medicaid waiver of lien and/or statement of Medicaid lien as required under Neb. Rev. Stat. §77-2018.02(6).

The inheritance tax proceeding was filed in the County Court of [Name of County] County, Nebraska as Case Number PR 16 - XX. The following information is supplied pursuant to the statute.

Social Security number for [Name of Decedent] is [SS#].

[Decedent's name] date of birth was [Decedent's date of birth].

The date of death for [Name of Decedent] was [Decedent's date of death].

The decedent's spouse is deceased and the spouse's name was [Name of Decedent's spouse, if any] and the social security number of the spouse was [SS# of decedent's spouse]. [Spouse's name] date of birth was [Date of birth of Decedent's spouse] and her date of death was [Date of death of Decedent's spouse].

A complete Nebraska Department of Health and Human Services Authorization of Disclosure Form per Chapter 42 Code of Federal Regulations is also attached with this mailing.

Yours very truly,

Frank C. Heinsch, Attorney
Heinisch & Lovegrove Law Office, PC LLO
Frank@HLLawoffice.com

FCH/ch
Enc.

RECEIVED

July 21, 2016

JUL 25 2016

Heinisch & Lovegrove

Christin P. Lovegrove
Heinisch & Lovegrove Law Office
179 N. Ninth St. – Box 311
Geneva, NE 68361-0311

Re: Estate of Trustor [REDACTED]

Dear Ms. Lovegrove:

This letter is the response of the Nebraska Department of Health and Human Services (DHHS) to your recent notice of the death of the above-named trustor.

DHHS has determined that there is no Medicaid Estate Recovery claim due respecting the above-named trustor. Accordingly, pursuant to Neb. Rev. Stat. §30-3880(c), DHHS hereby waives the statutory restriction at Neb. Rev. Stat. §30-3880(c) on transfer of trust property.

Thank you for your cooperation respecting this matter

Sincerely,



Jon Sterns,
NE Medicaid Estate Recovery
(402) 471-9126

PROPOSAL FOR THE DISTRIBUTION AND TERMINATION OF THE VARIABLE(TRUST-CAP)**

WHEREAS, VARIABLE(Grantor**) created a revocable grantor trust known as the VARIABLE(Trust**), appointing himself/herself as Trustee. A true and accurate copy of which is attached hereto and marked as **Exhibit 1** (hereinafter referred to as the "Trust").

WHEREAS, VARIABLE(Article**) on Page One (1) of the VARIABLE(Trust**) provides:

[Put in specific language from the Trust relating to Successor Trustees.]

"/(Example of Successor Trustee language from Trust) Section 1.3 Successor Trustees. Should Grantor fail, decline to qualify or cease to act as Trustee, the successor Trustee shall be VARIABLE(Trustee)."**

[Use this paragraph if estate was NOT probated and following paragraph IF estate was probated.]

WHEREAS, VARIABLE(Grantor**) died VARIABLE(D/O/D**), a resident of VARIABLE(Residence**) County, Nebraska. His/Her estate was not probated, however an inheritance tax determination was filed in the County Court of VARIABLE(County**) County, Nebraska as Case No. PR VARIABLE(Case #**). Upon the death of VARIABLE(GRANTOR**), the Trust became irrevocable.

OR

WHEREAS, VARIABLE(GRANTOR**) died VARIABLE(D/O/D**), a resident of of VARIABLE(Residence**) County, Nebraska. His/Her estate was probated in the County Court of of VARIABLE(County**) County, Nebraska as Case No. PR VARIABLE(Case #**). Upon the death of VARIABLE(GRANTOR**), the Trust became irrevocable.

WHEREAS, on VARIABLE(D/O/D**), (the date of death for VARIABLE(Grantor**)), VARIABLE(Trustee**) became the Successor Trustee of the Trust by operation of VARIABLE(Article**), of the VARIABLE(Trust**).

WHEREAS, an Affidavit and Agreement Confirming Title in Successor Trustee was subscribed and sworn by VARIABLE(Trustee**) as the Successor Trustee. Such affidavit was filed against the appropriate real estate and is attached hereto as **Exhibit 2** and incorporated herein by reference.

