

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN
Friday, November 14, 2025**

Regular Meeting Agenda

- I. Commencement (Nathan Piwowarski)
 - A. Call to Order and Welcome
 - B. Attendance:
 - 1. Zoom Roll Call
 - 2. Confirmation of In-Person Attendees
 - 3. Excused Absences (Hon. David Murkowski, David Sprague, Sandra D. Glazier)
- II. Monthly Reports
 - A. Lobbyist's Report (Public Affairs Associates)
 - B. Minutes of Prior Council Meetings (Melisa Mysliwiec) – **Attachment 1**
 - C. Chair's Report (Nathan Piwowarski) – **Attachment 2**
 - D. Treasurer's Report (Angela Hentkowski) – **Attachment 3**
- III. Committee Reports
 - A. Committee on Special Projects (Dan Hilker)
 - B. Amicus Curiae (Andy Mayoras) – **Attachment 4**
 - C. Annual Meeting (Nathan Piwowarski)
 - D. Awards (Katie Lynwood)
 - E. Budget (Melisa Mysliwiec)
 - F. Bylaws (David Lucas)
 - G. Charitable and Exempt Organizations (Rebecca Wrock)
 - H. Citizens Outreach (Kathleen Goetsch)
 - I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David)
 - J. Electronic Communications (Susie Chalgian)
 - K. Ethics and Unauthorized Practice of Law (Alex Mallory)
 - L. Guardianship, Conservatorship, and End of Life (Sandy Glazier)
 - M. Legislation Development and Drafting (Rob Tiplady and Rick Mills)
 - N. Legislation Monitoring and Analysis (Mike Shelton)

- O. Legislative Testimony (Dan Hilker)
- P. Membership (Ernscie Augustin)
- Q. Nominating (Mark Kellogg)
- R. Planning (Katie Lynwood)
- S. Probate Institute (Christine Savage)
- T. Real Estate (Angela Hentkowski)
- U. State Bar and Section Journals (Melisa Mysliwiec)
- V. Tax (J.V. Anderton) – **Attachment 5**
- W. Assisted Reproductive Technology (Nancy Welber)
- X. Electronic Wills (Kathleen Cieslik)
- Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger)
- Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady)
- AA. Premarital Agreements (Chris Savage)
- BB. Trust Accounts (Luckenbach)
- CC. Uniform Community Property Disposition at Death Act (Jim Spica)
- DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowarski and Kathleen Cieslik)
- EE. Undue Influence (Ken Silver)
- FF. Uniform Fiduciary Income and Principal Act (Jim Spica)
- GG. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume)

IV. Good of the Order

V. Adjournment of Regular Meeting

Roundtable (Time Permitting)

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Saturday, October 18, 2025

Minutes

I. Commencement

A. Call to Order and Welcome (Nathan Piwowarski):

Chairperson Nathan R. Piwowarski called the meeting to order at 10:00 a.m. following the conclusion of the Committee on Special Projects meeting. Mr. Piwowarski announced that the meeting was being recorded via Zoom solely for the purpose of preparing the minutes, and that the recording would be deleted once the minutes were approved by the Council.

B. Attendance: Roll call of In-Person attendees and Zoom attendees:

Ernscie Augustin, James F. Anderton, Georgette David, Angela Hentkowski, Daniel Hilker, Warren Krueger, David Lucas, Alexander S. Mallory, Richard C. Mills, Nathan Piwowarski, Christine Savage, Michael D. Shelton, David Sprague, Joseph J. Viviano, Rebecca Wrock, Theresa Castle, Shannon DeWall, Peter Langley (Public Affairs Associates), Marguerite Munson Lentz, David Lentz, Katie Lynwood, Hon. David M. Murkowski, Matt Wiebe, James P. Spica.

C. Excused Absences:

Melisa M. W. Mysliwiec, Sandra D. Glazier, Nicholas Reister, Kathleen Cieslik, Patricia E. Davis Daniel W. Borst, Susan L. Chalgian, Elizabeth L. Luckenbach, and Hon. Sara A. Schimke.

II. Monthly Reports:

A. Lobbyist's Report (Public Affairs Associates):

1. Mr. Langley updated Council regarding pending and anticipated legislative activity.

a) House Bills 4033 and 4034 (Trust Code Technical Amendments): Testimony by James Spica in Senate Judiciary Committee was well received; committee action is anticipated at its next meeting pending leadership approval.

b) Senate Bill 160 (Uniform Premarital Agreement Act): Awaiting further feedback from the Family Law Section; coordination with Chair Sarah Leitner's office ongoing.

- c) House Bill 4408 (Powers of Appointment Act) and House Bill 4523 (Mandatory MTC Provisions): Awaiting sponsor readiness for committee hearing.
- d) Guardianship Package (House Bills 4727–4729): Awaiting floor action upon House return; feedback from this Section expected shortly.
- e) House Bill 4014: Awaiting movement in Senate Finance, Insurance & Consumer Protection Committee.

2. Mr. Langley advised that little bipartisan activity is likely before year-end and that legislative progress may slow further entering the 2026 election cycle.

3. Questions were raised by Nathan Piwowarski and James Spica regarding timing of committee votes and strategy for advancing trust-related legislation. Mr. Langley explained that inter-chamber leadership disputes have delayed otherwise noncontroversial measures.

4. Follow-up discussion included:

- a) Coordination with the Family Law Section on the Premarital Agreement Act;
- b) Confirmation that the Guardianship Bill Package remains on the House floor awaiting action;
- c) A request by Mr. Langley for written confirmation of the Section's ongoing efforts to facilitate legislative progress, to avoid perceptions of inaction;
- d) Mr. Piwowarski concluded the item by thanking Mr. Langley and confirming that follow-up correspondence would be provided.

B. Minutes of Prior Council Meeting (Melisa Mysliwiec):

Chris Savage presented the draft minutes from the September 12, 2025, meeting (**Attachment 1**).

Corrections offered by James Spica included:

- Replace reference to House Bill 4512 with House Bill 4523
- Reverse order of bills to read “House Billss 4408 and 4523”
- Amend references to “Powers of Attorney” to read “Powers of Appointment”

- Replace “duties and powers of trustee” with “mandatory MTC provisions”
- Correct committee reference under item “K” to the Ethics and Unauthorized Practice of Law Committee. It should say “the memorandum at attachment 4”
- Correct committee reference under item “Z” to the Non-Banking Entity Trust Powers Committee, insert on the second line, “a version of the Michigan Trust Company Act.”
- No report after EE; there is no Committee.

Corrections offered by Nathan Piwowarski included:

- Replace “Honorable Schimke” with “Honorable Sarah A. Schimke.”

Nathan Piwowarski moved, and David Sprague supported, accepting the September minutes, as corrected. Motion carried.

C. Chair’s Report (Nathan Piwowarski):

Mr. Piwowarski summarized ongoing coordination between the Section and other Bar entities, emphasizing focus areas including legislative tracking, committee engagement, and preparation for upcoming educational programs.

D. Treasurer’s Report (Angela Henkowsky):

Angela Henkowsky presented current fiscal status, referencing **Attachment 2**. Hearts and Flowers funds should be sent to Nathan Piwowarski’s office for the foreseeable future. Payee should be “McCurdy Wotila and Porteous, PC”. No anomalies were reported; the Section remains financially sound.

III. Committee Reports

A. Committee on Special Projects (Daniel Hilker):

Daniel S. Hilker reported on ongoing legislative and educational initiatives, and highlighted coordination between drafting and monitoring subcommittees.

B. Amicus (Andy Mayoras): No report.

C. Annual Meeting (Nathan Piwowarski): Nathan Piwowarski notes next annual meeting will take place next September.

D. Awards (Katie Lynwood): No report.

E. Budget (Melisa Mysliwiec) : No report.

F. Bylaws (David Lucas): No report.

G. Charitable and Exempt Organizations (Rebecca Wrock): Next meeting is this coming Thursday the 23rd at 10 a.m., the committee is open to new members.

H. Citizens Outreach (Kathleen Goetsch): No report.

I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David): Georgette David reported on proposed amendments to MCR 2.107 and related rules. The Section previously opposed allowing text messaging as valid service. After testimony from Dan Hilker and Professor Davis, revised rules were issued.

The committee discussed clarifying e-service requirements, including defining non-parties, and confirming that initiating probate filings are case-initiating documents, with interested persons treated as parties for e-service.

A memorandum will form the basis of a proposed public policy position, to be approved by electronic vote and submitted to Council before the November 11, 2025, deadline for inclusion in the State Bar Board of Commissioners' November 21 meeting.

J. Electronic Communications (Susie Chalgian): No report.

K. Ethics and Unauthorized Practice of Law (Alex Mallory):

Council members discussed the Committee's prior hypothetical and Jim Spica's written response. Mr. Spica and Rick Mills emphasized that when a Michigan attorney amends a trust governed by another state's law, the key issue is competence, not unauthorized practice. The prudent course is to associate with local counsel from that state to ensure accuracy and compliance. He explained that while attorneys may study and competently apply another state's law, associating with out-of-state counsel helps avoid ethical concerns.

Nathan Piwowarski shared an example involving Wisconsin's elective community property law to illustrate unforeseen complexities when working across jurisdictions. Mr. Spica agreed, noting this underscores the value of consulting local counsel.

Alex Mallory referenced MRPC 5.5(C)(4), which allows limited legal services in another jurisdiction under certain conditions. Mr. Mills confirmed this could apply to ancillary probate filings, explaining that attorneys may advise on another state's law so long as they do not physically or professionally "practice" there beyond permitted limits.

Written report received (**Attachment 3**). Discussion deferred to next meeting due to time constraints.

L. Guardianship, Conservatorship, and End of Life (Sandy Glazier):

Sandra D. Glazier supplemental written report (Supplemental Attachment 1) summarized the committee's review of pending guardianship legislation. Key positions recommended:

- SB 585: Oppose as drafted; support if amended to allow appraisal or broker opinion of value.

- SB 586: Oppose due to impracticality of mandatory court approval before residential moves.
- HB 4727–4728: Oppose licensure of professional guardians; instead recommend training and background check reforms.
- HB 4676–4677: Oppose current “supported decision-making” language as inconsistent with EPIC definitions of incapacity.

Discussion deferred to next meeting due to time constraints.

- M. Legislation Development and Drafting (Rob Tiplady and Rick Mills): No report.
- N. Legislation Monitoring and Analysis (Mike Shelton): No report.
- O. Legislative Testimony (Dan Hilker): No report.
- P. Membership (Ernscie Augustin): No report.
- Q. Nominating (Jim Spica): Jim Spica reported that the roster, for purposes of the agenda, should reflect that the chair is Mark Kellogg.
- R. Planning (Katie Lynwood): The Planning/Executive Committee will meet this coming Monday; no additional report.
- S. Probate Institute (Christine Savage): Christine Savage reported the planning process is going well. Ms. Savage has had a couple meetings with ICLE, with the lineup of topics almost set and national speakers likely in line. The Institute will have two national speakers this year, if everyone accepts the invitations.
- T. Real Estate (Angela Hentkowski): Angela Hentkowski reported that the committee’s comprehensive review and redrafting of the General Property Tax Act’s uncapping statute is nearly done.
- U. State Bar and Section Journals (Melisa Mysliwiec): Rebeca Wrock was identified as the new, incoming editor.
- V. Tax (J.V. Anderton):

James Anderton presented the “Tax Nugget” (**Attachment 4**), highlighting a recent case addressing claims against an estate and the deductibility of those claims. He noted the case’s unusual factual circumstances, describing it as an intersection of tax law and sensational drama.

Dan Hilker added that the IRS considers this an important case under Section 2053 regarding deductions for claims by family members against an estate. He explained that the IRS disfavors such claims, viewing them as potential deductions for familial transfers, and that the Treasury’s five-factor test used to evaluate these claims is being applied rigidly rather than as a true facts-and-

circumstances analysis. Mr. Hilker expressed his view that the regulations lack proper support and may be invalid, having been created without public comment.

- W. Assisted Reproductive Technology (Nancy Welber): No report.
- X. Electronic Wills (Kathleen Cieslik): No report.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger): No report.
- Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady): No report.
- AA. Premarital Agreements (Chris Savage): Information was submitted to Rep. Sarah Lightner. We will, again, be reaching out to the Family Law Section in hopes of a discussion regarding our proposed changes.
- BB. Uniform Community Property Disposition at Death Act (Jim Spica): No report.
- CC. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowarski and Kathleen Cieslik): No report.
- DD. Undue Influence (Ken Silver): Will be continuing with CSP next month, materials are the same as they have been. If anyone has comments or concerns, reach out to Ken Silvers and Sandy Glazier directly.
- EE. Trust Account (Nathan Piwowarski):
Mr. Piwowarski reported that the committee still needs a chair. He expressed his intent to offer that role to Liz Luckenbach. Chris Savage expressed that she is willing to serve if Ms. Luckenbach is not.
- FF: Uniform Fiduciary Income and Principal Act (Jim Spica): Jim Spica reported that he testified on October 15 before the Senate Civil Rights and Judiciary Committee regarding House Bill 4033, the Unitrust Act. He noted that the bill is expected to be voted out of committee soon, and if it passes the Senate, the legislative process for the measure will be complete.
- GG. Uniform Partition of Heirs Property Act: With the act adopted, this committee is being disbanded.
- HH. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume): No report.

IV. Good of the Order

Members discussed coordination with the Michigan Bankers Association, updates on the Probate Institute, and acknowledgment of strong committee participation.

V. Adjournment of Regular Meeting

There being no further business, the meeting adjourned at approximately 12:30 p.m.

Roundtable discussion followed informally.

