

Notices:
Who, When, How, and Why

By

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APPENDIX OF FORMS

- a. Notice of Successor Trustee
- b. Notice of Trustee Authority
- c. Notice, Spendthrift Restriction Is a Material Purpose of the Trust
- d. Notice of Trust
- e. Trust Annual Report
- f. Proposed Schedule of Distribution
- g. Waiver of Trustee's Reports
- h. Representation
- i. Amendment of Revocable Trust

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Except for 16 mandatory rules, Nebraska Uniform Trust Code [NUTC] §30-3805(b) (UTC 105(b)) the terms expressed in the trust instrument prevail over all provisions of the Code. The Code is primarily a default statute in which much of the Code may be inappropriate and should be overridden on a case by case basis.

Should an attorney accept the default provisions of the Code, he or she must advise the client of the terms of the trust that are governed by the default rules of the Code rather than the express terms of the trust.

Although the Code establishes the default rules, it is still appropriate to include the key default rules of the Code in the express trust document so that the issues created by the default rules are presented to the client and available to the client upon later review of the document.

1. §30-3803(2) & (12) (UTC 103 (2) & (12)) Beneficiaries and Qualified Beneficiaries

(2) “**Beneficiary**” means a person that:

(A) has a **present or future** beneficial interest in a trust, **vested or contingent**; or

(B) in a capacity other than that of trustee, **holds a power of appointment** over trust property.

(12) “**Qualified beneficiary**” means a beneficiary who, on the **date** the beneficiary’s **qualification is determined**:

(A) is a **distributee or permissible distributee** of trust income or principal;

(B) would be a **distributee or permissible distributee** of trust income or principal **if the interests of the distributees described in subdivision (A) of this subdivision terminated** on that date; or

(C) would be a **distributee or permissible distributee** of trust income or principal **if the trust terminated** on that date.

"In addition to living and ascertained individuals, beneficiaries may be unborn or unascertained.

"Pursuant to Section 402(b), a trust is valid only if a beneficiary can be ascertained now or in the future. The term "beneficiary" includes not only beneficiaries who received their interests under the terms of the trust but also beneficiaries who received their interests by other means, including by assignment, exercise of a power of appointment, resulting trust upon the failure of an interest, gap in a disposition, operation of an antilapse statute upon the predecease of a named beneficiary, or upon termination of the trust.

"The fact that a person incidentally benefits from the trust does not mean that the person is a beneficiary. For example, neither a trustee nor persons hired by the trustee become beneficiaries merely because they receive compensation from the trust.

"While the holder of a power of appointment is not considered a trust beneficiary under the common law of trusts, holders of powers are classified as beneficiaries under the Uniform Trust Code. Holders of powers are included on the assumption that their interests are significant enough that they should be afforded the rights of beneficiaries. ...

"Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the Uniform Trust Code uses the concept of "**qualified beneficiary**" (paragraph (12)) to **limit the class of beneficiaries** to whom certain notices must be given from whom certain consents or consents must be received. ...

"The **qualified beneficiaries** consist of the beneficiaries **currently eligible** to receive a distribution from the trust **together with** those who might be termed the **first-line remaindermen**. These are the beneficiaries who would **become eligible** to receive distributions were the **event triggering the termination of a beneficiary's interest or of the trust itself to occur on the date in question**. Such a terminating event will typically be the death or deaths of the beneficiaries currently eligible to receive the income.

"Should a qualified beneficiary be a **minor, incapacitated, or unknown**, or a beneficiary whose identity or location is **not reasonably ascertainable**, the representation and virtual representation principles of [UTC] Chapter 3 [NUTC §30-3822 -- §30-3826] may be employed, including the possible appointment by the court of a representative to represent the beneficiary's interest.

"The qualified beneficiaries who take upon termination of the beneficiary's interest or of the trust can include takers in default of the exercise of a power of appointment. The term can also include the persons entitled to receive

the trust property pursuant to the exercise of a power of appointment. Because the exercise of a **testamentary power of appointment is not effective until the testator's death** and probate of the will, the qualified beneficiaries do not include appointees under the will of a living person.

“Charitable trusts and trusts for a valid **noncharitable purpose** do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. Section 110 expands the definition of qualified beneficiaries to encompass this wider group. It grants the rights of qualified beneficiaries to the **attorney general** of the state and charitable organizations expressly entitled to receive benefits under the terms of a charitable trust. It also grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a **trust created for an animal** or other noncharitable purpose.”

From Comments for UTC 103 prepared by the National Conference of Commissioners of Uniform State Laws (NCCUSL), emphasis added.

2. § 30-3810 (UTC110) **Others Treated as Qualified Beneficiaries**

(a) Whenever notice to **qualified beneficiaries** of a trust is required under the Nebraska Uniform Trust Code, the trustee must also give notice to any other **beneficiary who has sent the trustee a request for notice**.

(b) A **charitable organization** expressly designated to receive distributions under the terms of a charitable trust **or** a person appointed to enforce a trust created for the **care of an animal** or **another noncharitable purpose** as provided in §30-3834 or §30-3835 has the **rights of a qualified beneficiary** under the Code.

(c) The **Attorney General** has the **rights of a qualified beneficiary** with respect to a **charitable trust** having its principal place of administration in this state.

"Under the Uniform Trust Code, certain notices need be given only to the "qualified" beneficiaries. For the definition of "qualified beneficiary," see Section 103(12). Among these notices are notice of a transfer of the trust's principal place of administration (Section 108(d)), notice of a trust division or combination (Section 417), notice of a trustee resignation (Section 705(a)(1)), and notice of a trustee's annual report (Section 813(c)). Subsection (a) of this section authorizes other beneficiaries to receive one or more of these notices by filing a request for notice with the trustee.

"Under the Code, certain actions, such as the appointment of a successor trustee, can be accomplished by the consent of the qualified beneficiaries. See, e.g., Section 704 (filling vacancy in trusteeship). Subsection (a) only addresses notice, not required consent. A person who requests notice under subsection (a) does not thereby acquire a right to participate in actions that can be taken only upon consent of the qualified beneficiaries.

"Charitable trusts do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. In the case of a charitable trust, this includes the state's attorney general and charitable organizations expressly designated to receive distributions under the terms of the trust, who under subsections (b)-(c) are granted the rights of qualified beneficiaries. Because the charitable organization must be named in the terms of the trust, excluded are organizations who may receive distributions only in the trustee's discretion and organizations holding remainder interests subject to a contingency.

Subsection (b) similarly grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other trust with a valid purpose but no ascertainable beneficiary. For the requirements for creating such trusts, see sections 408 and 409.

"'Attorney General' is placed in brackets in subsection (c) to accommodate jurisdictions which grant enforcement authority over charitable trusts to another designated official.

"This section does not limit other means by which the attorney general or other designated official can enforce a charitable trust."

From Comments for UTC 110 prepared by the National Conference of Commissioners of Uniform State Laws (NCCUSL), (emphasis added).

EXAMPLE

ARTICLE 8 FAMILY TRUST

Section 8.1 Spouse Right to Income: **After my death and during the lifetime of my spouse** the Trustee shall pay to my spouse **all net income** of this Trust at least quarterly. The Trustee shall not have any discretion whatsoever to refuse such request.