WHEREAS, VARIABLE(Article**), on pages Two (2) through Five (5) of the VARIABLE(Trust**) provides:

"Copy and paste in language from Trust regarding final distribution of the Trust."

WHEREAS, the VARIABLE(Trust**) was a revocable grantor trust prior to the death of VARIABLE(Grantor**) and no accounting was maintained for the Trust during the life of VARIABLE(Grantor**). Upon the death of VARIABLE(Grantor**), the VARIABLE(Trust**) became irrevocable. Accounting from VARIABLE(D/O/D**) (date of death of VARIABLE(Grantor**)) to VARIABLE(Acctg Date**) OR to the date of this Proposal is attached hereto as **Exhibit 3**.

WHEREAS, the assets of the VARIABLE(Trust**) as of VARIABLE(D/O/D**) (date of death of VARIABLE(Grantor**)) were as follows:

VARIABLE(TRUST-CAP**)																																											
G- 1	Copy and paste (list) trust assets and date of death values that were reported on Inventory filed with the Court		\$0.00																																								
G- 2	<p>Example: Real estate legal</p> <p>North Half of the Southeast Quarter (N½ SE¼) of Section Sixteen (16), Township Six (6) North, Range Two (2), West of the 6th P.M.,XXXX County, Nebraska Parcel # XXXXX</p> <p>2016 Assessed Value</p> <table> <tr> <th>Land Type</th><th># of Acres</th><th>\$/Acre</th><th>Total</th></tr> <tr> <td>Irrigated</td><td>66.93</td><td>\$8,000.00</td><td>\$535,440.00</td></tr> <tr> <td>Dry</td><td>11.72</td><td>\$5,500.00</td><td>\$64,460.00</td></tr> <tr> <td>Road</td><td>1.01</td><td></td><td></td></tr> <tr> <td>Site</td><td>0.34</td><td></td><td></td></tr> <tr> <td>TOTAL</td><td>80.00</td><td></td><td>\$599,900.00</td></tr> <tr> <td>Grain Bin</td><td></td><td></td><td>\$10,000.00</td></tr> <tr> <td>Pivot</td><td></td><td></td><td>\$30,000.00</td></tr> <tr> <td>TOTAL IMPROVEMENTS</td><td></td><td></td><td>\$40,000.00</td></tr> <tr> <td colspan="3">Total Value</td><td>\$639,900.00</td></tr> </table>	Land Type	# of Acres	\$/Acre	Total	Irrigated	66.93	\$8,000.00	\$535,440.00	Dry	11.72	\$5,500.00	\$64,460.00	Road	1.01			Site	0.34			TOTAL	80.00		\$599,900.00	Grain Bin			\$10,000.00	Pivot			\$30,000.00	TOTAL IMPROVEMENTS			\$40,000.00	Total Value			\$639,900.00		\$639,900.00
Land Type	# of Acres	\$/Acre	Total																																								
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Pivot			\$30,000.00																																								
TOTAL IMPROVEMENTS			\$40,000.00																																								
Total Value			\$639,900.00																																								

G- 3	Example: Investment Account #XXX-XX; titled XXX, Trustee						\$84,442.12
G- 3a.	Money Market Account (trading symbol); CUSIP #						
	# of shares	Price/Share		Date of Death Value			
	15,000.000	\$1.00		\$15,000.00			
G- 3b.	Name of Stock (trading symbol); CUSIP #						
	# of shares	High	Low	Average	Date of Death Value		
	500.000	\$23.40	\$23.13	\$23.27	\$11,632.50		
G- 3c.	Name of Mutual Fund (trading symbol); CUSIP #						
	# of shares	Price/Share		Date of Death Value			
	1,423.890	\$26.02		\$37,049.62			
G- 3d.	Name of municipal bonds DTD XX/XX/XXXX; Callable XX/XX/XXXX @ \$XXX.00; CUSIP #; interest rate: X.X%; Maturity Date:						
	# of units	Price/Share		Date of Death Value			
	20,000.000	\$103.800		\$20,760.00			
TOTAL INVESTMENT ACCOUNT						\$84,442.12	
G- 4	[Name of Bank] Certificate of Deposit #XXX including accrued interest					\$10,132.00	
G- 5	[Name of Bank] checking account #XXX titled XXXX, Trustee of the Trust					\$16,852.97	
Total Schedule G – Transfer During Life - Trust						\$751,327.09	