Respectfully submitted,

Melisa M.W. Mysliwiec, Secretary

From: **Nathan Piwowarski**
To: **Probate and Estate Planning Section – Council Members**
Re: **November Chair's Report**
Date: **November 14, 2025**

1. **Chair's Dinner.** It warmed my heart to see so many of you attend the October Chair's dinner. Many thanks to Greenleaf Trust for sponsoring our social hour, our hosting institutions, the Cadillac Grill and Evergreen Resort, and Theresa Castle for her extensive logistical support.
2. **December 12 luncheon meeting; your RSVP's requested.** Our December 12 meeting will include a holiday lunch buffet. To help the University Club prepare, I ask that you inform Theresa whether you plan to attend in person no later than Monday, December 8.
3. **Planning notice regarding consideration of Undue Influence Committee's proposals.** I would like for the CSP, and potentially Council, to give a sustained block of time to the Undue Influence Committee. This Committee's work has stretched over several years and covers several complex topics. The start-and-stop nature of the last several meetings has made it difficult for us to consider the committee's proposals as an integrated whole, and for our members to provide consistent direction to the Committee. I have consulted with Dan Hilker (for the CSP) and Ken Silver (for the UI Committee), and we have agreed that it would be best to set up especially-large blocks of time at our January and February meetings for this purpose, to provide materials to members well in advance.
4. **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act—Section feedback requested.** Rep. Lightner reached out to request the Section's feedback concerning the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, as well as coordinating changes in EPIC. Copies of the un-introduced bills are included in the meeting materials.
5. **HB 4959 (Professional Fiduciary Licensing Fees)—Section feedback requested.** Our lobbyist has brought 2025 HB 4959 to our attention (<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2025-HB-4959>). It is currently on second hearing in the House. The bill would establish licensing fees for professional guardian and professional conservator. We have been asked whether we wish to take a public policy position. The bill is part of a larger package, which includes 2025 HBs 4727, 4728, and 4729.

6. **SB 585 (Impose Pre-Sale Real Estate Appraisal Requirement)—Section feedback requested.** The Senate Committee on Housing and Human Services recently took testimony on 2025 SB 585 (<https://legislature.mi.gov/Bills/Bill?ObjectName=2025-SB-0585>). If enacted, the bill would require licensed appraisals of a protected individual's real estate before sale.
7. **SB 585 (Required Findings Before Approval of Change in Residence)—Section feedback requested.** The Senate Committee on Housing and Human Services is also deliberating over 2025 SB 586 (<https://legislature.mi.gov/Bills/Bill?ObjectName=2025-SB-0586>), which would require that the court find on the record that a change in a legally incapacitated individual's residence is in their best interest.
8. **Trustee Final Accounts—Section feedback requested.** We expect that the House Judiciary Committee will revisit last session's "trust accountings" proposal, HB 6011 (<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2024-HB-6011>). Liz Luckenbach has agreed to serve as chair of the ad hoc committee to reevaluate this proposal.
9. **SBs 5152 and 5153 (Tax Foreclosure Protections)—Section support requested.** Thaddeus Hackworth, corporate counsel for Berrien County, has invited the Section to support 2025 HB 5152 and 2025 HB 5153. These bills were developed to address "redemption schemes" concerning tax-forfeited property owned by deceased or vulnerable persons. HB 5152 (<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2025-HB-5152>) and HB 5153 (<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2025-HB-5153>) would each amend the Revised Judicature Act. They would create additional notice and redemption rights to fight these schemes. Copies of Mr. Hackworth's message and memo are included in the meeting materials.
10. **Proposed redefinition of "newspaper" in MCR 2.106—Section feedback requested.** The State Bar solicited our comments on ADM File No. 2022-31, which would amend the definition of "newspaper" in MCR 2.106's publication requirements. Comments are due to the Bar by 1/13/2026.
https://www.courts.michigan.gov/4aa4d2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/proposed-orders/2022-31_2025-10-22_formor_propadmcr2.106.pdf.
11. **Elder Abuse Task Force update—informational only.** I receive occasional updates from the Elder Abuse Task Force. The Task Force's Guardianship Caseload & Fee Schedule Committee remains active, and will eventually propose legislation to amend MCL 700.5106, which addresses compensation for professional fiduciaries.

Nathan Piwowarski

From: Thaddeus Hackworth <thackworth@berriencounty.org>
Sent: Monday, November 3, 2025 10:58 AM
To: Nathan Piwowarski
Subject: Request for Section Support: HB 5152 & HB 5153 (Targeting Probate & Foreclosure Fraud)
Attachments: 2025-HIB-5152.pdf; 2025-HIB-5153.pdf; 2025.10.31 Memo re B2511354.pdf

Dear Mr. Piwowarski,

My name is Thaddeus Hackworth, and I serve as Corporate Counsel for Berrien County. I'm writing to you as Chair of the Probate & Estate Planning Section to formally request that the Section review and consider supporting a new legislative package: HB 5152 and HB 5153.

This legislation is the direct result of a multi-year effort by our county government to shut down a predatory business model that targets vulnerable residents. I am reaching out to your Section specifically because one of the most insidious schemes we've documented involves the direct abuse of the probate court system.

We have tracked numerous "ghost" probate cases filed by non-attorney agents of these firms. As detailed in the attached memo, their tactic is to find an heir to a deceased homeowner's property, have them sign pre-filled applications, and get them appointed as Personal Representative—often without the heir fully understanding the fiduciary duties they are accepting.

Once the PR is appointed, the firm has them sign away the estate's primary asset (the home's equity) for pennies on the dollar. After securing the asset, the firm abandons the probate case, leaving a legal mess for the court and the heir, who has been manipulated and potentially exposed to liability.

HB 5153 is designed to shut this primary scheme down. By making the statutory right of redemption and, most critically, the right to surplus proceeds non-assignable (except by succession), the bill eliminates the "asset" these firms are deceptively purchasing from the estate. This change removes the main financial incentive for them to file these fraudulent, bad-faith probate cases.

We also designed HB 5152 to block the obvious workaround. If these firms simply try to have the PR conduct a regular sale of the property, any such conveyance after the foreclosure notice is recorded would be invalid unless the PR signs a mandatory "Notice of Rights." This notice serves as a powerful obstacle, as it explicitly warns the PR that they are waiving the estate's rights to redemption, occupancy, and any potential surplus.

This package protects heirs, preserves estate assets for their rightful beneficiaries, and stops the bad-faith weaponization of the probate process by non-attorneys.

I've attached both bills and the background memo I prepared for my Board, which details this probate scheme. I am, of course, happy to answer any questions or present to the Section at any time.

Best,
Thaddeus

Thaddeus J. Hackworth
Corporate Counsel
Berrien County - Administration
701 Main St, St. Joseph, MI 49085

(269) 983-7111 x8416

COUNTY ADMINISTRATION

- County Administrator
- Personnel
- Corporate Counsel
- Community Corrections/
Grants Administrator

**BERRIEN COUNTY
ADMINISTRATION CENTER**

701 Main Street
St. Joseph, Michigan 49085

Telephone: (269) 983-7111
Fax: (269) 983-5788
www.BerrienCounty.org

TO: Berrien County Board of Commissioners

FROM: Thaddeus J. Hackworth – Berrien County Corporate Counsel 

RE: Background and Legal Review on Resolution Supporting HB 5152 & HB 5153

DATE: October 31, 2025

As you know, the resolution before you supports House Bills 5152 and 5153. I wanted to provide some additional background for your review, as these bills aren't just abstract policy—they are the direct result of a multi-year effort by this office, the Sheriff, the Register of Deeds, and the Probate Court. This all started back in late 2023 when I referred a case to the Michigan State Police for criminal investigation, which was followed by a referral to the State Bar for the unauthorized practice of law.

The problem we've been trying to tackle is a systematic business model, run primarily by one entity, that exploits loopholes in the state's foreclosure laws to strip equity from our most vulnerable residents. The scheme, which we've documented in police reports and our own investigations, generally works in several ways.

First, they target homeowners who are in foreclosure *before* the foreclosure auction. They convince these owners to sign a quitclaim deed, often for a paltry sum of a few hundred dollars. The homeowners are misled about what they are signing away. That deed transfers *all* of their statutory rights, meaning they lose their right of redemption, their right to occupy the home, and crucially, their right to collect any surplus proceeds from the upcoming auction. In many instances, they are trading tens of thousands of dollars in home equity for just pennies on the dollar, and are forced to immediately leave a home that they may have otherwise had the right to stay in for up to a year while they worked to redeem it.

Second is the post-auction surplus fraud. The case I sent to the Michigan State Police is the clearest example. A property owned by a deceased resident went to auction and sold for a price that resulted in \$10,597.70 in surplus proceeds—money that legally belonged to the decedent's heir. *After* the auction, when this surplus was a known sum, the firm located the sole heir, a 73-year-old woman in poor health, and paid her \$100 in cash to sign away her rights to the entire \$10,597.70. She was adamant she was never told about the surplus, and it's hard to imagine that she would have accepted the bargain if she had.

Third is an insidious probate scheme. To get the rights from a deceased homeowner, where the property falls into foreclosure after the homeowner's death, the firm needs a Personal Representative (PR) appointed by the Probate Court. As I detailed in my State Bar referral, the firm's non-attorney agents find an heir, have them sign a pre-filled probate application, and then file it themselves, paying the court fees. The heir is often completely unaware they've just become a fiduciary for an estate. Once the firm gets the deed signed and secure the home's equity for themselves, they simply abandon the probate case, leaving it to clog the court's docket. Our records show this one firm has initiated at least a dozen of these "ghost" probate cases in the last couple of years.

Lately, aware of the scrutiny in my office, their tactic has shifted. They are now focusing on buying the properties outright *before* the auction, but the deception is the same. They mislead the sellers, convincing them to sign over the deed for a low-ball offer while failing to explain their crucial statutory rights: the right of redemption, the right to occupy the home during the redemption period, and the right to collect any and all surplus proceeds from the auction.

This legislative fix has been a long-term effort. After I sent the criminal referral in September 2023 and the UPL referral in November 2024, it became clear that prosecution alone wouldn't close these loopholes. So, in December 2024, I sent a formal bill draft request to Representative Andrews's office. We also received the full and eager support of Representative Brad Paquette's office, who worked with Representative Andrews to champion and co-sponsor this legislative package. After reviewing the first draft, I sent back critical revisions in May 2025—specifically, adding the surplus proceeds to the notice and, most importantly, requiring the foreclosure notice to be *recorded* with the Register of Deeds. That recording requirement is the key enforcement mechanism that ensures a title company will see it and demand the notice.

The two bills work as a package to, hopefully, shut all of this down. HB 5153 is the hammer: it makes the right to surplus money and the right of redemption non-assignable. The "asset" these firms are buying would no longer be a salable commodity. It also makes the fraudulent probate scheme pointless.

HB 5152 is the shield. It tackles the other method—buying the property outright. It makes any sale after a foreclosure notice is recorded invalid unless the homeowner signs a clear "Notice of Rights." This notice explicitly warns them they are waiving their right to redemption, occupancy, and any surplus proceeds. If read, it pierces the deception.

These bills are a direct, necessary, and, in my view, well-crafted response to documented fraud happening in our county. They will protect residents, preserve family equity, and reduce the administrative headaches for our own departments. I strongly recommend the Board adopt the resolution in support.

Probate: guardians and conservators; jurisdictional provisions in the estates and protected individuals code; revise to reflect adoption of the uniform adult guardianship and protective proceedings jurisdiction act.

Probate: guardians and conservators;

HOUSE BILL NO. _____

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1301, 5307, and 5402 (MCL 700.1301, 700.5307, and 700.5402).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1301. Except as otherwise provided in this act, this act
2 applies to all of the following:

3 (a) The affairs and estate of a decedent ~~, or~~ missing
4 individual ~~, or protected individual~~ who is domiciled in this



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H01566 '25 a



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1 state.

2 (b) A nonresident's property that is located in this state or
 3 property coming into the control of a fiduciary that is subject to
 4 the laws of this state.

5 (c) ~~An incapacitated individual or~~ **A** minor in this state.

6 (d) Survivorship and related accounts in this state.

7 (e) A trust subject to administration in this state.

8 (f) **An incapacitated individual or the affairs and estate of a
 9 protected individual if a court of this state has jurisdiction
 10 under the uniform adult guardianship and protective proceedings
 11 jurisdiction act.**

12 Sec. 5307. **By** ~~Except as otherwise provided in the uniform
 13 adult guardianship and protective proceedings jurisdiction act, by~~
 14 accepting appointment, a guardian personally submits to the court's
 15 jurisdiction in a proceeding relating to the guardianship that may
 16 be instituted by an interested person. Notice of a proceeding ~~shall~~
 17 **must** be delivered to the guardian or mailed to the guardian by
 18 first-class mail at the guardian's address as listed in the court
 19 records and to ~~his or her~~ **the guardian's** address as then known to
 20 the petitioner.

21 Sec. 5402. **After** ~~Except as otherwise provided in the uniform
 22 adult guardianship and protective proceedings jurisdiction act,
 23 after~~ the service of notice in a proceeding seeking a conservator's
 24 appointment or other protective order and until the proceeding's
 25 termination, the court in which the petition is filed has the
 26 following jurisdiction:

27 (a) Exclusive jurisdiction to determine the need for a
 28 conservator or other protective order until the proceeding is
 29 terminated.



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H01566'25 a

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6 (c) Concurrent jurisdiction to determine the validity of a
7 claim against the protected individual or the protected
8 individual's estate, and questions of title concerning estate
9 property.

10 Enacting section 1. This amendatory act does not take effect
11 unless House Bill No. ____ (request no. H01566'25) of the 103rd
12 Legislature is enacted into law.

Payee Name			
Street			
City			
State		Zip Code	
E-Mail			
Phone			
Section			



306 Townsend St., Lansing MI 48933-2012, (800) 968-1442

Section Expense Reimbursement Form

Staple receipts to back of form as required. For electronic transmittal, scan and PDF receipts and send with form by e-mail. Policies and procedures on reverse side.