Section 8.2 Sprinkling Distribution of Principal: **After my death and during the lifetime of my spouse**, the Trustee may pay to or apply for the benefit of any one or more of the group consisting of my spouse and my issue portions of **principal** as the Trustee in its uncontrolled **discretion** may determine to be appropriate, provided a sole Trustee may not make discretionary distributions except as provided in Section Number 13.17 of this Trust "Absolute Discretionary Authority." Such distributions need not be equal to the members of the class.

Section 8.3 Division and Distribution Upon Fixed Age: **After my death and the death of my spouse** and when my **youngest then living child attains the age of twenty-four (24)** years, the entire Family Trust including assets added to this Family Trust by reason of Article Number 7 "Marital Deduction Trust" shall be divided into as many equal shares as there are then living children of mine and deceased children of mine who have left issue then surviving, each of which shares will constitute a separate Trust.

- 8.3.1 To Children: Each share created on account of a then living child of mine shall be distributed to each such child forthwith, free and clear of this Trust.
- 8.3.2 Sprinkle Income & Principal To Children: Pending such division and final distribution, the Trustee may pay to, or for the benefit of, any one or more of the living issue of mine, from time to time, so much of the income and principal of this Trust as the Trustee shall deem in its absolute discretion appropriate for each such child, provided a sole Trustee may not make discretionary distributions, see Section Number 13.17 of this Trust "Absolute Discretionary Authority." Such distributions need not be made equally unto all members of the class.
- 8.3.3 Child Dies Prior To Final Distribution: Should a child of mine die prior to the time of final distribution of this Trust without surviving issue, such child's share of the remaining assets of this Trust shall be divided and distributed by the Trustee pursuant to the foregoing provisions of this Article Number 8 "Family Trust" in the same proportions as if such child had not survived me.
- 8.3.4 Separate Trust for Surviving Issue: Each share created on account of the then surviving issue of a deceased child of mine shall be allocated to the issue of such child and shall be held by the Trustee in a separate Trust in accordance with the provisions of Section Number 8.03.04 "Final Distribution to Issue of a Deceased Child."

Application of the defined terms to the Example:

- A. Beneficiary Spouse and issue
- B. Qualified Beneficiary Spouse and children
- C. Distributee Spouse income interest
- D. Permissive distributee discretionary principal to Spouse and issue
- E. Present beneficial interest Spouse income interest
- F. Future beneficial interest issue
- G. Vested beneficial interest Spouse income interest
- H. Contingent beneficial interest discretionary principal to Spouse and issue

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3. Notices Under the Nebraska Uniform Trust Code

In dealing with notices and reports there are several approaches. §30-3878 (UTC 813) details the Duty to Inform and Report. Generally, notice requirements may be overridden except for notification to Qualified Beneficiaries of an irrevocable trust who have attained the age of 25 [§30-3805(8)] and except for a beneficiary of an irrevocable trust who has requested reports and information [§30-3805(9)]. As a practical matter, the following may be utilized:

1. Deliver the notice or report [§30-3809 (UTC109)]
2. Enter into a non-judicial agreement [§30-3811 (UTC111)] this is helpful in representation documentation [§§30-3822 - 30-3826 (UTC Article 3)].
3. Consent [§30-3898 (UTC1009)]
4. Waiver [§30-3809 (UTC109)]
5. Knowledge [§30-3804 (UTC 104)]

UTC	NUTC	Trustee's duty Qualified Beneficiaries [QB]	Notice Requirements <u>First Look to the Terms of a Trust</u>
105(b)(8)	30-3805(8) Form d	Notify QB of irrevocable trust who have attained the age of 25 years	for trustee's identity & trustee's reports (terms of trust will not prevail).
105(b)(9) 110(a) 813(c)	30-3805(9) 30-3810(a) 30-3878(c)	respond to request of a beneficiary of an irrevocable trust	for trustee's reports and other information reasonably related to the administration of a trust (terms of trust will not prevail).
108(d)	30-3808(d)	Notify QB of transfer of the trust's principal place of administration 60 days before transfer	include name of new jurisdiction, address & telephone number of trustee, reason for transfer, anticipated date, date to give objection of proposed transfer, not less than 60 days after notice is given for QB to object.
111	30-3811	Nonjudicial Settlement Agreements – between "interested persons" (the persons a court would require to consent to a settlement approved by court).	Any matter involving a trust may be subject to nonjudicial settlement agreements as long as the material purpose of the trust is not violated. Virtual representation is essential. 1. trust interpretation or construction 2. Approval of trustee reports 3. Direction to refrain or grant authority 4. trustee resignation or appointment 5. Transfer place of administration 6. trustee liability

UTC	NUTC	Trustee's duty Qualified Beneficiaries [QB]	Notice Requirements <u>First Look to the Terms of a Trust</u>
411	30-3837	Modification or Termination by consent of non-charitable irrevocable trust.	(a) by Settlor and all beneficiaries even if inconsistent with the material purpose of the trust. (b) all beneficiaries may modify or terminate a trust if the court concludes continuance of the trust is not necessary to achieve any material purposes of the trust.
417	30-3843	Notify QB of trust division or combination without court consent	as long as the rights of any beneficiary are not impaired and the purposes of the trust are not adversely affected.
603	30-3855(a)	Notify beneficiaries when settlor no longer has capacity to revoke a trust	then beneficiaries are entitled to request information, including annual reports as required in §30-3878, duty to inform and report.
604(a)	30-3856 (a) Form d	Notify person who may contest the validity of a trust that was revocable at the settlor's death Shorten statute of limitations to contest trust.	earlier of one year after settlor's death or 120 days after notice is sent with a copy of the trust, notice informing of the trust's existence, the trustee's name and address and the time allowed for commencing a proceeding.
701(c)(1)	30-3857(c)(1)	Notify Settlor, or if Settlor is dead or lacks capacity, notify QB of a temporary assumption of duties without accepting trusteeship	A person who is designated to be a successor trustee and declines to be trustee may act to preserve trust property.
704(c)	30-3860(c)	appoint a successor trustee	1 st by the terms of the trust, 2 nd by unanimous agreement of the QBs or 3 rd by court appointment.
705(a)(1)	30-3861(a)	Notify QB of trustee resignation	upon 30 days notice to either QBs, the settlor and all co-trustees or with court approval.
706(b)(4)	30-3862(b)(4)	remove trustee	(a) settlor, Co-trustee or a beneficiary may request the court to remove a trustee. (b) The court may remove a trustee (4) at the request of all QBs and the court finds the removal of the trustee is in the best interest of all beneficiaries.
802(b)(4) 1009	30-3867(b)(4) 30-3898	Breach of Duty of Loyalty , (acts of self dealing are voidable by beneficiary).	Exception, the beneficiary consented to trustee's conduct, ratified the transaction or released the trustee.