[Use this paragraph if Trust owned Real Estate]

WHEREAS, the real estate associated with such real estate shown as Items G-1 and G-2 have been sold. Such Deeds were executed and recorded on May 18, 2016, in Deed Book 94, on Page 502 as Instrument No. 2016-01336, and on June 20, 2016, in Deed Book 94, on Page 503 as Instrument No. 2016-01337 of the Records of the Clerk of VARIABLE(RE County**) County, Nebraska. A true and accurate copy of the Trustee's Deeds are attached hereto and marked as **Exhibit 4**.

[Use one of the following 4 paragraphs if the Trust had an Investment account(s)]

WHEREAS, the aforementioned investments held by VARIABLE(Investment**) shown as Item G-3 were distributed in kind and split equally between VARIABLE(Beneficiaries**) and the investments have been transferred to the individual VARIABLE(Investment**) investment accounts of VARIABLE(Beneficiaries**). The VARIABLE(Investment**) Trust investment account was closed on or about June 13, 2016.

OR

WHEREAS, the VARIABLE(Investment**) Account #XXX-XX shown as Item G-3 is currently in the process of being liquidated.

OR

WHEREAS, the stock, mutual funds, bonds and other investments held by VARIABLE(Investment**) and shown as Item G-3 have been sold and the sale proceeds were deposited into the Trust checking account at VARIABLE(Bank**) in VARIABLE(City**), Nebraska.

OR

WHEREAS, the VARIABLE(Investment**) Account #XXX-XX shown as Item G-3 was closed and all funds were transferred to a new VARIABLE(Investment**) Account #XXX-XX.

[Use the following paragraph if the Trust had a Certificate of Deposit(s)]

WHEREAS, the VARIABLE(CD Bank**) Certificates of Deposit #XXXX1, shown as Item G-4 was liquidated and the proceeds was deposited into the VARIABLE(Bank**) checking account #XXXX on June 3, 2016.

WHEREAS, the only substantial asset still in existence for the VARIABLE(Trust**) is the VARIABLE(Bank**) checking account #XXXX. The checking account had a balance of \$XX,XXX.XX as of June 15, 2016.

WHEREAS, the balance of the Trust checking account #XXXX will be distributed in equal amounts to VARIABLE(Beneficiaries**) to bring the account balance down to zero.

WHEREAS, upon the liquidation of the Trust checking account #XXXX, there will no longer be any assets still in existence for the VARIABLE(Trust**).

WHEREAS, the Successor Trustee of the Trust will provide to the beneficiaries and qualified beneficiaries accounting for the Trust from the date of death of VARIABLE(D/O/D**)

to the date of this Proposal; a true and accurate copy of which is attached hereto and marked as **Exhibit 3**. Further, the Trustee hereby provides notice to all beneficiaries that he(he) may petition the VARIABLE(County**) County Court of VARIABLE(Court City**), Nebraska, to approve such accounting and release the trustee from any further liability in his capacity as trustee.

WHEREAS, the Successor Trustee of the Trust acknowledge that the final income tax return for the Trust will not be filed until all of the 1099's that are needed to prepare the return are received and that the final income tax return will be prepared by VARIABLE(CPA**).

WHEREAS, the Successor Trustee of the Trust acknowledges that the trust has received notification from the Nebraska Department of Health and Human Services that there is no Medicaid reimbursement due and that the Nebraska Department of Health and Human Services waived the statutory restriction pursuant to Neb. Rev. Stat. §30-3880(c), §30-3881(b), and §30-3882(d) and therefore the Trust can be officially terminated. A true and accurate copy of the Nebraska Department of Health and Human Services letter is attached hereto and marked as **Exhibit 5**.