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Date

Title

Signature

Date _____

Title

Approved by (Signature)

Grand Total

1000

1000

STATE BAR OF MICHIGAN

Section Expense Reimbursement Policies and Procedures (July 2021)

General Policies

1. Requests for reimbursement of individual expenses should be submitted as soon as practical after being incurred, but not to exceed 45 days. However, at the end of the fiscal year, any remaining expense reimbursement requests for the fiscal year just ended must be submitted by the 3rd workday in October. The State Bar reserves the right to deny a reimbursement request that is untimely or where the State Bar's ability to verify an expense has been compromised due to any delay. Expense reimbursement forms, along with instructions for completing and transmitting expense reimbursement forms, are found on the State Bar of Michigan website at: <http://michbar.org/programs/forms>
2. All expenses must be itemized. Each reimbursed expense must be clearly described and the business purpose indicated.
3. Reimbursement in all instances is limited to reasonable and necessary expenses for business purposes.
4. Detailed receipts are recommended for all expenses but required for expenses over \$25.
5. An itemized receipt is required before reimbursement will be made for any meal. The reimbursement request must identify whether the meal is a breakfast, lunch or dinner. If the receipt covers more than one person, the reimbursement request must identify the names of all those in attendance for whom reimbursement is claimed, and the business purpose of the meal. If the receipt includes charges for guests for whom reimbursement is not claimed, the guests need not be identified by name, but their presence and number should be noted. Reimbursed meals while traveling (except group meals) are taxable if no overnight stay is required. For subsidized sections (Young Lawyers Section and Judicial Section) the presumptive limits on meal reimbursement are the per diem amounts published on the State of Michigan Department of Technology, Management and Budget's website at DTMB-Travel.michigan.gov referencing Travel Rates and Select Cities for the current fiscal year. This policy applies to each individual meal - breakfast, lunch and/or dinner. Meal reimbursements exceeding the per diem amounts due to special circumstances must be approved by the section treasurer or section chair, whenever possible in

advance of the expenditure. Reimbursement for meals exceeding the presumptive limits without an acceptable explanation of special circumstances will be limited to the published per diem amount. The presumptive limit on meal reimbursement applies to any meal expense (individual or group) reimbursed under this policy, but does not apply to meals for group meetings and seminars invoiced directly to the SBM. For all other sections, the amount of the meal reimbursement shall be deemed what is reasonable and necessary.

6. Spouse expenses are not reimbursable.
7. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursed mileage for traveling on State Bar business is limited to actual distance traveled for business purposes.
8. Receipts for lodging expenses must be supported by a copy of the itemized bill showing per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid. Barring special circumstances such as the need for handicap accessibility accommodations, for conference attendance, the reimbursement will be limited to the least expensive available standard room conference hotel rate.
9. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
 - A. Tickets should be at the best rate available for as direct a path as possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.
 - B. Reimbursement of airfare will be limited to the cost of coach class tickets available for the trip at the time the tickets are purchased. The additional cost of business class or first class airfare will not be reimbursed.
 - C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
 - D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

10. Reimbursement for car, bus, or train will not exceed reimbursable air fare if airline service to the location is available.
11. Outside speakers must be advised in advance of the need for receipts and the above requirements.
12. Bills for copying done by an outside provider should include the number of copies made, the cost per page, and general purpose (committee or section meeting notice, seminar materials, etc.).
13. The State Bar of Michigan is exempt from sales tax. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.
14. All gift cards and gift certificates are taxable income regardless of the amount. Tangible gifts other than recognition items (e.g. plaques, gavels, etc.) are considered taxable if value is greater than \$100.

Specific Policies

1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.
2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.
3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.
4. Payments to vendors for \$5,000 or greater are not reimbursable. Payments to vendors for \$5,000 or greater should be paid directly by the State Bar.

Probate and Estate Planning Section of the State Bar of Michigan
Policy Regarding Consideration of Amicus Curiae Matters

The Amicus Curiae Committee (“Amicus Committee”) of the Probate and Estate Planning Section of the State Bar of Michigan (the “Section”) reviews and considers requests to the Section to file an amicus curiae brief, makes recommendations to the Section’s Council whether to file an amicus curiae brief, identifies legal counsel to prepare an amicus curiae brief, and oversees the work of legal counsel doing so.

It is the policy of the Section that amicus curiae briefs shall only be filed by the Section in cases pending in the Michigan Court of Appeals or the Michigan Supreme Court and which involve issues of significance in the areas of estate planning, trusts, probate, nonprobate estate settlement, guardianships, and conservatorships, or which involve Cases related to the practice of law in these areas. The Section does not file amicus curiae briefs in cases pending in a probate or circuit court and ordinarily does not file amicus curiae briefs in cases pending in federal court unless dealing directly with issues of Michigan law in the above mentioned areas.

The Amicus Committee reviews and considers requests for an amicus curiae brief (1) upon receipt of an *Application for Consideration* from a party to the litigation, (2) in response to an invitation to file an amicus curiae brief that is received by the Section from the court before which a case involving an issue of significance to the Section is pending, (3) upon the request of a Council member at the discretion of the Chair of the Committee or (4) by the Committee at its own discretion.

When the Council is considering an application for the Section to file an amicus brief in an action pending in any Michigan court, the applicant may not address the Council at meetings of the Section’s Council or at meetings of the Section’s Committee on Special Projects (“CSP) with regard to the application (beyond submitting the written application). No attorney who is representing any party in the action or is affiliated with a firm representing any party in the action may address the Council with regard to the application. All attendees at the Council meeting who are affiliated with a firm representing any party in the action shall be excused from the meeting during consideration of the application. After any individuals serving on Council, the CSP, or the Amicus Curiae Committee are excused, the Amicus Committee will present the facts of the case, discuss the legal principles and issues involved, and offer the Committee’s recommendation to the Council as to whether to file an amicus curiae brief.

In determining whether to file an amicus curiae brief the Amicus Committee and the Section’s Council will consider all factors they consider relevant, including the anticipated impact of the lower court and appellate court(s) opinions on the Section’s attorneys and their clients, whether the lower court erred, the perceived likelihood a court to which leave to appeal has been sought will accept the case, whether the lower court’s opinion is a published opinion, whether the case involves facts that are likely to recur, whether a higher court is likely to grant leave to appeal in a particular case, and the financial resources of the Section. Examples of cases in which the Section favors filing an amicus curiae brief are (a) cases involving facts or principles with widespread applicability, (b) cases that affect the practice of law by members of the Section, and (c) cases in which the Michigan court of appeals has erred in a published opinion.

In determining whether to file an amicus curiae brief, the Amicus Committee will contact the legal counsel for the parties in the particular case to determine the facts and legal principles involved, obtain and review all relevant pleadings, independently review the applicable law, and evaluate possible positions the Section might wish to take in the matter. After completing its review, the Amicus Committee will submit a written report and recommendation to the Section's Council regarding whether an amicus curiae brief should be filed by the Section and what position(s) the Section should take on the issues presented. In general, the Section will take positions and advocate for what the Section believes the law is or should be and will not advocate or favor a result for any particular party to the litigation.

When time permits, the Amicus Committee will submit its written report and recommendations before the Council's next regularly scheduled meeting following receipt of the request by the Amicus Committee. When time permits, a decision regarding whether to file an amicus curiae brief will be made by the Council at the meeting at which the Amicus Committee's recommendation is presented.

All votes by the Council to accept the Amicus Committee's report and recommendation, to file an amicus curiae brief, and to determine the position(s) to be taken in the brief shall be by show of hands and the votes for, against, and in abstention shall be recorded in the minutes by the Secretary of the Section or the acting secretary of the meeting of the Council if the Secretary of the Section is not present.

Notwithstanding any discussion or vote by CSP or otherwise, the Section's Council retains final authority to determine whether the Section will file an amicus curiae brief and the position(s) that the Section will take. Where possible the Section will seek opportunities to file joint amicus curiae briefs and share in the cost of their preparation with other sections of the State Bar of Michigan or other interested organizations. The Section will pay the costs of preparing and filing amicus curiae briefs from Section funds, and shall not accept contributions to defray the costs from any party to the proceeding.

In connection with any case in which the Section's Council votes to file an amicus curiae brief, the Council ordinarily shall authorize the Amicus Committee to retain legal counsel, and shall authorize a sum, ordinarily not to exceed \$15,000 per case, to be paid to legal counsel, to file a brief on behalf of the Section setting forth the Section's position(s) in the case.

This policy is subject to change by vote of the Section's Council.

Amicus Curiae Committee
Probate and Estate Planning Section of the State Bar of Michigan

Application for Consideration

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan (“Section”), based upon the Section’s Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.

Date: 7/28/2025

Name: Nathan Piwowarski P Number: P70974

Firm Name: McCurdy, Wotila, & Porteous, P.C.

Address: 120 West Harris Street

City: Cadillac State: MI Zip Code: 49601

Phone Number: (231) 775-1391 Fax Number_____

E-mail address: nathan@mwp/legal.com

Attach Additional Sheets as Required

Name of Case: In Re The Charles C Kalbach and Betty J Kalbach Trust

Parties Involved: Peter Kalbach, appellant; Thomas Kalbach, respondent

Current Status: Application for Leave to Appeal to Michigan Supreme Court filed 6/25/25

Deadlines: N/A

Issue(s) Presented

1. Did the lower courts properly admit extrinsic evidence, even though they did not identify specific ambiguities within the trust documents?
2. Was a resulting trust created in favor of the settlors’ heirs when both beneficiaries died without descendants before complete distribution, and the trust instrument imposed a condition subsequent divesting beneficiaries of their interests if they died before complete distribution?

3. Can a court use MCL 700.7412(2) to reform a trust when unlikely circumstances occur, even if those circumstances were addressed in the trust instrument?
4. Can a surviving settlor amend a trust when the trust expressly states it becomes irrevocable upon the death of the first settlor?
5. Should the evidence of both settlors' intent at the time of the trust's creation be augmented by extrinsic evidence of a deed and amendment executed by only the surviving settlor?
6. Should a primary beneficiary's intent to devise her probate estate to her brother via her Will control the distribution of assets over the settlors' explicit intent to disinherit a beneficiary who dies before complete distribution?
7. Should the trust's wipeout clause control the disposition of trust assets because both beneficiaries had died before distribution, and neither had descendants?

Michigan Statute(s) or Court Rule(s) at Issue: MCL 700.7412(2)

Common Law Issues/Cases at Issue: Law of resulting trusts

Why do you believe that this case requires the involvement of the Probate and Estate Planning Section? Do you believe that a decision in this case will substantially impact this Section's attorneys and their clients? If so, how?

This appeal concerns a probate court's proper role in effectuating the intent of an express trust's settlor. The trial court and Court of Appeals deemed the Kalbach Trust ambiguous *because* it ran out of beneficiaries, when in fact it had *unambiguously* run out of beneficiaries. They dismissed the possibility of a resulting trust (a reversion to the settlors' estates after the trust ran out of beneficiaries). Then, based on the finding of ambiguity, the lower courts concluded that *sua sponte* reformation of the Kalbach Trust was appropriate. While there are a variety of interesting errors made in the lower courts, the appellant has identified three major errors impacting Michigan's trust jurisprudence:

1. The probate court and Court of Appeals rushed past the proper initial processes to effectuate the settlors' intent. In so doing, they parted ways with Michigan case law and the Michigan Trust Code, which call for as light as possible of judicial involvement in trusts' administration. By filing an amicus brief, the Section can

educate the Supreme Court on the proper “order of operations,”¹ and why this order is necessary to safeguard settlors’ intent and foster certainty in trusts’ drafting and administration. Having the Supreme Court reassert this order of operations will appropriately limit the judiciary’s intervention in trusts’ administration, and lead to more predictable and orderly trust supervision proceedings when a court’s jurisdiction has been properly invoked.

2. While the trial court identified no source of its authority to reform the Kalbach Trust, the Court of Appeals grounded it in MCL 700.7412(2) – despite this statute never having been previously mentioned at the trial or appellate level. This is a consequential error: the Court of Appeals stretched section 7412 far beyond its purpose. Instead of authorizing reformation for “unanticipated circumstances,” it has blessed using section 7412 to reform trusts in response to unlikely-but-planned-for circumstances. This overbroad reading invites future misuse of the statute and disruption of settlors’ intent, increasing the frequency and scope of trust interpretation litigation.
3. The lower courts blunted the application of century-old caselaw concerning resulting trusts, including *Walters v Pittsburgh & L A Iron Co*, 201 Mich 379, 386; 167 NW 834 (1918). The appellant has asked the Supreme Court to confirm that resulting trusts may arise from express trusts that do not fully dispose of their assets. By filing an amicus brief, the Section can remind the Supreme Court that resulting trusts are a means of effectuating the settlor’s probate intent. A resulting trust is distributed under the law of intestacy, which reflects the Legislature’s “best guess” as to a settlor’s intent in absence of other instructions. One of the best uses of amicus advocacy is to offer broader public policy and historical perspectives concerning an appellate question. In this case, the Section could offer perspective on the various iterations of the Uniform Probate Code that ultimately culminated in the Estates and Protected Individuals Code. The Section could remind the Court of the rigor that the Uniform Law Commission employed to ensure that the rules of intestacy reflected “common intent,” *see, e.g.*, Waggoner, Lawrence W., The Revised Uniform Probate Code, U of M Law School Scholarship Repository, 1994, <https://repository.law.umich.edu/articles/1054>.

*****No attorney who is representing any party in the action or is affiliated with a firm representing any party in the action may address the Council or the Committee for Special Projects (CSP) with regard to the application. All attendees at the meeting who are affiliated with a firm representing any party in the action shall be excused from the meeting during consideration of the application.*****

¹ First, employ the rules of interpretation to ascertain the agreement’s meaning; second, resort to extrinsic evidence and the rules of construction to resolve ambiguities; and finally, reform the trust only upon limited, express statutory grounds.

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CREATION OF THE TRUST

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

I. NAME OF TRUST

This Trust shall be known as: "The Charles C. Kalbach and Betty J. Kalbach Trust", dated MAY 25, 2006, Charles C. Kalbach and Betty J. Kalbach Grantors and/or Trustees.