UTC	NUTC	Trustee's duty Qualified Beneficiaries [QB]	Notice Requirements <u>First Look to the Terms of a Trust</u>
813(a)	30-3878(a) Form d	Notify QB to keep them reasonably informed to protect their interests Also promptly respond to beneficiary's request for information.	trustee shall respond to request for information related to the trust administration.
813(b)(1)	30-3878(b)(1) Form d	Provide beneficiary copy of trust instrument upon request of beneficiary. May be excluded by terms of the trust, see 30-3805(8)	Terms of the trust may vary providing a copy of the trust but see statute of limitations to contest trust, 30-3856(a)
813(b)(2)	30-3878(b)(2) Form a	Notify QB within 60 days after accepting trusteeship	Include trustee's name, address and telephone and date of acceptance. For acceptance of trust duties after January 1, 2005.
813(b)(3)	30-3878(b)(3) Form d	Notify QB within 60 days of creation of irrevocable trust or former revocable trust becomes irrevocable [ie. by death]	Include date became irrevocable, identity of settlor, right to request a copy of trust and right to trustee's report. For acceptance of trust duties after January 1, 2005.
813(b)(4)	30-3878(b)(4)	Notify QB in advance of change of method or rate of trustee's compensation	
813(c)	30-3878(c) Form e	Keep distributees or permissible distributees informed of trust income or principal and qualified or non-qualified beneficiaries who request notice at least annually and upon termination of the trust.	Report: trust property; liabilities; receipts; disbursements, including source and amount of trustee's compensation; and trust assets with market values.
817(a)	30-3882(a) Form f	Notify Beneficiaries of proposed distribution upon termination of the trust	The beneficiary's right to object terminates 30 days after the notice is sent, provided the notice informs the beneficiary of the right to object and the time allowed for objection.
1005	30-3894	Notify Beneficiaries or representatives of breach of trust	report must disclose the existence of a potential claim for breach of trust and inform the beneficiary of the time allowed for commencing a proceeding. Such notice shortens the time to bar an action to one year rather than 4 years.
	30-38,102 Form b	Certification of Trust	30-38,103 lists the facts and information the certificate may confirm.

UTC	NUTC	Trustee's duty Qualified Beneficiaries [QB]	Notice Requirements <u>First Look to the Terms of a Trust</u>
	25-2708	Certificate of Pending Judicial Proceedings	Where real estate is described as an asset of the trust in a proceeding in County Court [or inheritance tax proceeding], the Judge shall issue a certificate to be filed with the register of deeds .
	30-2352 Nebraska Probate Code	Upon notice to QB and hearing, Court may permit trustee to renounce any restriction on or power of administration, management or allocation of benefit.	Renounce after judicial hearing upon notice to trustee

4. §30-3809 (UTC 109) Methods and Waivers of Notice

(a) Notice to a person under the Nebraska Uniform Trust Code or the sending of a document to a person under the code must be accomplished in a manner **reasonably suitable under the circumstances and likely to result in receipt** of the notice or document. Permissible **methods of notice** for sending a document include:

- a. First-class **mail**,
- b. **Personal delivery**,
- c. Delivery to the person's **last known** place of **residence** or place of **business**, or
- d. A properly directed **electronic message**.

(b) Notice otherwise required under the code or a document otherwise required to be sent under the code **need not be provided to a person whose identity or location is unknown** to and **not reasonably ascertainable** by the trustee.

(c) Notice under the code or the sending of a document under the code may be **waived** by the person to be notified of the sent document.

(d) Notice of a judicial proceeding may be given as provided in the applicable rules of civil procedure or as in §30-2220.

NON-JUDICIAL NOTICES AND JUDICIAL NOTICES

NUTC creates a new class of notices in Nebraska -- Non-judicial notices. §30-3809 applies for all notices except that §30-3809(d) requires notice of a judicial proceeding to be given under the rules of civil procedure or as in § 30-2220.

“Notice in trust administration proceedings is governed by the Nebraska Probate Code § **30-2220**. See § 30-2811. The Court may order additional persons to be notified.

“Since §30-2811 refers only to § 30-2220, it may be argued that notice in a trust administration proceeding may not be waived as waiver is provided in § 30-2221. [It may also be argued that a broader latitude of notice may be allowed under the applicable rules of civil procedure.] Since the court for good cause shown may order that notice be given in a different manner, it is theoretically possible to request the court to determine that actual notice has been given and that formal notice may be waived. § 30-2220(b).

“Since mailing of the published notice to the interested parties is required by § 30-2215 (with proof under § 25-520.01), the same argument may be raised.

“Notice is given by”

(i) by mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post office address given in his or her demand for notice, if any, or at his or her office or place of residence, if known, or

(ii) by delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing” § 30-2220(a)(1).

“In addition, notice by three publications is also required unless the court, for good cause shown provides for a different method of giving notice.”

From Nebraska Comments on Uniform Trust Code §109 Sourcebook on the Nebraska Uniform Trust Code, November 2003, page 44, (emphasis added).

NOTICE NOT REQUIRED IF IDENTITY OR LOCATION ARE UNKNOWN

CAUTION, even though §30-3809(b) (UTC109) provides that notice need not be provided to a person whose identity or location is unknown, this will not satisfy unanimous consent requirements. Unanimous consent cannot be achieved by absence. Best look to substitute consent given by another person on behalf of a beneficiary, see §30-3822 - §30-

3826 (UTC Article 3). Unless otherwise provided by the terms of the trust, unanimous consent is required in the termination of a noncharitable irrevocable trust §30-3837(a) & (b) (UTC 411), and in the appointment of a successor trustee §30-3860(c)(2) (UTC 704).

ELECTRONIC TRANSACTIONS

Notice by electronic service is new. See, §30-38,109 (UTC 1102) Documents need not be in paper form, all documents may be transmitted in electronic form. A properly directed electronic message is a valid method of notice under the Code as long as it is reasonably suitable under the circumstances and likely to result in receipt of the notice or document. See Comment to UTC 1102.

Nebraska adopted the Uniform Electronic Transaction Act (UETA), operative date January 1, 2003, §§86-612 – 86-643, R.S. Supp. 2002. Rules and regulations regarding digital signatures are §86-611, operative date January 1, 2003. UETA §86-632 requires both parties to agree to the use of electronic means. A document may be notarized with an electronic signature of the notary, §86-638. The Nebraska Comments on Uniform Trust Code § 1102 lists permissible actions under UETA.

- (a) Inter vivos trust agreements and amendments may be in electronic form and may be signed electronically.
- (b) A nonjudicial settlement agreement under §30-3811 (UTC 111) may be in electronic form and electronically signed.
- (c) An exercise of a power of withdrawal may be given to a trustee electronically.
- (d) Revocation of a trust (except by a will) may be made electronically.
- (e) An acceptance of a trust (except for a testamentary trust's original trustee) may be made electronically.
- (f) A bond may be supplied electronically.
- (g) A co-trustee may delegate or dissent electronically.
- (h) A resignation of a trustee may occur electronically.
- (i) A delegation by a trustee under §30-3872 (UTC 807) may occur electronically.
- (j) A beneficiary's consent under §30-3898 (UTC 1009) may be given electronically.
- (k) A certification of trust under §30-38,102 - §30-38,107 (UTC 1013) may be given electronically.

WAIVER

§30-3878(d) (UTC 813(d)) "A **beneficiary** may **waive** the right to a trustee's **report** or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given." Waiver does not relieve the trustee from accountability.

"Among the notices and documents to which this subsection [§30-3809(c) UTC 109] can be applied are notice

of a proposed transfer of principal place of administration §30-3878 (Section 108(d)) or

of a trustee's report §30-3878 (Section 813(c)).

to qualified beneficiaries of a proposed trust combination or division §30-3843 (Section 417),

of a temporary assumption of duties without accepting trusteeship §30-3857 (Section 701(c)(1)), and

of a trustee's resignation §30-3861 (Section 705(a)(1)).