NOW THEREFORE, the Trustee of the Trust proposes to terminate the Trust and distribute the Trust's assets as follows:

- A. The above recitals are hereby incorporated as a part of this proposal.
- B. Such past distributions shall be considered a part of this Proposal that encompasses both past and future distributions.

[Use the following paragraph if the Trust had an Investment account(s) that is being distributed in kind rather than being liquidated]

- C. The Trustee of the Trust will **distribute and transfer** the stocks, mutual funds, and municipal bonds held in the Trust VARIABLE(Investment**) account #XXX-XX in kind.
- D. The Trustee of the Trust will **distribute and transfer** the remaining **asset** (cash) in equal amounts to VARIABLE(Beneficiaries**) in accordance with the Trust **after** payment of all expenses.
- E. The aforementioned transfers were subject to charges for attorneys fees and costs due VARIABLE(ATTORNEY**) in the amount of \$XX,XXX.00 **plus advances and expenses** that were incurred for legal services performed for or on behalf of the Trust and the Estate and also includes preparation of the first and final Trust income tax return.

- F. The interested parties are deemed to have waived any further accounting and annual reports of the Trust while VARIABLE(Grantor**) was alive.
- G. The interested parties are deemed to have approved all accounting and annual reports of the Trust after the death of VARIABLE(Grantor**).
- H. The Trust receipts and disbursements reported in the attached **Exhibit 3** shall be deemed by the interested parties to the Trust that have received a copy of this Proposal as authorized by the Trust and deemed as an accepted, approved, true, correct, and complete accounting of the Trust from VARIABLE(D/O/D**) (date of death of VARIABLE(Grantor**)) to VARIABLE(Acctg Date**) OR to the date of this Proposal.
- I. The interested parties acknowledge that the final income tax return for the Trust will not be filed until all of the 1099's that are needed to prepare the return are received.
- J. The interested parties acknowledge that the trust has received notification from the Nebraska Department of Health and Human Services that there is no Medicaid reimbursement due and that the Nebraska Department of Health and Human Services has waived the statutory restriction pursuant to Neb. Rev. Stat. §30-3880(c), §30-3881(b), and §30-3882(d) and therefore, the Trust can be officially terminated. A true and accurate copy of DHHS's letter is attached hereto and marked as **Exhibit 5**.
- K. Pursuant to Neb. Rev. Stat. § 30-3882, any beneficiary of the Trust has the right to object to this proposal for the distribution and termination of the Trust. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent.
- L. The trustee of the Trust may seek Court approval of the termination of the Trust in the County Court of VARIABLE(County**) County, Nebraska.
- M. This proposal is binding upon and inures to the benefit of the heirs, devisees, successors, assigns and representatives of the parties hereto and shall be subject to the laws of the State of Nebraska.

Dated: June ____, 2016

VARIABLE(Trustee**), as Trustee of the
VARIABLE(Trust**), and as a Beneficiary
thereunder

**RELEASE AND DISCHARGE OF TRUSTEE
BY QUALIFIED BENEFICIARY
OF THE
VARIABLE(Trust-CAP**)**

The undersigned Qualified Beneficiary of the VARIABLE(Trust**), hereby acknowledges the following recitals:

1. VARIABLE(Grantor**) died VARIABLE(D/O/D**).
2. VARIABLE(Pronoun**) has received the "Proposal for the Distribution and Termination of the VARIABLE(Trust**) and all referenced exhibits.
3. The "Proposal for the Distribution and Termination of the VARIABLE(Trust**)" informed the undersigned beneficiaries of their right to object and to the fact that the right to object to the proposed distribution terminates if the beneficiaries do not notify the Trustee of an objection within thirty (30) days after the Proposal was mailed to them on or before June 23, 2016. Provided the Proposal must inform the beneficiary of the right to object and of the time allowed for objection.[§ 30-3832(a) NUTC].
4. VARIABLE(Pronoun**) has read and accepts the terms and provisions of the "Proposal for the Distribution and Termination of the VARIABLE(Trust**)" and further accepts and ratifies the recitals and exhibits contained therein.
5. The undersigned hereby waives further reports or prior reports, including accounting, for the time the Trust was created through the complete distribution of all Trust assets.
6. The reports and "Proposal for the Distribution and Termination of the VARIABLE(Trust**)" provided by the Trustee adequately describes the Trust property, liabilities, receipts, and disbursements, including the source and amount of the Trustee's compensation, also including a listing of the trust assets and their respective market values and/or tax basis. [see §30-3878(c) NUTC] All payments from the Trust reported in the accounting and recited by or proposed in the "Proposal for the Distribution and Termination of the VARIABLE(Trust**)", including but not limited to distributions to beneficiaries and payment of fees to the Trustee, were appropriate and within the scope of the Trustee's authority.
7. VARIABLE(Pronoun**) has been given adequate time and opportunity to review the "Proposal for the Distribution and Termination of the VARIABLE(Trust**)" and all exhibits and reports, and VARIABLE(Pronoun1**) has no objection to the "Proposal for the Distribution and Termination of the VARIABLE(Trust**)", its recitals, exhibits or reports and VARIABLE(Pronoun1**) accepts all of the documents and recitals as previously presented as true and correct.

Now therefore the undersigned agrees to the following:

- a. The above **recitals** are true and correct and are incorporated herein by this reference.
- b. The VARIABLE(Trust**) shall be distributed and terminated pursuant to the **"Proposal for the Distribution and Termination of the VARIABLE(Trust**)"** described above without delay upon receipt by the Trustee of a signed Release from the following parties: VARIABLE(Beneficiaries**).
- c. The Trustee's **accounting and exhibits** given to the undersigned provided adequate information concerning the administration of the Trust (including but not limited to Trustee compensation), assets and liabilities of the Trust, and receipts and disbursements of the Trust. The undersigned requires no further reports of Trust information. The Trustee acted within the scope of VARIABLE(Pronoun2**) authority in all transactions shown.
- d. VARIABLE(Pronoun**) will **save and hold harmless**, and hereby **releases and forever discharges** VARIABLE(Trustee**), Trustee of the VARIABLE(Trust**), VARIABLE(Pronoun2**) employees, agents and attorneys from all claims and rights whatsoever that the undersigned may have against VARIABLE(Pronoun3**) regarding the Trust and/or the administration of the Trust to date.
- e. In consenting to this Release, the undersigned is **acting on behalf** of VARIABLE(Pronoun4**), VARIABLE(Pronoun5**) issue, and any unborn heirs who might acquire an interest in the VARIABLE(Trust**) in the event of their birth. These interests are all substantially identical to the interest of their respective parents and all of the persons named in this paragraph are bound by this Release pursuant to Neb. Rev. Stat. §30-3822(b) and §30-3825.
- f. This Release is binding upon and inures to the **benefit of** the heirs, devisees, successors, assigns and representatives of the parties hereto and shall be interpreted under and subject to the laws of the State of **Nebraska** and VARIABLE(Pronoun1**) hereby submits VARIABLE(Pronoun4**) to the jurisdiction of the County and District Courts of VARIABLE(County**) County Nebraska in all matters concerning the subject Trust.
- g. The undersigned hereby affirms and ratifies the continuation of the Trust for a reasonable time after the receipt by the Trustee of this Release signed by the above named parties to permit a filing of a tax return, payment of attorney fees and distribution of the Trust as described herein.

Dated: June ____, 2016.

VARIABLE(Beneficiary1**)

State of VARIABLE(State**), County of VARIABLE(County1**) - ss.

The foregoing "Release and Discharge of Trustee By Qualified Beneficiary" was acknowledged before me on June _____, 2016, by VARIABLE(Beneficiary1**), as VARIABLE(Pronoun5**) voluntary act and deed.

Notary Public