II. TRUST AGREEMENT

We, Charles C. Kalbach and Betty J. Kalbach, on MAY 25, 2006, sign this Trust Agreement ("Agreement") appointing Charles C. Kalbach and Betty J. Kalbach as trustee(s), both of whom, and the survivor of them, and any successor trustee, shall be called "Trustee" in this Agreement and referred to in singular neuter pronouns. Trustee shall hold all property delivered to it, in trust, as follows:

III. TRUSTEE AUTHORITY TO ACT INDEPENDENTLY

The above named Grantor(s) who are Trustee(s) shall serve jointly and severally, and either shall have full authority for the Trust without the consent of the other, and shall act independently in performing transactions on behalf of the Trust, except as to transactions involving a real property owned by the Grantor(s) which shall require the joint consent and signatures on all sale and transfer documents of both the Grantor(s) while they are both living and competent. Notwithstanding the foregoing, property held in any Trust created herein as the separate property of either Grantor shall be solely

administered under the authority of the Grantor whose property it is, so long as he or she is living and competent. This authority shall extend to all powers granted to the Trustee(s) under "Trustee Powers" herein and shall include the right to contract for and on behalf of the Trust and to execute, negotiate, and compromise such instruments as may be necessary to carry out the purposes and intents of this Trust.

IV. RIGHTS RESERVED

a. Revocable Trust

We reserve the right to amend or revoke this Agreement, wholly or partly, by a writing signed by us or on our behalf and delivered to Trustee during our life. However, we cannot change materially the duties or compensation of Trustee without its written approval.

b. Additions and Withdrawals

We reserve the right to add property to, and withdraw property from, the Trust.

V. DISTRIBUTION DURING LIFETIME

As to income accumulated and principal held during my lifetime, Trustee shall pay all the net income to us or for our benefit, or as we otherwise direct, orally or in writing, and Trustee shall pay any part of the trust principal as I direct in writing. However, during any period in which, in Trustee's opinion, we are incapable of managing my own affairs, Trustee shall pay to or use for our benefit, our descendants' benefit, and the benefit of any others partially or wholly dependent on us, the net income and principal that Trustee determines is required for our support, comfort and welfare, in our accustomed manner of living, or for any other purposes Trustee believes to be for our best interests.

VI. DISTRIBUTION AFTER DEATH

Tangible Personal Property

We have prepared or may prepare a written statement or list, in either of our handwriting or signed by one of us, or both, to dispose of items of tangible personal property to a certain person or persons. If we have not already given each item to that person, Trustee shall deliver those items at the death of the survivor of us. Property comprising our "tangible personal property" shall be those items of ours that are not used primarily in a business, and shall include, but shall not be limited to, boats, books, china, clothing, furnishings, furniture, glass, household items, jewelry, lawn and garden equipment, motor vehicles, personal effects, pictures, recreational items, rugs, silver, works of art, and any other similar items, as well as any insurance on those assets. Trustee shall determine which items are within this definition, and the determination shall bind all persons.

If tangible personal property is to be distributed to a minor, Trustee may determine that specific items (e.g., a motor vehicle) are inappropriate for distribution to a minor, and Trustee may distribute those items, or proceeds from sale of those items, as part of the remaining trust property. Trustee may distribute tangible personal property to a minor, to the minor's guardian, or to an adult with whom the minor lives, without further liability.

VII. TRUST PROPERTY

The Grantors intend this Trust to be the recipient of all their assets, including without limitation, assets commonly owned, jointly owned, marital, deferred marital, community, quasi-community or separate. The Grantor(s) intend this trust to be the

named beneficiary of all interests of which either, or both Grantors are, or may become, beneficiaries.

a. Property Transferred to the Trust

Property held by the Trustee(s) of this Trust, which is held in trust for the benefit of the beneficiaries subject to the provisions of this Trust Agreement, is and shall be property owned by the Trust. The Grantor(s) have paid over, assigned, granted, conveyed, transferred and delivered, and by this Trust Agreement do hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee(s) their property and may cause the Trustee(s) to be designated as beneficiary of life insurance policies for and on behalf of the Trust and its beneficiaries. These insurance policies, and any other insurance policies that may be delivered to the Trustee(s) hereunder or under which the Trustee(s) may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee(s), and any other property that may be received or which has been received by the Trustee(s) hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee(s) as hereinafter set forth. All property transferred to this Trust shall retain its character, (e.g., joint, community, separate, or otherwise), subject to the terms of this Trust agreement.

b. Commonly Owned Property

Property transferred to the Trustee(s) by the Grantor(s) which is commonly owned by the Grantor(s) shall remain their commonly owned property, and shall be treated in accordance with the laws of the State in which they reside or the situs of the property, whichever controls. This property, as invested and reinvested, together with the rents, issues and profits therefrom (hereinafter referred to as "commonly owned

property") shall retain its character as commonly owned property during the joint lifetimes of the Grantor(s).

Community and quasi-community property transferred to the Trustee(s) by the Grantor(s) shall be their community property, and treated in accordance with the laws of the State in which they reside or the situs of the property, whichever controls. This property, as invested and reinvested, together with the rents, issues and profits they generate (hereinafter referred to as "the Community Estate" or the "community property") shall retain its character as community property during the joint lifetimes of the Grantor(s), in spite of any change in the situs of the Trust, subject, however, to the provisions of this Agreement. Property transferred to the Trustee by the Grantor(s), which is jointly owned with rights of survivorship, shall be held and owned by the trust as the commonly owned property of the Grantor(s).

c. Separate Property

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

VIII. TRUSTS FOR SPOUSE AND FAMILY

At the death of the first grantor leaving a surviving grantor:

a. Division of Property

Trustee shall divide the remaining property into two trusts, "Trust A" and "Trust B." First, trustee shall allocate to Trust A an amount equal to all remaining trust property minus the sum of (1) the amount of trust property, if any, that, when added to the value of

my taxable estate (other than the remaining trust property) will increase my taxable estate (other than remaining trust property) to the largest amount that, after allowing for (a) the unified credit not used for transfers during lifetime; (b) any other allowable credits and deductions; (c) any other charges to principal that are not allowed as deductions in computing my taxable estate, will result in no federal estate tax being imposed on my estate; and (2) any trust property which is not included in my gross estate. However, Trustee shall not use the maximum state death tax credit if to do so would require an increase in the state death taxes paid. As used in this paragraph, "taxable estate" means my gross estate, as defined in Sec. 2031(a) of the Internal Revenue Code of 1986, as amended ("IRC"), less (1) deductions set out in IRC 2053 and 2054 (whether or not claimed) and (2) any other charges to principal that are not allowed as deductions pursuant to IRC 2053 and 2054. Second, Trustee shall allocate to Trust B any remaining trust property. Trustee shall have authority to allocate assets in kind between Trusts A and B, but the values used shall be determined as of the date or dates of allocation. Trustee shall allocate no asset or proceeds of sale of any asset to Trust A that would not qualify for the marital deduction. Trustee shall pay no taxes from assets allocated to Trust A. In carrying out these provisions, Trustee may rely conclusively on written statements of the personal representative of my estate as to the value of assets for federal estate tax purposes, the value of assets qualifying for the marital deduction, and other information that may be pertinent.

b. Disclaimer of Interest

The Surviving Grantor may disclaim his or her interest in any asset, or portion thereof, which is included in the Trust Estate or any share created by this Trust

Agreement. Such disclaimer shall be in writing, in such form as may be prescribed by state law, and which may meet the further requirements of the rules and regulations of the Internal Revenue Service for qualified disclaimers. The Surviving Grantor may disclaim his or her right to income, the right to invade principal (whether by ascertainable standard or otherwise), the right to appoint the residual by amendment to this Trust or by testamentary instrument, and any other right or rights, interest and/or portions thereof. In making the election to disclaim any interest in property, the Surviving Grantor may choose the property to be disclaimed, and such interest or interests therein as they may deem prudent. If a disclaimer extends to the Surviving Grantor's entire interest in an asset, and all rights therein, said asset shall be held, managed, allocated and distributed according to the terms herein pertaining to the death of the Surviving Grantor, as if such death had occurred.

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

c. Division of Marital Share

The marital share shall be divided and administered as follows: Taking into account any assets already assigned into and held under the terms of Decedent's Trust B,

and including any assets disclaimed by the Surviving Grantor in favor of Decedent's Trust B, an amount equal to the exemption equivalent available by reason of the unified tax credit available under Internal Revenue Code Section 2010 or any successor or modified version of that Section (reduced by any such credit applied to lifetime transfers), shall be placed in Decedent's Trust B and shall be administered under the terms of Trust B as hereinafter set forth (Decedent's Trust B), and any amount of the marital share exceeding the amount allocated to Trust B shall be administered under the terms of Trust C as hereinafter set forth.

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

d. Decedent's Trust B

Decedent's Trust B shall be composed of cash, securities or other property of the Trust Estate having a value equal to the largest amount, that after allowing for the unified credit against the federal estate tax and the state death tax credit against such tax (but only to the extent that the use of such death tax credit does not increase the death tax

payable to any state), will not result in a federal estate tax being imposed on the estate of the deceased Grantor. Notwithstanding the foregoing, if the decedent Grantor is a non-resident, non-citizen of the United States at death then all of the Decedent's Share shall be allocated to Survivor's Trust A after Decedent's Trust B.

e. Decedent's Trust C

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

f. Use of Trusts A and B - Simultaneous Death

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

If any non-Grantor beneficiary and a Grantor should die under circumstances which would render it doubtful as to which died first, the Grantor or the non-Grantor

beneficiary, it shall be inclusively presumed that said non-Grantor beneficiary predeceased such Grantor by (60) sixty days.

IX. SURVIVORS TRUST A

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

a. Income

Trustee shall pay net income to the surviving grantor until death, at least quarterly annually.

b. Principal

If net income is insufficient to maintain the standard of living of the surviving grantor, Trustee shall use that portion of principal necessary to enable the surviving grantor Spouse to maintain that standard of living. Trustee may distribute principal only to the surviving grantor.

c. Withdrawal Right

The surviving grantor may withdraw from principal during each calendar year the greater of (1) \$5,000 or (2) 5 percent of the market value of the principal on the last day of the calendar year in which the withdrawal is requested. Withdrawals may be made at any time during the last 30 days of the calendar year. Withdrawals shall be made in writing and delivered to the Trustee prior to the expiration of the withdrawal period. The right of withdrawal is not cumulative and, if not exercised, shall lapse. If the dollar amount set forth in IRC 2514(e)(1) shall be increased by a future amendment, the increased amount shall be substituted for \$5,000 in the first sentence of this paragraph, effective for all calendar years beginning on or after the effective date of the amendment.

d. Control of Assets

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

e. Right to Change Beneficiary

The Surviving Grantor retains the right to change the beneficiaries of Trust A.

f. Allocation to Survivor's GST Trust

Effective as of the date of death of the last of the Grantor(s) to die, this Trust A, as finally determined, shall be further divided and held as two (2) parts known respectively as the "Survivor's GST Trust" and "Trust A." The Survivor's GST Trust shall consist of that amount of property, if any that has a value equal to the amount of the decedent Grantor's then available generation-skipping transfer ("GST") tax exemption. In making the division of property into Survivor's GST Trust and Trust A: (a) the values as finally determined for federal estate tax purposes (or, if no estate tax return is required with respect to the decedent Grantor's estate, the values determined in accordance with federal estate tax laws), will be conclusive and (b) the trustee may select the property to be used to satisfy the Survivor's GST Trust and Trust A amounts, but the trustee must select such property in a manner that the assets, including cash, of each share will have an aggregate fair market value fairly representative of each part's proportionate share of the appreciation or depreciation in value to the date or dates of allocation of all property then

available for allocation for the purposes of determining the amount of property allocated to Survivor's GST Trust and Trust A. The decedent Grantor's then available GST tax exemption means an amount equal to the GST tax exemption provided in Section 2601 et. seq. of the Internal Revenue Code of 1986, as amended, that has not been allocated by the decedent Grantor (or by operation of law) to property transferred by the decedent Grantor during the decedent Grantor's lifetime and that has not been allocated by the decedent Grantor's personal representative to any other disposition under the decedent Grantor's will, this trust, or otherwise. In determining the allocation amount, if the decedent Grantor has died without filing a federal gift tax return that is required to be filed and that has a due date (including extensions) that is after the decedent Grantor's death, then the decedent Grantor will be deemed to have allocated the decedent Grantor's GST tax exemption to zero (0). The property with respect to which the decedent Grantor is the transferor for federal GST tax purposes that (a) may at some time be subject to the federal GST tax, (b) is required to be reported on such gift tax return (c) is to or for the benefit of the decedent Grantor's lineal descendants or any of them; and (d) does not qualify for any other exemption or exclusion from the federal GST tax. Nonetheless, the decedent Grantor shall not be deemed to have allocated his GST tax exemption to any trust if the entire trust principal may, at any time, either be required under the terms of the governing instrument to be paid to one or more children of the decedent Grantor or to one or more persons treated as a child of the decedent Grantor for federal GST tax purposes (other than as an invasion of principal in the discretion of a trustee or pursuant to an ascertainable standard), or be subject to federal estate tax by reason of the death of a child of the decedent Grantor or a person treated as a child of the decedent Grantor for federal

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

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

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

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

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

X. DECEDENT'S TRUST B

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

a. Payment of Income

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

b. Payment of Principal

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

c. Other Payments

In addition to the income (paid under "Payment of Income" above) and discretionary payments of principal (paid under "Payment of Principal" above) from this Trust, there shall be paid to the Surviving Grantor, during his or her lifetime, from the

principal of this Trust, upon the Surviving Grantor's written request, during the last month of each fiscal year of the Trust an amount not to exceed during such fiscal year the amount of five thousand (\$5,000) dollars or five (5%) percent of the aggregate value of principal for such fiscal year, whichever is greater. This right of withdrawal is not cumulative, so that if the Surviving Grantor does not withdraw, during such fiscal year, the full amount to which he or she is entitled under this paragraph, his or her right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

d. Control of Assets

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

e. Qualified Terminable Interest

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

share of Trust B Property (including a different fractional share than selected in any federal law election) as qualifying for any state law marital deduction.

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

f. Distribution of Residual of Trust B

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

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

XI. DECEDENT'S TRUST C

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

a. Payment of Income

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

b. Payment of Principal

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

c. Control of Assets

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

d. Allocation to Decedent's GST Trust

Effective as of the date of death of the first of the Grantor(s) to die, this Trust C, as finally determined, shall be further divided and held as two (2) parts known respectively as the "Decedent's GST Trust" and "Trust C." The Decedent's GST Trust shall consist of that amount of property, if any, that has a value equal to the amount of the decedent Grantor's then available generation-skipping transfer ("GST") tax exemption.