From Comments for UTC 109 prepared by the National Conference of Commissioners of Uniform State Laws (NCCUSL), emphasis added.

5. §30-3804 (UTC 104) Knowledge

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has **actual knowledge** of it;

(2) has **received a notice** or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, **has reason to know** it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was **received by an employee having responsibility to act** for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence.

An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines.

Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

This reflects current Nebraska law except that notice to a loan officer of a bank with a trust department would not be notice to the bank, until the notice is brought to the attention (or should have been brought to the attention) of a an employee who has responsibility to act for the trust.

“Know” is used in its defined sense in:

§30-3809 (UTC 109) methods and waiver of notice
§30-3826 (UTC 305) appointment of representative,
§30-3856 (UTC 604) limitation on contest of revocable trust,
§30-3877 (UTC 812) collecting trust property,
§30-3898 (UTC 1009) non-liability of trustee upon beneficiary's consent,
release, or ratification, and
§30-38,101 (UTC1012) protection of person dealing with trustee.

But as to certain actions, a person is charged with knowledge of facts the person would have discovered upon reasonable inquiry. See Section 1005 (limitation of action against trustee following report of trustee).

From Comments for UTC 104 prepared by the National Conference of Commissioners of Uniform State Laws (NCCUSL) (emphasis added).

6. §30-3898 (UTC 1009) Beneficiary's Consent, Release and Ratification

A trustee is not liable to a beneficiary for breach of trust if the beneficiary, **consented to the conduct** constituting the breach, **released** the trustee from liability for the breach, or **ratified** the transaction constituting the breach, unless:

- (1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

"Comment This section is based on Sections 216 through 218 of the Restatement (Second) of trusts (1959). A consent, release, or affirmance under this section may occur either before or after the approved conduct. This section requires an affirmative act by the beneficiary. A failure to object is not sufficient. See Restatement (Second) of trusts § 216 cmt. a (1959). A consent is binding on a consenting beneficiary although other beneficiaries have not consented.

"See Restatement (Second) of trusts § 216 cmt. g (1959). To constitute a valid consent, the beneficiary must know of the beneficiary's rights and of the material facts relating to the breach.

"See Restatement (Second) of trusts § 216 cmt. k (1959). If the beneficiary's approval involves a self-dealing transaction, the approval is binding only if the transaction was fair and reasonable.

"See Restatement (Second) of trusts §§ 170(2), 216(3) & cmt. n (1959).

"An approval **by the settlor of a revocable trust** or by the holder of a presently exercisable **power of withdrawal binds all** the beneficiaries. See Section 603. A beneficiary is also bound to the extent an approval is given by a person authorized to represent the beneficiary as provided in Article 3."

From Comments for UTC 1009 prepared by the National Conference of Commissioners of Uniform State Laws (NCCUSL) (emphasis added).

7. §30-3855 (UTC 603) Revocable Trust and Notices

(a) While a trust is **revocable and the settlor has capacity** to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Section 603 provides that while a trust is revocable and the settlor has capacity to revoke the trust, the rights of the beneficiaries are subject to the settlor's control.

Section 604 prescribes a statute of limitations on contest of revocable trusts. Sections 601 and 604, because they address requirements relating to creation and contest of trusts, are not subject to alteration or restriction in the terms of the trust.

See Section 105. Sections 602 and 603, by contrast, are not so limited and are fully subject to the settlor's control.

"This section has the effect of postponing the enjoyment of the rights of the beneficiaries of a revocable trust until the death or incapacity of the settlor or other person holding the power to revoke the trust. This section thus recognizes that the settlor of a revocable trust is in control of the trust and should have the right to enforce the trust.

"Pursuant to this section, the duty under Section 813 to inform and report to beneficiaries is owed to the settlor of a revocable trust as long as the settlor has capacity. In the case of a trust having several settlors, subsection (b) clarifies that this duty extends to all settlors having capacity. Should fewer than all settlors revoke or modify their portion of the trust, the trustee must notify the other settlor or settlors of the action. See Section 602 Comment.

"If the settlor loses capacity, subsection (a) no longer applies, with the consequence that the rights of the beneficiaries are no longer subject to the settlor's control. The beneficiaries are entitled to request information concerning the trust and the trustee must provide the beneficiaries with annual trustee reports and whatever other information may be required under Section 813. However, because this section **may be freely overridden in the terms of the trust, a settlor is free to deny the beneficiaries these rights, even to the point of directing the trustee not to inform them of the existence of the trust.** Also, should an incapacitated settlor later regain capacity, the beneficiaries' rights will again be subject to the settlor's control. The **cessation of the settlor's control** upon the settlor's **incapacity** or death does **not mean** that the beneficiaries **may reopen transactions** the settlor approved while having capacity.

"Typically, the settlor of a revocable trust will also be the sole or primary beneficiary of the trust. Upon the settlor's incapacity, any right of action the settlor-trustee may have against the trustee for breach of fiduciary duty will pass to the settlor's agent or conservator.

"Subsection (c) makes clear that a holder of a power of withdrawal has the same powers over the trust as the settlor of a revocable trust. Equal treatment is warranted due to the holder's equivalent power to control the trust. For the definition of power of withdrawal, see §103(10)."

From Comments for UTC prepared by the National Conference of Commissioners of Uniform State Laws (NCCUSL) (emphasis added).

8. §30-3856 (UTC 604)
Limitation on Action Contesting
Validity of Revocable Trust;
Distribution of Trust Property

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) **one year** after the settlor's death; or

(2) **one hundred twenty days** after the trustee **sent** the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may **proceed to distribute** the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(c) A beneficiary in receipt of property from a trust that is determined to have been invalid is liable to **return**:

(1) the property and its income since distribution, if the beneficiary has the property; or

(2) the value of the property as of the date of disposition of the property, and its income and gain received by the beneficiary, if the beneficiary has disposed of the property.

See also §30-3878 (UTC 813) Duty to Inform and Report.

Section 604 prescribes a statute of limitations to contest the validity of a trust that is revocable at the Settlor's death or one year after settlor's death. The statute of limitations may be shortened to 120 days after the trustee sends a copy of the trust instrument and

notice to a person who may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death.

A person is defined as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity." §30-3803(9) (UTC 103(9))

The notice shall inform the person of the trust's existence, or the trustee's name and address, and of the time allowed for commencing a proceeding. §30-3856(a)(2)

Because Section 604 recites the requirements relating to contesting trusts, it is not subject to alteration or restriction in the terms of the trust. See §30-3805(6)

The rules for improper distribution and return are similar to the Nebraska Probate Code.