In making the division of property into Decedent's GST Trust and Trust C: (a) the values as finally determined for federal estate tax purposes (or, if no estate tax return is required with respect to the decedent Grantor's estate, the values determined in accordance with federal estate tax laws), will be conclusive; and (b) the trustee may select the property to be used to satisfy the Decedent's GST Trust and Trust C amounts, but the trustee must select such property in a manner that the assets, including cash, of each share will have an aggregate fair market value fairly representative of each part's proportionate share of the appreciation or depreciation in value to the date or dates of allocation of all property then available for allocation. For the purposes of determining the amount of property allocated to Decedent's GST Trust and Trust C, the decedent Grantor's then available GST tax exemption shall mean an amount equal to the GST tax exemption provided in Section 2061 et. seq. of the Internal Revenue Code of 1986, as amended, that has not been allocated by the decedent Grantor (or by operation of law) to property transferred by the decedent Grantor during the decedent Grantor's lifetime and that has not been allocated by the decedent Grantor's personal representative to any other disposition under the decedent Grantor's Will, this Trust, or otherwise. In determining the allocation amount, if the decedent Grantor has died without filing a federal gift tax return that is required to be filed and that has a due date (including extensions) that is after the decedent Grantor's death, then the decedent Grantor shall be deemed to have allocated the decedent Grantor's GST tax exemption to all the property with respect to which the decedent Grantor is the transferor for federal GST tax purposes that (a) may at some time be subject to the federal GST tax; (b) is required to be reported on such gift tax return; (c) is to or for the benefit of the decedent Grantor's lineal descendants or any of them; and

(d) does not qualify for any other exemption or exclusion from the federal GST tax. Nonetheless, the decedent Grantor shall not be deemed to have allocated his GST tax exemption to any trust if the entire trust principal may, at any time, either be required under the terms of the governing instrument to be paid to one or more children of the decedent Grantor or to one or more persons treated as a child of the decedent Grantor for federal GST tax purposes (other than as an invasion of principal in the discretion of a trustee or pursuant to an ascertainable standard), or be subject to federal estate tax by reason of the death of a child of the decedent Grantor or a person treated as a child of the decedent Grantor for federal GST tax purposes. The Trust property held as Decedent's GST Trust and as Trust C shall be held and administered in accordance with the other terms and conditions of this section of the Trust, "**DECEDENT'S TRUST C**," as herein contained.

e. Distribution of Residual of Trust C

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

After the death of the first Grantor, the trustee shall, to the extent possible, make property allocations and distributions of the Trust Estate so that any distributions to "skip persons" (as defined in the Internal Revenue Code of 1986, as amended) of the Grantor shall be made from the Decedent's GST portion of Trust B or Trust C, as the case may be, so long as all distributions to skip persons will be made from those portions of the Trust Estate or the deceased Grantor's taxable estate having an inclusion ratio of zero (0). If

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

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

XII. FAMILY TRUST

a. Income

Trustee in its discretion (a) shall pay net income (i) to or for the benefit of the surviving grantor until death or (ii) to or for the benefit of one or more of our descendants, or (b) may accumulate all or any part of net income. Trustee shall distribute or accumulate net income using the following ascertainable standard: first the surviving

grantor, and then each other potential beneficiary, shall receive health care, education, support, and maintenance in the manner that existed prior to the death of the first grantor.

b. Principal

If net income is insufficient to maintain the standard of living, described above, that we enjoyed, and other potential beneficiaries enjoyed, prior to the death of the first grantor, Trustee shall use that portion of principal necessary to enable the surviving grantor or any other potential beneficiary to maintain that standard of living; provided, no principal of Trust B shall be distributed to the surviving grantor until the principal of Trust A is exhausted.

c. Residue

At my Spouse's death, Trustee shall distribute Trust B, together with any income of Trust B not distributed during my Spouse's lifetime, under the provisions of (d) below.

d. Spouse's Right

The surviving grantor shall have the right to receive free from trust all or any portion of the assets that otherwise would have been held by Trustee under this Agreement after the death of the first grantor, but only by filing with the probate court that has (or would have had if my estate were probated) domiciliary jurisdiction of my estate a writing evidencing exercise of that right, which shall make specific reference to this provision of this Agreement, be signed by the surviving grantor personally, and which shall be filed with the court after the death of the first grantor and not later than 5:00 p.m., current local time, one month prior to the initial due date for filing the federal estate tax return for the estate of the first grantor to die. Failure of the surviving grantor to file the writing shall constitute an irrevocable disclaimer of any rights under this paragraph. The surviving

grantor may exercise this right to receive assets free from trust if, and only if, the assets, or the remaining assets, that Trustee is to continue to hold in trust under this Agreement would be free from federal estate tax in the surviving grantor's estate if the surviving grantor were to die immediately after exercise of the right.

e. Withdrawal Right

The surviving grantor may withdraw from principal during each calendar year the greater of (1) \$5,000 or (2) 5 percent of the market value of the principal on the last day of the calendar year in which the withdrawal is requested. Withdrawals may be made at any time during the last 30 days of the calendar year. Withdrawals shall be made in writing and delivered to the Trustee prior to the expiration of the withdrawal period. The right of withdrawal is not cumulative and, if not exercised, shall lapse. If the dollar amount set forth in IRC 2514(e)(1) shall be increased by a future amendment, the increased amount shall be substituted for \$5,000 in the first sentence of this paragraph, effective for all calendar years beginning on or after the effective date of the amendment.

XIII. HEIRS AT LAW

The children of Grantors **Charles C. Kalbach** and **Betty J. Kalbach**, who are children named as Primary Beneficiaries of the Trust Estate, are as follows: **Barbara L. Kalbach** and **Brett L. Kalbach**. Although Grantors have great love and affection for all of their children, the children of Grantors **Charles C. Kalbach** and **Betty J. Kalbach**, who are children specifically not named as Primary Beneficiaries of the Trust Estate and are therefore allocated no shares are as follows **Charles C. Kalbach, Jr., Peter J. Kalbach, and Thomas D. Kalbach**.

a. Distribution to Family

Upon the death of the surviving grantor, Trustee shall divide the remaining trust property, including additions from any sources, into separate trusts, as provided in section XXIII subsection J, "Allocation of Trust Assets", for each living family member of ours who is a beneficiary, and one for the then living descendants, collectively, of each deceased family member of ours who is a beneficiary. Trustee shall distribute each trust set aside for a living family member who is an adult beneficiary to the beneficiary as provided in section XXIII subsection K, "Distribution of Trust Assets". Trustee shall divide each trust set aside for an adult descendant of a deceased family member who is a beneficiary to the descendant as provided in section XXIII subsection J, "Allocation of Trust Assets". Trustee shall hold and dispose of each trust for each minor family member who is a beneficiary, and each trust for a minor descendant of a deceased beneficiary for whom a separate trust has been created, as follows:

1. **Income Before Age 25** Before the beneficiary attains the age of 25 years, Trustee, in its discretion, shall pay to or use for the benefit of the beneficiary all or any part of net income. In exercising its discretion, Trustee shall consult with and be guided by the guardian of the beneficiary, if any, but Trustee shall

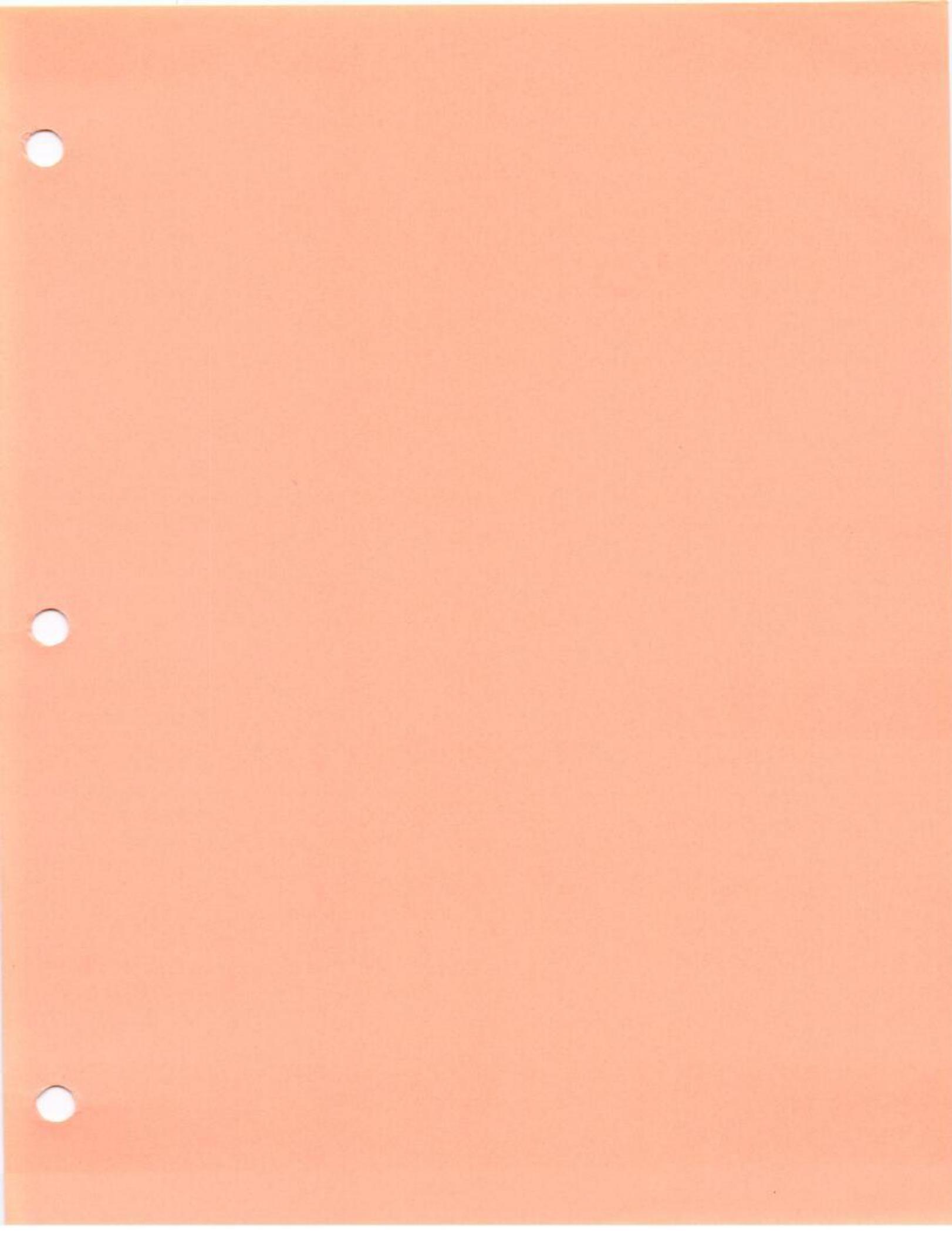
make the final decision. Trustee shall add income to principal, at Trustee's discretion.

2. **Income After Age 25** After the beneficiary attains the age of 25 years, Trustee shall pay to or for the benefit of the beneficiary all net income from the final year prior to final distribution, in one convenient installment.
3. **Principal** Trustee shall pay to or for the benefit of the beneficiary those portions of principal that Trustee determines necessary for the reasonable health care, education, support and maintenance of the beneficiary and the beneficiary's immediate family (reasonable support and maintenance includes, but is not limited to, obtaining a residence or becoming established or remaining in a business or profession).
4. **Residue** When the beneficiary attains the following age, Trustee shall distribute the following portions of the principal of the trust to the beneficiary free from trust:

25 years: All Remaining Trust Assets

b. Death of Beneficiary

Unless stated otherwise in section XXIII subsection J, "Allocation of Trust Assets", if the beneficiary dies before being entitled to distribution of the remaining trust property, Trustee shall distribute the remaining trust property to, or in trust for the benefit of, a person or persons among our descendants, upon such conditions and estates, with the powers, in the manner and at the time or times, as the deceased beneficiary appoints by will which specifically refers to this power of appointment. To the extent this power of appointment is not exercised effectively, Trustee shall distribute the then remaining trust property to the beneficiary's then living descendants, by right of representation, or if there are none, to my then living descendants, by right of representation. The share of any ultimate beneficiary in default of appointment for whose primary benefit another trust then is held or is to be held under this Agreement shall be added to and commingled with the



other trust and held, or partly held and partly distributed, as if it had been an original part of the other trust.

c. Withdrawal Right

Beneficiary may withdraw from principal during each calendar year the greater of (1) Five thousand (\$5,000) dollars or (2) Five (5%) as percent of the market value of the principal on the last day of the calendar year in which the withdrawal is requested.

Withdrawals may be made at any time during the last 30 days of the calendar year.

Withdrawals shall be made in writing and delivered to the Trustee prior to the expiration of the withdrawal period. The right of withdrawal is not cumulative and, if not exercised, shall lapse. If the dollar amount set forth in IRC 2514(e)(1) shall be increased by a future amendment, the increased amount shall be substituted for five thousand (\$5,000) dollars in the first sentence of this paragraph, effective for all calendar years beginning on or after the effective date of the amendment.