Prepared on February 12, 2004 by **Heinisch Law Office** Telephone 402-759-3122, Fax 402-759-3123

\\F\1f\2004 Trust Seminar\NCLE Trust Present.wpd Geneva State Bank Bldg, Suite 200, Geneva, NE 68361-0311 3:32 pm

Appendix

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The following forms use the same variables

- a. Notice of Successor Trustee
- b. Notice of Trustee Authority
- c. Notice, Spendthrift Restriction Is a Material Purpose of the Trust
- d. Notice of Trust
- e. Trust Annual Report
- f. Proposed Schedule of Distribution
- g. Waiver of Trustee's Reports
- h. Representation
- i. Amendment of Revocable Trust

Variables

–search and replace with client’s information

Name of Settlor Patrick Timmer
Name of Trust Patrick Timmer 2000 Trust
Date of Trust July 4, 2000
Name of Trustee Della Street
Trustee Address line 1 896 G Street, Suite 200
Trustee Address line 1 Geneva, NE 68361
Trustee Telephone Number 402. 759-3122
Settlor Date of Death February 12, 2002
Name of Adult Competent Beneficiary Frank Solich
Name of Adult Incompetent Beneficiary Oscar D. Grouch
Name of Conservator of Incompetent Beneficiary Frank Solich
Name of Adult, Location Unknown Amelia Earhart
Name of Parent June Cleaver
Name of Minor Beneficiary Wally Cleaver
Name of Agent Steve Pederson
Name of Successor Trustee Erin Brachovich
Name of County Fillmore

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NOTICE OF SUCCESSOR TRUSTEE

State of Nebraska, County of Fillmore ss.

Upon oath, the undersigned states that:

- 2. Erin Brachovich, is the Trustee of the
Patrick Timmer Trust dated July 4, 2000.
- 3. Take notice that the above trust has not been terminated and is in good standing.
- 4. The Settlor of the Trust, Patrick Timmer, was the initial Trustee, and died on February 12, 2002, a resident of Fillmore County Nebraska. The Trust provides as follows for a successor Trustee:

Article II, page 2, "Upon my death, Erin Brachovich shall become the successor Trustee."

- 5. The Trust owns the following real estate:

Black acre farm legal description.

- 6. By this document, Erin Brachovich acknowledges that **she accepts the duties** and responsibilities as successor Trustee and agrees to abide by the terms of the trust and submits to the jurisdiction of the Fillmore County Court in all matters concerning the trust.
- 7. The undersigned hereby certifies that she mailed this Notice by first class U.S. mail postage prepaid on **March 5, 2004** to the following qualified beneficiaries at the designated addresses:

Name:	Mailing Address:
_____	_____
_____	_____

- 8. The undersigned states that after diligent investigation and inquiry, she is unable to ascertain and does not know the identity of any other person that is to receive this Notice of Successor Trustee as required under the Nebraska Uniform Trust Code §30-3878(b)(2).

Further Affiant saith not.

Erin Brachovich

Subscribed to and sworn by Erin Brachovich on this **5th day of March 2004.**

Notary Public

See §30-3878(b)(2) (UPC 8130)(b)(2)
Notify Qualified beneficiaries within 60 days after acceptance

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CERTIFICATE OF TRUSTEE AUTHORITY TO GUARANTEE

State of Nebraska, County of Fillmore ss.

Upon oath, the undersigned states that:

1. Della Street is the Trustee of the
Patrick Timmer 2000 Trust dated July 4, 2000.
2. Patrick Timmer is the Settlor of the Trust which is an irrevocable trust.
3. The Trust has not been terminated and is in good standing.
4. The Trustee has authority to **pledge Trust property** as provided in the Trust:

Article II, paragraph 19, page 2, [My Trustee may] "pledge Trust property to guarantee loans made by others to the beneficiary."

5. The Trust owns the following described real estate which shall be pledged to secure the \$10.00 debt of Frank Solich, a beneficiary of the Patrick Timmer 2000 Trust dated July 4, 2000, to-wit:

Black acre farm legal description.

6. The trust has not been revoked or amended to make any representations contained in this certification of trust incorrect and the signatures to this document are those of all the acting trustees.

Further Affiant saith not.

Della Street

Subscribed to and sworn by Della Street this **5th** day of **March 2004**.

Notary Public

See §30-38,103

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**NOTICE
SPENDTHRIFT RESTRICTION
IS A MATERIAL PURPOSE OF THE TRUST**

State of Nebraska, County of Fillmore ss.

Upon oath, the undersigned states that:

1. Della Street, is the Trustee of the
Patrick Timmer Trust dated July 4, 2000.
2. Take notice that the above irrevocable trust has not been terminated and is in good standing.
3. Della Street is familiar with the Settlor's intent that the **spendthrift** provision of the Trust is a **material purpose** of the Trust.
4. The Trust is a Spendthrift Trust and provides on page ____ as follows:

Section 21 Spendthrift Restriction: The interest of each beneficiary of this Trust in principal or income of this Trust shall be free from the control or interference of any creditor of the beneficiary or of the spouse of a married beneficiary and shall not be subject to assignment, encumbrance, hypothecation, attachment, execution or other process of law or susceptible of anticipation or alienation, provided a beneficiary may disclaim and renounce an interest in this Trust as permitted by law and such share shall be held, administered and distributed in this Trust in the same manner as if the beneficiary who disclaimed died at the time of disclaimer.

5. The undersigned, as Trustee of the Trust, affirms and ratifies the Trust and by this document is not attempting to modify or amend the Trust, rather she is establishing by evidence, other than the provisions expressed in the Trust instrument, that the terms of the trust under the Nebraska Uniform Trust Code, § 30-3803(18) includes a Spendthrift provision as a material purpose of the Trust contrary to the presumption of § 30-3837(c).
6. Note that Nebraska Uniform Trust Code prevails over the terms of a trust as to the rights of certain creditors and assignees to reach a trust with a spendthrift provision as provided in § 30-3846 to § 30-3852, [see § 30-3805(b)(5)].

Further Affiant saith not.

Della Street

Subscribed to and sworn by Della Street this **5th** day of **March 2004**.

Notary Public

§30-3803(18) (UTC103(18)) "Terms of a trust ... may be established by other evidence that would be admissible in a judicial proceeding."

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NOTICE OF TRUST

1. The Trustee of the Patrick Timmer 2000 Trust, dated July 4, 2000 is now:

Name: **Della Street**
 Address: 896 G Street, Suite 200
 Geneva Nebraska 68361
 Telephone Number: 402. 759-3122 [§30-3878 requires the telephone number but not §30-3856]

2. Patrick Timmer, the Settlor of the Patrick Timmer 2000 Trust, died on February 12, 2002.

3. Della Street accepted the Trusteeship on February 15, 2002.
 [this notice is to be mailed within 60 days after the acceptance date and within 60 days after the Trustee knows the Trust is irrevocable, §30-3878(b)(2) & (3)]

4. A copy of the Trust is annexed hereto. Take notice that the above Trust has not been terminated and is in good standing.

5. The qualified beneficiaries are hereby notified that they have a right to request a Trustee's report as provided in §30-3878(c) of the Nebraska Uniform Trust Code.
 [A qualified beneficiary of an irrevocable Trust who has attained the age of 25 has a right to request Trustee's reports, to know the existence of the Trust and the identity of the Trustee. §30-3805(8)]

6. The time allowed for commencing a proceeding to contest the validity of this irrevocable Trust that was revocable until the Settlor's death is one hundred twenty (120) days after the Trustee has sent a copy of the Trust instrument and this notice in accordance with the Nebraska Uniform Trust Code, § 30-3856(a)(2).

7. The undersigned hereby certifies that she mailed this Notice by first class U.S. mail postage prepaid on **March 5, 2004** to the following at the designated addresses:
 Name: _____ Mailing Address: _____

8. The undersigned states that after diligent investigation and inquiry, she is unable to ascertain and does not know the identity of any other person that is to receive this Notice of Trust as required under the Nebraska Uniform Trust Code.

Dated: **March 5, 2004.**

Della Street, Trustee

See §30-3856(a) (UTC 604) send to persons who may commence a contest of the validity of the trust and §30-3878(b)(3) (UTC 813) to qualified beneficiaries within 60 days after the trustee knows the trust is irrevocable.

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TRUST ANNUAL REPORT

State of Nebraska, County of **Fillmore** ss.

Upon oath, the undersigned states that:

1. **Della Street**, is the Trustee of the
Patrick Timmer 2000 Trust dated July 4, 2000.
2. Take notice that the above Trust has not been terminated and is in good standing.
3. This Report shall be given to the distributees or permissible distributees of the Trust income or principal, and to other qualified or non-qualified beneficiaries who request it. Upon a vacancy in the trusteeship the report shall be sent to the qualified beneficiaries by the former trustee unless a cotrustee remains in office.
4. This Report shall consist of the following Exhibits, which are attached and incorporated herein by this reference which reports the financial status of the trust as of December 31, 2004 and the receipts and disbursements for the full year 2004:
 - a. Exhibit A, a list of all Trust property including the respective market values.
 - b. Exhibit B, a list of all liabilities.
 - c. Exhibit C, a list of all receipts and disbursements,
5. The amount of the Trustee's compensation is \$ _____ and the source from which it was paid is _____.
6. The Trustee confirms that this report is just and true in all respects and to the best of the Trustee's knowledge and belief she has accounted for all of the assets, indebtedness, receipts and disbursements that have come into her possession or knowledge or the possession of anyone for the Trustee.
7. The undersigned hereby certifies that she mailed this Notice by first class U.S. mail postage prepaid on **March 5, 2004** to the following at the designated addresses:
 Name: _____ Mailing Address: _____

See Form h, Representation, §§30-3822 to 30-3826 to add persons who are minors, unborn, incapacitated, identity unknown, or location unknown.

8. The undersigned states that after diligent investigation and inquiry, she is unable to ascertain and does not know the identity of any other person that is to receive this Annual Report as required under the Nebraska Uniform Trust Code §30-3878(c).

Dated: _____

Della Street, Trustee

See §30-3878(c) (UTC 813) This report is to be given annually and upon termination of the trust. Also this report is to be given to the qualified beneficiaries from the former trustee upon the vacancy of a trusteeship unless a cotrustee remains in office. A personal representative, conservator or guardian may send the report on behalf of a deceased or incapacitated trustee.

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PROPOSED SCHEDULE OF DISTRIBUTION

1. The Trustee of the Patrick Timmer 2000 Trust, dated July 4, 2000 is:

Name: **Della Street**
 Address: 896 G Street, Suite 200
 Geneva Nebraska 68361
 Telephone Number: 402. 759-3122

2. Patrick Timmer, is the Settlor of the Patrick Timmer 2000 Trust.

3. This Schedule of Distribution is the proposal for distribution upon termination ~~for partial termination~~ of the trust and is to be sent to the beneficiaries of the trust. The following is the name and address of each proposed distributee and a description of the funds and property proposed to be distributed:

4. The right of any beneficiary to object to this proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after this proposal was sent in accordance with the Nebraska Uniform Trust Code, § 30-3882(a).

5. The undersigned hereby certifies that she mailed this Notice by first class U.S. mail postage prepaid on **March 5, 2004** to the following beneficiaries at the designated addresses:

Name: _____ Mailing Address: _____

See Form h, Representation, §§30-3822 to 30-3826 to add beneficiaries who are minor, unborn, incapacitated, identity unknown, or location unknown

6. The undersigned states that after diligent investigation and inquiry, she is unable to ascertain and does not know the identity of any other beneficiary.

Dated: _____

Della Street, Trustee

See §30-3882(a) (UTC 817)

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WAIVER OF TRUSTEE'S REPORTS

The undersigned, a beneficiary of the **Patrick Timmer 2000 Trust**, dated July 4, 2000 hereby **waives his right to a Trustee's report** or other information otherwise required to be furnished under § 30-3878 of the Nebraska Uniform Trust Code. The undersigned acknowledges that he understands that he may withdraw this waiver at any time.

See Form h, Representation, §§30-3822 to 30-3826. Add the waiver of beneficiaries who are minor, unborn, incapacitated, identity unknown, or location unknown.

Dated: _____

Frank Solich

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Representation in Nonjudicial Agreement [§30-3811 (UTC 111)]

A person under §§30-3822 to 30-3826 may represent and bind another person with the same effect as if notice were given to the other person.

1. §30-3824 (UTC 303) Representation by **Fiduciaries and Parents**

- a. I, Frank Solich, having been appointed by the County Court of Fillmore County, Nebraska at case number **05-9999** as the as **conservator** of **Oscar D. Grouch**, an incapacitated person, and on his own behalf hereby **consents to the above agreement**. This consent is intended to be binding upon the ward, Oscar D. Grouch, pursuant to *Neb. Rev. Stat.* §30-3822(b) and §30-3824(1).
- b. Steve Pederson, **Agent**, pursuant to a Power of Attorney granted by Patrick Timmer, having authority to **approve** the accounting as final and binding, hereby approves the **above accounting** and consents to treat the **above accounting as final and binding** pursuant to *Neb. Rev. Stat.* §30-3824(3). This consent is considered to be a **nonjudicial settlement agreement** pursuant to *Neb. Rev. Stat.* §30-3811.

The Agent must have **authority to act** with respect to the particular question, §30-3824(3) (UTC 303(3)) usually a general grant of authority in a Power of Attorney may be sufficient to confer the necessary authority except with respect to amendment, revocation or termination of the Trust. The Agent's powers should be expressly authorized by the terms of the Trust or the power of attorney [preferably in both]. §30-3837(a) (UTC 411(a)), §30-3854(e) (UTC 602(e)). See UTC Comment for 303.

§49-1544 Specific Authority for Trusts, defined (Short Form Act as amended by NUTC) and §49-1550 General Power for Fiduciary Relationships, defined. (Short Form Act). See UTC Comment for 303.

- c. June Cleaver as **parent** and natural guardian of Wally Cleaver, a **minor child**, and for any other unborn children of hers, and on her own behalf hereby **consents to the above agreement**. This consent is intended to be binding upon the minor and unborn children of June Cleaver pursuant to *Neb. Rev. Stat.* §30-3822(b) and §30-3824(6).
- ### 2. §30-3825 (UTC 304) Virtual Representation by Person having **Substantially Identical Interest**
- a. I, **Della Street**, hereby approves the **above accounting** and hereby consents to treat the **above accounting as final and binding**.

- b. This consent is considered to be a **nonjudicial settlement agreement** pursuant to *Neb. Rev. Stat.* §30-3811. In approving this annual accounting I am acting on behalf of:
 - i. myself
 - ii. my brother, Oscar D. Grouch, who is an adult who is **not mentally competent**;
 - iii. my sister, Amelia Earhart, who is an adult but whose **location is unknown** and is not reasonably ascertainable after diligent efforts have been made to locate her;
 - iv. my brother, Wally Cleaver, who is a **minor**; and
 - v. any other **unborn** siblings who might acquire an interest in the trust in the event of their birth.