XIV. TRUSTEE

a. Successor Trustee

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

b. Surviving Trustee

In the event of the death resignation, or incompetence of an original Trustee, or if for any reason any such person ceases, or is unable, to serve as Trustee hereunder, the Grantor(s) nominate and appoint the remaining original Trustee to continue to serve as Trustee hereunder without the approval of any court. So long as the Surviving Grantor

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

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

c. First Successor Trustee

In the event of the death resignation or incompetence of the remaining or surviving original Trustee who is a Grantor, or if for any reason such person ceases, or is unable, to serve as Trustee hereunder, the Grantor(s) nominate and appoint:

Barbara L. Kalbach, presently residing at 2770 International Drive - Apt. 509C, Ypsilanti, Michigan, 48197, and **Brett L. Kalbach**, presently residing at 6857 Grace Road, Benzonia, Michigan, 49616 to serve jointly as Successor Trustees hereunder without court approval.

d. Second, Third, and Fourth Successor Trustees

When more than one person is named with others to serve as Successor Trustee(s) together and one of the named persons is unable or unwilling for any reason to serve or to continue to serve, and no additional persons are named herein to take the place of such Trustee who is unable or unwilling for any reason to serve or to continue to serve, the Grantor(s) direct that the remaining named Successor Trustee(s) shall continue to serve as Trustee(s) (or if only one remains, Trustee), without court approval.

e. Resignation by Trustee

Trustee may resign at any time by giving written notice, specifying the effective date of resignation, to me, or after my death to the beneficiaries. If no successor is named, a remaining co-Trustee may continue to serve as sole trustee.

f. Removal of Trustee

We may remove a Trustee, and we may appoint any successor, in writing at any time. At any times after the death of the first grantor, the then survivors of the surviving grantor and adult children, acting by unanimous written consent, may remove an incumbent Trustee or a co-Trustee, without cause, and may appoint a successor Trustee or Trustee(s), located in or out of the state of Michigan; provided, no person, acting alone, may remove or name a Trustee of a trust that would be included in that person's gross estate and subject to tax solely by reason of this right of removal or appointment.

g. Action by One Trustee

When more than one person is serving as Trustee, any one of them, acting alone, may exercise any power and authority of Trustee except that I am the only Trustee who may make discretionary distributions of income and principal to myself or my estate as a beneficiary without the concurrence of all incumbent co-Trustee(s); provided, that if a corporate co-Trustee is serving, only the corporate Trustee may make discretionary distributions of income and principal.

h. Miscellaneous Trustee Provisions

The following apply to every trust created under this Agreement:

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

2. **Multiple Successor Trustee(s) Must Act Together** When there is more than one Successor Trustee serving, the multiple trustee(s) must unanimously agree in order to act. If the Grantor(s) are serving as Trustee this provision does not apply.
3. **Resolution of Conflict** Any controversy between the Trustee(s) and any controversy between the Trustee and any other parties to this Trust, including Beneficiaries, involving the construction or application of any of the terms, provisions, or conditions of this Trust shall, on the written request of any disagreeing party served on the other or others, be submitted to arbitration. The parties to such arbitration shall each appoint one person to hear and determine the dispute and, if they are unable to agree, then the persons so chosen shall select another impartial arbitrator whose decision shall be final and conclusive upon all parties. The cost of arbitration shall be borne by the losing party or parties, in such proportion as decided in arbitration proceedings. Such arbitration shall comply with the commercial Arbitration Rules of the American Arbitration Association, 140 West 51st Street, New York, New York, 10020.
4. **Litigation** Trustee(s) are hereby authorized to defend, at the expense of the trust estate, any contest or other attack of any nature on the Trust or any of its provisions.
5. **Trustee Compensation** No Grantor shall receive compensation for services as Trustee. Any Successor Trustee shall be entitled to reasonable compensation for their services, which compensation shall be commensurate with comparable charges for similar services made from time to time by corporate Trustee(s) in the geographic area in which the Trust has its principal situs for administration. The Trustee shall also be entitled to reimbursement for expenses necessarily incurred in the administration of the Trust Estate. No Trustee shall be required to accept compensation for their services. No duty to pay compensation or reimbursement to any Trustee shall arise unless and until that Trustee has submitted a request or billing for compensation or reimbursement.
 - a. **Trustee's Fees** Trustee shall be entitled to reasonable compensation for services, and to reimbursement for reasonable expenses.
 - b. **Qualifying as Trustee** A successor Trustee shall qualify upon signing an acceptance of this trust and mailing or delivering the acceptance to one or more of the then beneficiaries of this Agreement.
 - c. **Title and Powers** Any successor Trustee shall have all the title, powers, and discretion of the Trustee succeeded, without the necessity of any conveyance or transfer.
 - d. **Prior Trustee's Acts and Accounts** No successor Trustee shall be personally liable for any act or omission of any predecessor Trustee. Any successor Trustee may accept, without examination or review, the

accounts rendered and the property delivered by or for a predecessor Trustee, without incurring any liability for doing so.

- e. **Corporate Successor** Any corporate successor to the trust business of any corporate Trustee acting under this Agreement shall become Trustee in place of its predecessor, without the necessity of any conveyance or transfer.
- f. **Proceeds Application** No person paying money or delivering any property to Trustee need see to its application.
- g. **Notice** Unless otherwise specifically provided in this Agreement, Trustee may rely on any notice, certificate, affidavit, letter, telegram, or other document believed by it to be genuine, or on any evidence deemed by it to be sufficient, in making any trust payment or distribution. Trustee shall incur no liability for any payment or distribution made in good faith without actual knowledge of a changed condition affecting any person's interest in the trust.

XV. TRUSTEE POWERS AND DUTIES

a. Grantor(s) Retain Absolute Right as Trustee

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

b. Duties of Trustee

Subject to the terms herein, every Trustee may exercise any of the following powers, and any others that are granted by law, without court order:

c. Investment and Management of Property

1. Retain any trust property.
2. Invest in any property, without limit.
3. Sell or exchange any trust property, real or personal, for cash or on credit, at public or private sales, for any purposes; exchange any trust property for other property; grant options to purchase or acquire any property; and determine the prices and terms of sales, exchanges, and options.
4. Vote in person or by proxy all securities and keep any property in bearer form or in the name of a trustee or a nominee, with or without disclosure of any fiduciary relationship.
5. Continue any business (other than a profession) in which we were engaged at our death in any manner, in any business form, for any length of time (with or without incorporating, as my Trustee decides), and with that portion of the trust property that Trustee deems best, without liability on the part of Trustee for any losses incurred.
6. Enter into a lease or other arrangement for the exploration and removal of minerals or other natural resources, or enter into a pooling or unitization agreement.

7. Operate, maintain, dedicate, convey, exchange, lease for any length of time, partition, plat, subdivide, improve, repair, surrender, abandon, grant easements, or otherwise deal with or dispose of all trust property, or any part of it, at the times, in the manner, and on terms Trustee may deem expedient and proper.
8. Borrow money for any purpose from Trustee or from others and mortgage or pledge any trust property.
9. Collect, pay, contest, compromise, or abandon claims of or against the trust, including claims against the trust by the Trustee.
10. Execute contracts, conveyances and other instruments, including instruments containing covenants and warranties binding on and creating a charge against the trust property, and containing provisions excluding personal liability.
11. Receive, apply for, own, pay premiums on, and borrow upon any insurance policy held by the trust.
12. Exercise, as absolute owner, all of the options, benefits, rights, and privileges under any insurance policies held by the trust.
13. Purchase assets from a grantor, or from a so-called marital or QTIP trust or trusts for the benefit of a grantor, or from a combination of them, and give as consideration a private annuity for the benefit of a grantor.

d. Tax Matters

Make, revise or revoke any available allocation, consent, or election affecting any tax, including, but not limited to, allocation of all or part of realized capital gains to income, by book entries; but this specific allocation may not be made by a person who personally may benefit financially. Trustee's decision shall bind all beneficiaries. Trustee may, but need not, make compensating adjustments between principal and income, or with respect to any gift, as a result of decisions that beneficially or adversely affect the interests of beneficiaries.

e. **General Powers of Administration**

1. Employ agents, with or without discretionary powers, and pay their reasonable compensation and expenses.
2. Credit receipts and charge expenditures, including, but not limited to, the expenses incurred in the administration, management and preservation of trust property, to income or principal or partly to each as Trustee determines to be reasonable.
3. Enter into any transaction with the personal representative of my estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee has any interest, even though Trustee also is the other trustee or personal representative.
4. Allot different kinds or disproportionate portions or undivided interests in property among beneficiaries; and determine the value of any allotted property without compensating adjustment, even if the basis for federal income tax purposes of property allotted to any beneficiary is not fairly representative of all property available for distribution.
5. Make any distribution or division of trust property in cash or in kind or both.
6. Either divide into separate trusts, or hold as designated portions of a single trust, assets held in "portions" for the benefit of the same beneficiary.
7. Transfer the assets of any trust to another jurisdiction and appoint, compensate, and remove a successor trustee (individual or corporate) for trust assets in another jurisdiction, with any trust powers set out in this Agreement that Trustee delegates to the successor trustee.
8. Release all or any part of a general power or special power, even if a special power is not presently exercisable or is exercisable in a fiduciary capacity that requires the exercise of the power, if Trustee, in its sole discretion, determines that the release is necessary to qualify a trust (1) for the marital or charitable deductions for federal estate or gift tax purposes or (2) as an eligible shareholder of an S corporation (as defined in IRC 1361(b)). The Trustee shall hold, manage, invest and reinvest the commonly owned and/or community estate (if any requires such management and investment) and shall collect the income, if any, there from and shall dispose of the net income and principal during the joint lives of the Grantor(s) as follows:

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

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

f. Separate Property

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

The Trustee shall pay to, or apply for the benefit of the Grantor who contributed such separate estate, all of the net income of such Grantor's separate estate. The Trustee may pay to, or apply for the benefit of the Grantor who contributed such separate estate, such sums from the principal thereof as in the Trustee's sole discretion shall be necessary

or advisable from time to time for the medical care, welfare and maintenance of such Grantor, taking into consideration to the extent the Trustee deems advisable, any other income and resources of such Grantor known to the Trustee.

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

g. Sub-Chapter S Authorization

It is the grantor's intent that all Trusts and shares created hereby each qualify as a Qualified Subchapter S Trust ("QSST") for federal tax purposes (if the appropriate election is made) and in any event to conform to the requirements of the provisions of the Internal Revenue Code from time to time existing with respect to the federal income tax treatment of S Corporations and their shareholders with respect to any S Corporation Stock or rights therein. The grantor(s) intend that the provisions of this Trust, including any power, duty or discretionary authority, be construed to conform to that intent. To the extent that any such provision cannot be so construed with respect to any S Corporation Stock or rights therein, it shall be deemed void as to such Stock or right. In no event shall the Trustee take any action or have any power that will impair the power of such trusts or shares to hold S Corporation Stock, and all provisions regarding such trusts shall be interpreted to conform to that objective with respect to any S Corporation Stock or rights therein.

h. Precious Metals and Limited Partnerships

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

i. Stock of Professional Corporation

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

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

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

j. Occupancy of Residence

The Trustee may permit any Grantor Beneficiary to occupy rent free any residence constituting a part of the assets of a Trust for such Beneficiary and to pay the real estate taxes thereon; expenses of maintaining said residence in suitable repair and condition; and to pay hazard insurance premiums on said residence; provided, however, the Trustee shall not exercise this power in any way which would deprive either Grantor under this Trust of the beneficial enjoyment of the Trust and either Grantor shall have the right to limit, restrict or terminate the Trustee's exercises of this power if it interferes with such beneficial enjoyment.

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

k. Valuation of Assets

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

I. Insurance

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

- 1. Policy Owners Rights** Nothing in this Article shall be construed as limiting the right of either Grantor to dispose of by Will his or her interest in any life insurance policy on the other Grantor's life that is payable to the Trustee hereunder or as limiting any such right a Grantor may possess in any such insurance policy by virtue of its commonly owned or community property character.
- 2. Trustee Held Harmless as Custodian** The owner of any life insurance policies payable to the Trustee shall have all rights under any such policies, including the right to change the Beneficiary, to receive any dividends or other earnings of such policies without accountability therefore to the Trustee or any Beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to either Grantor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon owners written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee.
- 3. Cancelling a Policy** If any policy is surrendered or if the Beneficiary is changed, this Trust shall be revoked with respect to such policy. However, no revocation of the Trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in Beneficiary of the policy is accepted by the insurance company.
- 4. Policy Options** Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the insured that matures any such policy, the Trustee, in the Trustee's discretion either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to the Trustee, and the Trustee shall deliver any policies on the Grantor's life held by the Trustee and payable to any other beneficiaries as those beneficiaries may direct.
- 5. Insurance Payment Discharge** Payment to, and the receipt of, the proceeds, by the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this Trust Agreement or see to the application of any payment.

6. **Suing an Insurance Company** The Trustee need not engage in litigation to enforce payment of any policy without prior indemnification to the Trustee from the Trust satisfactory to the Trustee for any resulting expenses.
7. **Limitation on Change of Beneficiary** The Trustee shall not have the power or authority to change the beneficiary of any policy of insurance held in any irrevocable trust created under the terms hereof.

XVI. ENVIRONMENTAL MATTERS

- a. **Environmental Powers** Respond to environmental concerns and hazards affecting trust assets, including, but not limited to the following actions:
 1. Inspecting property and the operation of business activities on property held by the trust (including property held in or operated by sole proprietorships, partnerships, or corporations) to determine compliance with any environmental laws affecting the property and to respond to any actual or threatened violation of any environmental law affecting property held by the trust.
 2. Taking any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the trust, either before or after the initiation of an enforcement action by any governmental body.
 3. Appointing an independent special trustee to hold title to and take any reasonably required action relating to any environmental law on any property tendered to the trust (1) until Trustee determines that no substantial risk exists if the tendered property becomes trust property or (2) until Trustee abandons the tendered property.
 4. Refusing to accept property if Trustee determines that any property to be transferred to Trustee either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving a hazardous substance and that activity could result in liability to the trust or otherwise impair the value of the assets held in the trust.
 5. Settling or compromising at any time any and all claims against the trust, involving the alleged violation of any environmental law affecting property held in the trust, that may be asserted by any governmental body or private party.
 6. Disclaiming any power granted by any document, statute, or rule of law that, in the sole discretion of Trustee, may cause Trustee to incur personal liability under any environmental law.
 7. Declining to serve or resigning as Trustee if Trustee reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and it

in its individual capacity because of potential claims or liabilities that may be asserted against it on behalf of the trust because of the type or condition of assets held in the trust.

8. Charging the cost of any inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized in these provisions against the income or principal of the trust.
9. **Limitations** Trustee shall not be personally liable to any beneficiary or other party for any decrease in the value of assets in the trust because of Trustee's compliance with any environmental law (specifically including any reporting requirement under any environmental law). Neither Trustee's acceptance of property nor Trustee's failure to inspect property or business operations shall create any inference that there is or may be any liability under any environmental law with respect to the property or business operations. The authority granted by these provisions is solely to facilitate the administration and protection of trust assets and is not to impose greater responsibility or liability on Trustee than that imposed by law absent these provisions.
10. **Definitions** For purposes of these provisions, environmental law means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health; and hazardous substance means any substance defined as hazardous or toxic or otherwise regulated by any environmental law.

XVII. LIMITATION OF TRUSTEE POWERS REGARDING INSURANCE

When more than one person is serving as Trustee and at least one of them is not beneficially interested in the exercise or non-exercise of a power or election, the beneficially interested Trustee shall not participate in the exercise or non-exercise of the power or election.

Trustee shall exercise no power in a way that would affect adversely a marital or charitable tax deduction unless it clearly would benefit the beneficiaries. Thus, assets allocated to a trust qualifying for the marital deduction, other than personal residences, must produce reasonable income within a reasonable time.

When exercising discretion relating to distribution of income or principal, Trustee shall consider all other income and liquid assets of the beneficiary known by Trustee.

We the grantors are the only persons who, when serving as Trustee, may exercise any incident of ownership, alone or with others, over any policy of insurance on the life of the person.

XVIII. BENEFICIARY UNDER DISABILITY

If a beneficiary is under the age of 21, or legally disabled, or, in Trustee's opinion, incapable of managing a trust distribution, Trustee either may expend directly any income or principal that it is authorized to use for the beneficiary, or may pay it over to or for use of the beneficiary, or to the beneficiary's guardian, if any, or to any adult with whom the beneficiary is residing, without responsibility for its expenditure. If Trustee is directed to distribute any portion of trust principal to that beneficiary, the trust principal shall vest in interest in the beneficiary indefeasible, but Trustee, in its discretion, may distribute the portion to a custodian under a Uniform Gifts to Minors Act or similar act or hold the portion as a separate trust for the period of time Trustee deems advisable but not after the time (1) the beneficiary reaches the age of 21 years, or (2) after the removal of the legal disability, or (3) after the time Trustee deems the beneficiary is capable of managing a trust distribution, whichever is latest. If Trustee holds the portion as a separate trust, Trustee may pay to or use for the beneficiary so much of the income and principal as Trustee determines to be required for the reasonable health care, education, support, and maintenance of the beneficiary and the beneficiary's Spouse and descendants.

XIX. SPENDTHRIFT CLAUSE

No interest under this Agreement may be transferred or assigned by any beneficiary, or be subject during the beneficiary's life to claims by or for the beneficiary's

creditors, Spouse, or Spouse's creditors. However, this provision shall not restrict exercise of a power of appointment granted by this Agreement.

XX. MISCELLANEOUS ADMINISTRATION PROVISIONS

The following apply to every trust created under this Agreement:

a. Combining Trusts

If Trustee is holding any trust for the primary benefit of any person or persons for whose primary benefit Trustee is holding any other trust, upon substantially the same terms, which I created by this or any other instrument, or which any other member of my family created, Trustee in its discretion may commingle them and hold them as a single trust.

b. Minimum Trust Value

If at any time a trust created under this Agreement, in Trustee's judgment, shall become uneconomical or impractical to administer, Trustee may, but need not, terminate the trust and distribute the assets to the beneficiary or beneficiaries, at that time, of the current trust income, and if there is more than one beneficiary, in the proportions in which they are beneficiaries. However, if there is more than one beneficiary to whom current income could be paid but the interests are indefinite, Trustee shall distribute the trust assets to the beneficiaries who are our descendants, by right of representation, or if no descendant of ours is a beneficiary, to all income and then living residuary beneficiaries of the trust per capita.

c. Accrued Income

Upon the death of a beneficiary, other than a beneficiary to whom Trustee is directed to pay all net income until death, any accrued or undistributed income shall be held

and accounted for, or distributed, in the same manner as if it had been received and accrued after the beneficiary's death.

d. Generation-Skipping Transfer Tax

If any trust created under this Agreement would have a generation-skipping transfer tax ("GSTT") inclusion ratio other than one (1) or zero (0), Trustee shall divide the trust into two separate trusts which are fractional shares, the "Exempt Trust" and the "Nonexempt Trust." The Exempt Trust is that fractional share of the total trust fund that has a GSTT inclusion ratio of zero, and the Nonexempt Trust is the remaining fractional share of the trust, with a GSTT inclusion ratio of one. The assets of each separate Exempt and Nonexempt Trust shall be held and administered as a separate trust, and Trustee shall maintain adequate accounting and other records for each Trust. To the extent possible, Trustee shall make distributions of principal to a beneficiary who is a non-skip person from the Nonexempt Trust. Trustee shall not add any property to an Exempt Trust, which would cause the inclusion ratio of the Trust to change. To the extent possible, Trustee shall effect the division and designation of these separate trusts as of the date of the surviving grantor's death. We direct Trustee, to the extent possible, to pay any estate, inheritance and other taxes from the Nonexempt Trust, unless that would be deemed a contribution to the Exempt Trust for GSTT purposes.

e. Trust Registration

This Agreement and any trust created by it shall be exempt from registration under Article 8 of the Michigan Revised Probate Code. However, if any controversy arises relating to the Agreement or a trust, and recourse to any probate court is required, the Agreement shall be registered and the proceedings held in Benzie county, Michigan.

f. Distribution by Right of Representation

In any distribution by right of representation, the stirpes (common ancestor) shall be the oldest generation with at least one then survivor.

g. Certificate of Trust Existence and Authority

In addition to any certificate authorized by law, Trustee may, at any time, record, file, or deliver a Certificate of Trust Existence and Powers ("Certificate") with or to any clerk, register of deeds, transfer agent, or other similar agency or office or to any person dealing with Trustee. The Certificate shall contain a verbatim synopsis of certain provisions of this Agreement and shall be signed and acknowledged by Trustee. Any purchaser or person dealing with Trustee shall be entitled to rely on the Certificate as a full statement of the provisions of this Agreement that are pertinent to the particular transaction. Machine copies of the executed Certificate shall have the same effect and authority as the executed Certificate.

XXI. GENERAL PROVISIONS

a. Notice to Creditors – Pursuant to MCLA 700.7504

If there is no probate estate said trustee must publish notice notifying estate creditors to present their claims within four (4) months after the date of the notice's publication or be forever banned. Said trustee who has published notice must also send a copy of the notice or a similar notice to each estate creditor who the successor trustee knows of at the time of publication or becomes aware of during the four months following publication. A successor trustee knows a creditor of the decedent if the successor trustee has actual notice of the creditor. The successor trustee also has knowledge if the creditors' existence is reasonably ascertainable by the successor trustee

based on and investigation of the decedent's available records for the two years immediately preceding death and mail following death. Notice to a known creditor of the estate must be given within four months after the date of the publication. If the successor trustee first knows of an estate creditor less than twenty five (25) days before the expiration of the time limit, notice must be given within twenty eighty (28) days after the successor trustee first knows of the creditor.

b. Payment of death costs

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

- 1. Discretionary Powers of Trustee** After a Grantor's death, the Trustee may, in the Trustee's discretion pay all or any part of such deceased Grantor's funeral and last illness expenses, legally enforceable claims against the Grantor or his or her estate, reasonable expenses of estate administration, any allowances by court order to those dependent upon such Grantor, any estate, inheritance, succession, death or similar taxes payable by reason of such Grantor's death, together with any interest thereon or other additions thereto, without reimbursement for such Grantor's Executor, Personal Representative or Administrator, from any Beneficiary of insurance upon such Grantor's life, or from any other person. All such payments, except for interest, shall be charged generally against the principal of the Trust Estate includable in such Grantor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof except as follows:
- 2. Specific Provisions for Settling Estate** On the death of the first of the Grantor(s) to die, the Surviving Grantor shall allocate and charge the final costs of the death of the first Grantor to die, to Trust A or Trust B or Trust C, as appropriate. Final costs shall include the costs of final illness, funeral expenses, and any Federal and State taxes. All taxes shall be charged against the Trust estate containing the assets creating the liability. Costs and expenses deducted in computing Federal Estate Tax and/or any State death tax shall be charged against the estate of the decedent Grantor. On the death of the Surviving Grantor, the Successor Trustee shall charge Trust A and Trust C proportionately with the costs of final illness, funeral expenses, and any Federal and State taxes of the Surviving Grantor.

3. **Written Statement as Evidence** Written statement by the executor, personal representative or administrator of such sums due and payable by the Trust Estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee, and the Trustee shall be under no duty to see to the application of any such payments.
4. **Flower Bonds** The Trustee shall see to the redemption of any obligations of the United States Government held hereunder which may be redeemed at par in payment of federal estate taxes, if held as part of the deceased Grantor's taxable estate, to the extent of the deceased Grantor's interest therein. If someone other than the Trustee is charged with the filing of returns and payment of death taxes, then the Trustee may pay over to such person(s) the obligations to be used in payment of taxes and upon receipt by such person(s) the Trustee shall be released from any duty to see to the application thereof.

c. Rule Against Perpetuities

Notwithstanding any provision to the contrary, all trusts under this Agreement shall terminate not later than 21 years after the death of the surviving grantor or the death of the last survivor of my descendants living on the date of the death of the surviving grantor, or a longer period (e.g., 90 years from the date the trusts become irrevocable), if permitted by Michigan law. At the end of that period Trustee shall distribute each remaining portion of the trust property to the beneficiary or beneficiaries, at that time, of the current trust income, and if there is more than one beneficiary, in the proportions in which they are beneficiaries.

d. Notice of Arbitration

The Grantor(s) and Trustee(s) of this Trust have agreed that alternative dispute resolution should be utilized to preserve the total trust Estate from the expenses of legal fees and litigation. For that reason, **THIS TRUST IS SUBJECT TO ARBITRATION**. The Trustee shall submit all disputes to arbitration as provided in this Trust and arbitration awards shall be fully enforceable under the terms of state law and common law to the

extent they are not inconsistent. Arbitration shall be pursuant to the rules of the American Arbitration Association.

e. Power of Appointment Exercise

In determining whether, in what manner, and to what extent a power of appointment has been exercised by will, Trustee may act in reliance on a court order in any jurisdiction admitting an instrument to probate as the will of the holder of the power or finding that the holder died intestate, and unless within three months after the holder's death Trustee has actual notice of the existence of a will or of probate proceedings, Trustee may assume that the holder died intestate. However, this provision shall not affect any right an appointee or beneficiary in default of appointment may have against any distributee.

f. Law, Definitions, Captions, and Severability

The following apply to every trust created under this Agreement:

1. **Governing Law** This Agreement and the trusts shall be construed and regulated and their validity and effect shall be determined by the law of Michigan.
2. **Definitions** Whenever necessary in this Agreement and where the context permits, (1) the singular term and the related pronoun shall include the plural, the masculine, and the feminine, and, as to Trustee, the neuter, and (2) "descendant" and "issue" shall include adopted children.
3. **Captions** Captions in this Agreement are used for convenience and shall not limit, broaden, or qualify the text.
4. **Provisions Severable** The provisions of this Agreement are severable. If any provision is held invalid by final judgment of a court, all other provisions shall remain valid.

g. Terror Clause

If any beneficiary under this Agreement or any heir of ours, or any person acting, with or without court approval, on behalf of a beneficiary or heir, shall challenge or contest the admission of my will to probate, or challenge or contest any provision of my will or of

this Agreement, the beneficiary or heir shall receive no portion of my estate, nor any benefits under this Agreement. However, it will not be a "challenge or contest" if Trustee or a beneficiary seeks court interpretation of ambiguous or uncertain provisions in this Agreement.

h. S Corporation Shares

Notwithstanding any provision of this Agreement (except a provision specifically identifying the shares and disposing of them), if the trust property includes shares of an S corporation (as defined in IRC 1361(a)) and the corporation will lose its status as an S corporation unless this provision is given effect, Trustee may appoint the shares to a person or persons out of a class composed of the surviving grantor and descendants or, if none, the residuary beneficiaries under this Agreement, including an appointment to a trustee in trust for a beneficiary so long as that trust is an eligible shareholder of an S corporation. Subject to the above restrictions, Trustee may appoint the shares in the estates, interests, and proportions that Trustee in its sole discretion deems appropriate. Trustee may exercise or release this power at any time but shall not be required to exercise it and shall have no liability for releasing, or failing to exercise, said power. Without limiting Trustee's sole discretion, we desire that Trustee consult with the surviving grantor and adult descendants, if any, before release or exercise of the power.

XXII. SURVIVAL

a. General Rule

Any beneficiary who dies within 120 hours after the death of the surviving grantor shall be deemed to have died before the surviving grantor.

b. Exceptions

(1) Any beneficiary, who is our child, has living descendants and dies within 90 days after the death of the surviving grantor shall be deemed to have died before the surviving grantor died if Treas. Reg. 26.2612-1(a)(2)(i) applies.

(2) As to any gift, other than a gift of tangible personal property, which will qualify for the marital deduction, grantor Betty J. Kalbach shall be deemed to have survived Charles C. Kalbach if we die under circumstances where it is not clear who survived.

XXIII. ALLOCATION AND DISTRIBUTION OF TRUST ASSETS

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

a. Upon Death of the First Grantor

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

b. Upon the Death of Both Grantor(s)

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

c. Personal Property Distribution

The Grantor(s) request the Trustee to abide by any memorandum by the Grantor(s) directing the disposition of personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, china, silverware, glass, books, jewelry, wearing apparel, and all policies of fire, burglary, property damage,

and other insurance on or in connection with the use of this property. Otherwise, the personal and household effects of the Grantor(s) shall be distributed with the remaining assets of the Trust Estate.

d. Support and Education

At any time prior to the division of the Trust into shares as hereinafter provided, or prior to distribution if divided, the Trustee may, at his/her sole and absolute discretion, provide such sums as shall be necessary or advisable, for the care and maintenance, medical needs, and education of any Primary Beneficiary, provided, however, such aid or support shall be charged against the share of the Beneficiary receiving it, and that no such aid or support shall in any way diminish the benefits available to any other Beneficiary. This provision shall also apply to the issue of a deceased Primary Beneficiary (as hereinafter designated).

e. Extraordinary Distribution

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

The Trustee is authorized, in his or her sole and absolute discretion, to distribute all the net income of the Trust Estate, at least annually, to the beneficiaries then entitled

to income. Any distribution of income shall be made in the same proportion as the beneficiary's right to principal as compared to the total principal of the Trust Estate. For example, if a beneficiary is entitled to a future distribution of twenty-five percent (25%) of the principal, the Trustee may distribute twenty-five percent (25%) of the net income to the beneficiary.