 - c. These interests are all **substantially identical** to my interest and my intention is to bind all of the persons named in this paragraph pursuant to *Neb. Rev. Stat.* §30-3822(b) and §30-3825.
3. **§30-3826** (UTC 305) Appointment of **Representation** by County **Court**
- a. I, **Della Street**, having been appointed by the County Court of Fillmore County, Nebraska, case number **05-9999** as the representative of:
 - i. Wally Cleaver, the **minor child** of June Cleaver;
 - ii. Oscar D. Grouch, an **incapacitated** adult individual;
 - iii. Amelia Earhart, an individual whose **location is unknown**;
 - iv. any **unborn** individuals who would be descendants of June Cleaver and
 - v. any other person whose **identity is unknown** who may become a **beneficiary** of the Patrick Timmer 2000 Trust dated July 4, 2000,

 - b. now, on behalf of the individuals for whom I have been appointed representative by the court, I hereby consent to the **above judicial settlement agreement** and bind the above individuals as if they had individually signed the above settlement agreement while adult and mentally competent.

The source of the above clauses is the “The Nebraska Uniform Trust Code From the Trenches” by William J. Lindsay, Jr. in the February 2004 “The Nebraska Lawyer.”

Amendment of a Revocable Trust Created under NCLE Trust System II (1996).

This amendment removes much of the flexibility of the NUTC. It also removes pitfalls that may cause grief for non-corporate trustees. This amendment is not all inclusive and must be edited to the needs of the individual client. Finally, this amendment is not the recommendation of NCLE nor the members of the NUTC Interim Study Committee.

FIRST AMENDMENT TO PATRICK TIMMER 2000 TRUST

I, Patrick Timmer, of the County of Fillmore, State of Nebraska, having created the Patrick Timmer 2003 Trust dated July 4, 2000, do hereby make, publish and declare this to be a First Amendment to the Patrick Timmer 2000 Trust:

I.

I hereby revoke **ARTICLE 2 REVOCABILITY AND AMENDMENT** on page One (1) of the Patrick Timmer 2000 Trust dated July 4, 2000, and substitute in lieu thereof the following:

2.1 Amendment and Revocation by Settlor: I may revoke or amend this Trust at any time. Any amendment or revocation shall be in writing and shall be signed by me. A revocation may be in whole or in part. After my death this trust is irrevocable.

2.2 Revocation or Amendment By Will: I may not revoke or amend this Trust by my will. [~~override §30-3854(c)(2)(A)~~]

2.3 Amendment and Revocation by Agent under a Power of Attorney: My agent under a Power of Attorney shall not be authorized to revoke or amend this Trust. [~~override §30-3854(e)~~]

2.4 Amendment and Revocation by Conservator or Guardian: While a trust is revocable, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. [~~override §30-3855(a) remove the requirement that the Settlor must have capacity to revoke the trust~~]. Should I become incapacitated, this trust shall not become irrevocable, a Conservator appointed on my behalf, or if no Conservator has been appointed, a Guardian appointed on my behalf may exercise my powers with respect to revocation, amendment or distribution, with the approval of the Court supervising the Conservatorship or Guardianship in accordance with Nebraska Uniform Trust Code §§30-3837(a) and 30-3854(f).

2.5 Modification or Termination Only by Court Approval: After this Trust becomes irrevocable, it may not be modified or terminated under the Nebraska Uniform Trust Code §30-3837 except by the approval of the Court. Consent to modify or terminate this Trust by the beneficiaries shall not be required.

2.6 Material Purposes: In considering the modification or termination of the Trust, the Court should consider the following material purposes of the trust:

2.6.1 The health, support and maintenance of my spouse is a material purpose of the trust.

2.6.2 The retention in the trust of farm land to be made available at a modest rental to one or more of my grandchildren who will farm the land is a material purpose of the trust.

2.6.3 Security for my daughters' retirement is a material purpose of the Trust.

2.6.4 After my death the spendthrift provision is a material purpose of the Trust. [~~override §30-3855(a)~~].

2.7 Value Insufficient to Justify Trust: After notice to the qualified beneficiaries, when the trust consists of trust property having a **total value less than** fifty thousand dollars (**\$50,000.00**) the Trustee may **terminate** the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. [~~override §30-3840(a)~~].

2.8 Override Trustee Limited Power of Invasion: The terms of this trust expressly indicate that Nebraska Uniform Trust Code §30-3879(b)(1) does not apply. [~~Pertains to applying a limited invasion standard to discretionary distributions for a trustee who may make discretionary distributions to or for the trustee's personal benefit.~~]

II.

I hereby revoke **ARTICLE 5 FAMILY TRUST, Section 5.9 Avoid Future Perpetual Interest** on page Six (6) of the Patrick Timmer 2000 Trust dated July 4, 2000, and substitute in lieu thereof the following:

Section 5.9 Rule Against Perpetuities Does Not Apply: The rule against perpetuities does not apply to this Trust as permitted by Nebraska Statute 76-2005(9) R.R.S. 2002.

III.

I hereby revoke **ARTICLE 7 ADMINISTRATION OF TRUST Section 7.1 Included Powers**, on pages Seven (7) and Eight (8) of the Patrick Timmer 2000 Trust dated July 4, 2000, and substitute in lieu thereof the following:

7.1 **Included Powers:** Specifically included within the powers granted to the Trustee and not in limitation thereof, with respect to all trust property, whether real or personal, tangible or intangible (including all forms of securities) to exercise, in the Trustee's discretion, the Trustee may:

- 7.1.1 collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- 7.1.2 acquire or sell property, for cash or on credit, at public or private sale;
- 7.1.3 exchange, partition, or otherwise change the character of trust property;
- 7.1.4 deposit trust money in an account in a regulated financial- service institution;
- 7.1.5 borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- 7.1.6 with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- 7.1.7 with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - 7.1.7.1 vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - 7.1.7.2 hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - 7.1.7.3 pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
 - 7.1.7.4 deposit the securities with a depository or other regulated financial-service institution;
- 7.1.8 with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to

- public use or grant public or private easements, and make or vacate plats and adjust boundaries;
- 7.1.9 enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;
- 7.1.10 grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
- 7.1.11 insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;
- 7.1.12 abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
- 7.1.13 with respect to possible liability for violation of environmental law:
- 7.1.13.1 inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;
- 7.1.13.2 take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;
- 7.1.13.3 decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
- 7.1.13.4 compromise claims against the trust which may be asserted for an alleged violation of environmental law; and
- 7.1.13.5 pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;
- 7.1.13.6 pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
- 7.1.14 pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;
- 7.1.14.1 exercise elections with respect to federal, state, and local taxes;
- 7.1.14.2 select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
- 7.1.15 make loans out of trust property not to exceed fifty percent (50%) of the value of the trust, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;
- 7.1.16 pledge trust property not to exceed fifty percent (50%) of the value of the trust to guarantee loans made by others to the beneficiary;
- 7.1.17 appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

- 7.1.18 pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
 - 7.1.18.1 paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
 - 7.1.18.2 paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;
 - 7.1.18.3 if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or
 - 7.1.18.4 managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;
 - 7.1.18.5 on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
- 7.1.19 resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;
- 7.1.20 prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
- 7.1.21 sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;
- 7.1.22 on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

~~NON-STATUTORY AUTHORITY:~~

- 7.1.23 retain, invest and reinvest trust assets without investment restrictions and without diversification;
- 7.1.24 allocate items of income or expense to either trust income or principal without restriction;
- 7.1.25 access a safe deposit box and add to or remove contents;
- 7.1.26 represent this Trust in regard to any government agency, including, but not limited to, Social Security Administration, Medicare and Medicaid, Department of Health and Human Services and Farm Service Agency;
- 7.1.27 purchase pre-paid, pre-need funeral arrangements, a casket, a cemetery lot, a marker, grave opening and other burial needs and services for me. The Trustee may designate as irrevocable the amount or amounts permitted under Medicaid standards for such prepaid arrangements; and
- 7.1.28 lease to the trustee or to the trustee's family the farmland owned by the trust at the same rate as provided in the lease at the time of my death or at the low end of the scale of cash or crop share farm rental in the area where the farm land is located.

III.

I hereby revoke **ARTICLE 7 ADMINISTRATION OF TRUST, Section 7.2 Spendthrift Restriction**, on page Nine (9) of the Patrick Timmer 2000 Trust dated July 4, 2000, and substitute in lieu thereof the following:

Section 7.2 Spendthrift Restriction: After my death, this trust is a spendthrift trust. This spendthrift provision is a material purpose of the Trust. The interest of each beneficiary of this Trust in principal or income of this Trust shall be free from the control or interference of any creditor of the beneficiary or of the spouse of a married beneficiary and shall not be subject to voluntary or involuntary assignment, encumbrance, hypothecation, attachment, execution or other process of law or susceptible of anticipation or alienation, except as restricted by the Nebraska Uniform Trust Code, § 30-3805(5) and provided a beneficiary may disclaim and renounce an interest or share in this trust as permitted by law and such renounced interest or share shall be held, administered and distributed in this Trust in the same manner as if the beneficiary who disclaimed died at the time the disclaimer became effective.

IV.

I hereby revoke **ARTICLE 7 ADMINISTRATION OF TRUST, Section 7.3 Reports and Inspection of Records**, on page Nine (9) of the Patrick Timmer 2000 Trust dated July 4, 2000, and substitute in lieu thereof the following:

7.3 Reports and Inspection of Records:

- 7.3.1 As long as the Trust is **revocable**, the Trustee shall **not have a duty to inform and report** under Nebraska Uniform Trust Code §30-3878.
- 7.3.2 After the Trust has become **irrevocable**, the Trustee:
- 7.3.2.1 shall give the Qualified Beneficiaries who have attained 25 years of age notice of:
- 7.3.2.1.1 existence of the Trust,
- 7.3.2.1.2 identity of the Trustee, and
- 7.3.2.1.3 Qualified Beneficiaries' right to Trustee's reports. [§30-3805(8)]
- 7.3.2.2 shall **respond** to the **request** of a **beneficiary** for Trustee reports and other information reasonably related to the administration of a Trust. [§30-3805(9)]
- 7.3.2.3 shall notify the Qualified Beneficiaries of **acceptance of trusteeship** by a Successor Trustee, providing the Trustee's name, address and telephone number. The time limit for delivery of this notice has been eliminated. [§30-3878(b)(2)]
- 7.3.2.4 shall notify the Qualified Beneficiary of any **change** in the method or rate of Trustee's **compensation**. [§30-3878(b)(4)]

- 7.3.2.5 shall **not have a duty to inform and report** under Nebraska Uniform Trust Code §30-3878, except as specifically designated herein.
- 7.3.3 The Trustee shall **not** be required to **file any accounting** or reports **to any Court**, except as may be ordered by a Court.
- 7.3.4 **Notice to a person** who may **represent** and bind another person under Nebraska Uniform Trust Code §30-3822 to §30-3826 has the same effect as if notice were given directly to the other person. Including but not limited to
- 7.3.4.1 a **parent** representing and binding the parent's minor or **unborn child**, § 30-3824(6);
- 7.3.4.2 a **minor, incapacitated, or unborn** individual, or a person whose **identity or location is unknown** and not reasonably ascertainable, may be represented by and **bound** by another having a **substantially identical interest** with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented, §30-3825; and
- 7.3.4.3 the **court** may **appoint** a representative to receive notice, give consent and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose **identity or location is unknown**, §30-3825(a).
- 7.3.5 **Notice** otherwise required under the Nebraska Uniform Trust Code or document otherwise required to be sent under the code **need not be provided** to a person whose **identity or location is unknown** to and not reasonably ascertainable by the Trustee, §30-3809(b).
- 7.3.6 Any qualified or non-qualified beneficiary may, at reasonable times, **inspect** the accounting records and assets of the Trust.
- 7.3.7 The Trustee shall be under **no duty to register** this Trust.
- 7.3.8 Non-judicial **notice** may be **given by** first-class mail, personal delivery, private carrier (as UPS or FedEx), delivery to the person's last-known place of residence or place of business, or a properly directed electronic message. [§30-3809(a)]
- 7.3.9 The Trustee **reports** shall be adequate if the reports are delivered **annually** and are delivered at the termination of

the trust to a beneficiary who has requested the reports consisting of

- 7.3.9.1 the Trust Fiduciary Federal Income **Tax Return** filed by the Trustee with the Internal Revenue Service or in lieu thereof a statement of the annual receipts and disbursements of the trust.
 - 7.3.9.2 an itemized report of the assets of the Trust, including the respective market values, in lieu thereof a copy of the year end **bank statements** and **stock brokerage reports** shall suffice.
 - 7.3.9.3 the **county assessed value** of the real estate which is a part of the Trust assets shall be adequate valuation for annual reports and termination reports without further appraisal.
 - 7.3.9.4 the Trustee shall **not be required to hire an appraiser** to determine the market value of any trust asset for an annual report or termination reports.
- 7.3.10 A report substantially the same as one to be given upon termination of the Trust shall be sent to the qualified beneficiaries by the former trustee upon a vacancy in a trusteeship, unless a cotrustee remains in office. A report may be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee §30-3878(c) (UTC 813(c)).
- 7.3.11 A Beneficiary may **waive** the right to a trustee's report or other information otherwise required to be furnished under Nebraska Uniform Trust Code §30-3878. With respect to future reports and other information a beneficiary may withdraw a waiver previously given.
[§30-3878(d) see also §30-3809(c)]

V.

I hereby ratify and confirm the Patrick Timmer 2000 Trust dated July 4, 2000, except insofar as the foregoing provisions amend the same.

IN WITNESS WHEREOF, I have hereunto set my hand as Settlor and in acceptance of this First Amendment, I as Trustee have hereunto caused this First Amendment to the Patrick Timmer 2000 Trust dated July 4, 2000 to be executed on February ____, 2004, in multiple counterparts each of which shall constitute an original.

Patrick Timmer, Settlor and Trustee

State of Nebraska, County of Fillmore, ss.

The foregoing First Amendment to the Patrick Timmer 2000 Trust dated July 4, 2000 was acknowledged before me on February ____, 2004, by Patrick Timmer, Settlor and Trustee as her voluntary act and deed.

Notary Public

HLO File #93.008.02B

Prepared on February 12, 2004 (3:32pm) by **Heinisch Law Office** Telephone 402-759-3122, Fax 402-759-3123
\\F1f\2004 Trust Seminar\NCLE Trust Foms.wpd E:\#47-0724621 Geneva State Bank Bldg, Suite 200, Geneva, NE 68361-0311 3:32 pm

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