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

f. Gifts or Loans

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

g. Handicapped Beneficiaries

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

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

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

The portion of the Trust Estate which absent the provisions of this section "Handicapped Beneficiaries," would have been the share of such incompetent or handicapped person shall be retained in Trust for as long as that individual lives. All income from such share, not otherwise utilized for the purposes of this Trust share, shall be added to the principal thereof annually. While the Trustee(s) hold Trust property available for the benefit of any handicapped beneficiary, it is the intent of the Grantor(s), and they direct that the Trustee(s), in their sole and absolute discretion, provide life enrichment benefits for that handicapped beneficiary which will not cause the loss of any Governmental benefit to which that beneficiary would otherwise be entitled. Such benefits may include: training to develop skills and abilities, transportation, educational support, tutoring, adaptive vocational skills training, home and residential adaptation assistance, and any other programs to provide "life enrichment" as may be permitted by law. Upon the death of this individual, the residual of this share shall be distributed as otherwise specified in the Trust.

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

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

h. Primary Beneficiaries

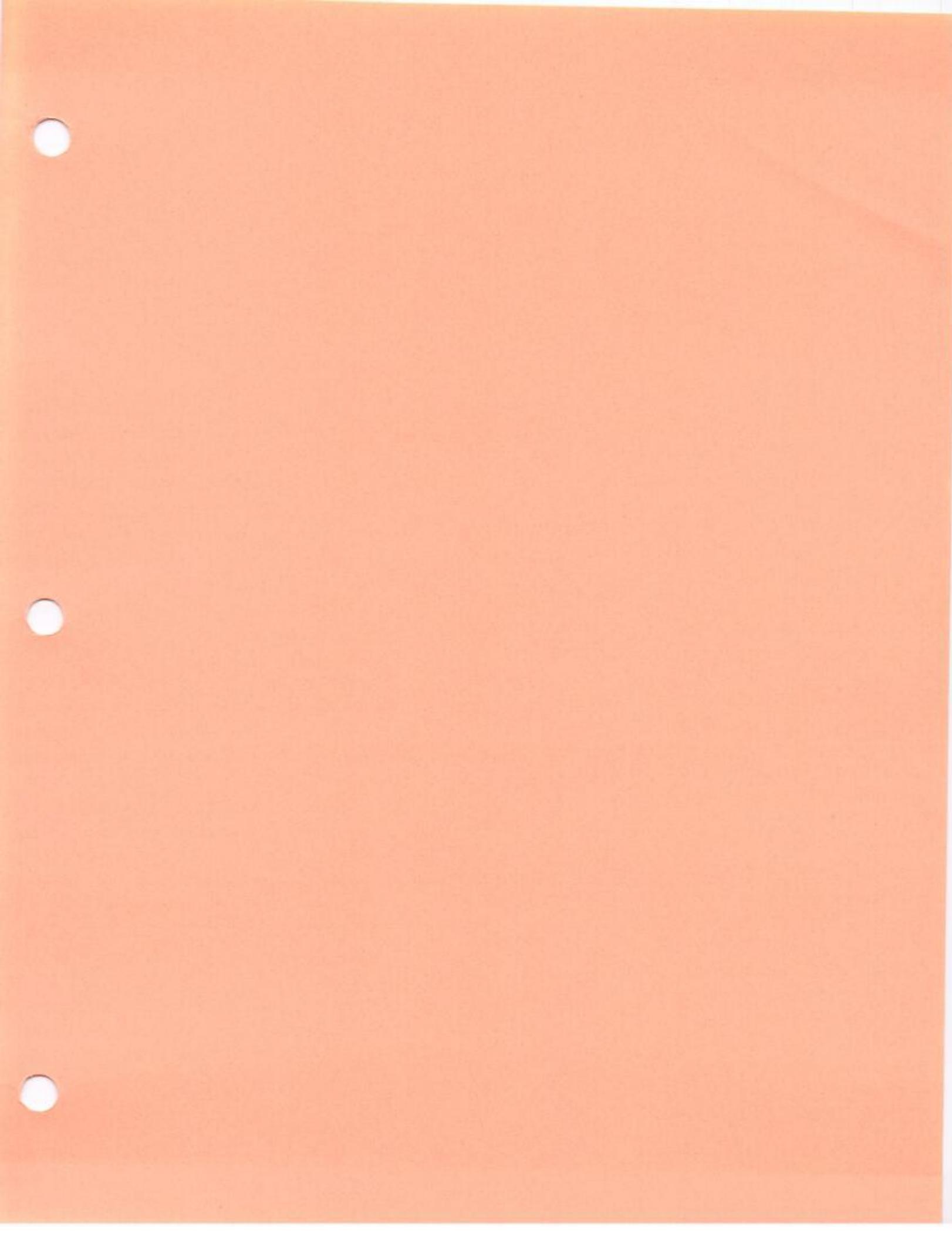
Unless otherwise herein provided, upon or after the death of the Surviving Grantor, the beneficiaries shall be:

Note: see following sub-sections j and k on allocation and distribution

i. Special Bequests

The Trustee shall collect from or withhold from each beneficiary receiving a special bequest (other than special bequests to the surviving spouse of a Grantor, to a handicapped child, or a special bequest to charity) their pro rata share of taxes attributable to the special bequest. For example, if a beneficiary receives a special bequest of one percent (1%) of the Trust Estate that beneficiary would owe one percent (1%) of the taxes due the Internal Revenue Service. The Trustee shall allocate and distribute the special bequests listed below:

There are no special bequests at the time of this agreement.



j. Allocation of Trust Assets

Barbara L. Kalbach

Estate Share: 1/2

Brett L. Kalbach

Estate Share: 1/2

On the death of the Surviving Grantor the Trustee shall allocate the balance of the Trust then constituted into equal separate shares to provide one (1) share each for **Barbara L. Kalbach** and **Brett L. Kalbach**, the Primary Beneficiaries of the Trust Estate. Each share shall be held, managed and distributed as provided herein.

In the event a Primary Beneficiary dies before receiving their entire share, said share shall be reallocated in the following manner: the undistributed balance of the deceased Primary Beneficiary's share shall be allocated equally among the Grantor's remaining Primary Beneficiaries.

k. Distribution of Trust Assets

Following the death of the Grantor, the Trustee shall distribute to the named Primary Beneficiaries outright as soon as practicable.

l. Per Stirpes

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

Any share allocated to the issue of a deceased Primary Beneficiary shall be distributed by right of representation in the following manner: when such an heir (issue of

a deceased Primary Beneficiary) attains the age of twenty-five (25) years, the Trustee shall distribute to such beneficiary the undistributed balance of his or her share. If an heir (issue of a deceased Primary Beneficiary) has already attained age twenty-five (25), at the time this trust is divided into shares, the Trustee shall, upon making the division distribute to such beneficiary all of that beneficiary's share.

If no provision has been made for allocation of trust assets and distribution of trust assets for the disposition of a trust share in the event such trust share cannot be distributed to the designated beneficiary because the designated beneficiary predeceases distribution or for any other reason then the balance of such trust share shall be allocated to the issue of the designated beneficiary by right of representation and held, administered and distributed in accordance with the provisions of this section, "Per Stirpes".

m. Intestate Succession

If at the time of the death of the Surviving Grantor, or at any later time prior to final distribution hereunder, all the issue of the Grantor(s) are deceased and no other disposition of the property is directed in this Trust, then and in that event the then remaining property of this Trust shall be distributed to the heirs of the Grantor(s) by the laws of intestate succession then in effect in the state where the Grantor(s)' death, except that no amounts shall be allocated or distributed to the parents, or brothers and/or sisters, aunts and/or uncles of the Grantor(s). If any real property held as an asset in the Trust Estate is located in the Commonwealth of Pennsylvania, real estate distributions shall be limited to those beneficiaries deemed "exempt" under Pennsylvania's Realty Transfer Tax Laws.

If no such heirs are exempt, then the Trustee is directed to distribute the property to qualified non-profit charitable organizations identified in Schedule B. If no such charity is identified in Schedule B, the Trustee shall select appropriate non-profit charitable organizations for distribution of the Trust Estate.

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

n. Property Exposed to Environmental Hazards

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

XXIV. FAMILY

a. Spouse

Grantors are a married couple. If our marriage terminates other than by reason of the death of one of us, then this Agreement shall be interpreted as if one of the grantors died as of the date of termination of our marriage.

b. **Children and Descendants**

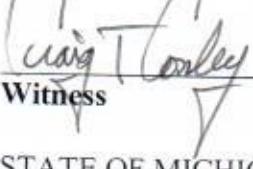
All references in this Agreement to our "child" or "children" shall include any child born to us or legally adopted by us after the date of this agreement. Our children as of the date of this Agreement are: **Charles C. Kalbach, Jr.**, (born 03/16/53); **Peter J. Kalbach**, (born 11/15/57); **Barbara L. Kalbach**, (born 01/23/59); **Thomas D. Kalbach**, (born 01/13/62); and **Brett L. Kalbach** (born 07/20/65). All references in this Agreement to my "descendants" shall include any descendants born or legally adopted after the date of this Agreement.

Executed in multiple original counterparts, delivered, and the trust accepted, as of the date first written above.

WITNESSES:


Witness

JOSEPH G. MOLLICA
ATTORNEY AT LAW
513 Second Street
TRAVERSE CITY, MI 49684


Witness

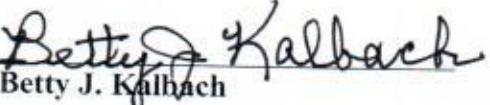
CRAIG T. CONLEY
6433 Sullivan Ave NE
Belmont, MI 49306-9704

STATE OF MICHIGAN

BENZIE COUNTY

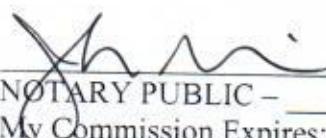
GRANTORS/TRUSTEES:


Charles C. Kalbach


Betty J. Kalbach

)
)SS
)

On this MAY 25, 2006, before me, a Notary Public, personally appeared Charles C. Kalbach and Betty J. Kalbach, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Charles C. Kalbach and Betty J. Kalbach who subscribed this instrument, and who appear to be of sound mind and not under or subject to duress, fraud, or undue influence, and acknowledged that they executed it.


NOTARY PUBLIC – _____

My Commission Expires: _____

County, Michigan

Prepared for:

Mr. and Mrs. Charles C. Kalbach
6857 Grace Road
Benzonia, Michigan 49616

NOTARY SEAL

JOSEPH G. MOLLICA, Notary Public
Grand Traverse County, Michigan
My Commission Expires: 11-01-12
Acting in Benzonia

Barbara L Kalback 3 acres on east side of
property

Brett L Kalback rest of property and house

Money to be divided equally.

STATE OF MICHIGAN
COURT OF APPEALS

*In re CHARLES C. KALBACH AND BETTY J.
KALBACH TRUST.*

PETER KALBACH,

Appellant,

v

THOMAS D. KALBACH,

Appellee.

UNPUBLISHED

May 14, 2025

10:30 AM

No. 367392

Benzie Probate Court

LC No. 22-000120-TV

Before: O'BRIEN, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Appellant appeals as of right the probate court’s opinion and order reforming the trust to remove certain real property, transfer the property to a deceased beneficiary’s estate, and ultimately distribute the property to appellee in accordance with the beneficiary’s will. We affirm.

I. BACKGROUND

In 2006, Charles C. Kalbach Sr. and Betty J. Kalbach created the Charles C. Kalbach and Betty J. Kalbach Trust (the Trust) and transferred their property to the Trust. Both settlors¹ were named as trustees, and the Trust was to provide for their financial needs during their lifetimes. The settlors had five children: Barbara L. Kalbach, Brett L. Kalbach, Charles C. Kalbach Jr., appellant, and appellee. The Trust named Barbara and Brett as both successor trustees and primary beneficiaries, and explicitly provided that the settlors intended not to name their other children as beneficiaries despite having “great love and affection for” them. The Trust provided that, once one of the settlors died, the trustee was to reorganize the Trust into multiple smaller trusts—Trust

¹ Although the lower court proceedings used both “settlor” and “grantor” interchangeably, we will use the term “settlor” for consistency.

A, B, and C—in a complex structure apparently intended to minimize certain tax liability. These smaller trusts would be used to provide for the financial needs of the surviving settlor. The Trust contained somewhat contradictory provisions concerning reorganization of Trust property after the surviving settlor died—some provisions provided for a complex reorganization for tax purposes, while other provisions called for a different reorganization with no reference to this complex tax structuring.

What is clear, though, is that upon the surviving settlors' death, the Trust's property was to be divided into two equal shares for Barbara and Brett, and distributed to them as soon as possible. The Trust provided for a number of scenarios in which beneficiaries might predecease distribution from the Trust. If a primary beneficiary died prior to "receiving their entire share," the remaining share was to be distributed to the other beneficiary. After the beneficiaries' shares were divided into equal halves, if a primary beneficiary or their heirs "predecease[d] complete distribution of his or her share, and there [was] no other direction for allocation and distribution," the remaining share was to be distributed to the primary beneficiary's descendants. The Trust also created a power of appointment, and, if a beneficiary died before being entitled to distribution from the Trust, the beneficiary's share was to be distributed according to any will of the deceased beneficiary so long as that will referenced the power of appointment. Finally, if all descendants of the settlors were deceased and there were no other directions from the Trust, the Trust's property was to be distributed to the settlors' heirs according to the laws of intestate succession except that no property was to be distributed to the settlors' parents, siblings, aunts, or uncles.

The parties' dispute revolves around a piece of real property located in Benzie County (the Property), which was the primary asset of the Trust.² Charles Sr. died sometime in 2011. In October 2014, Betty, as the surviving settlor, executed an amendment to the Trust purporting to include a specific bequest to Barbara and Brett, namely three acres of the Property to Barbara and eight and a half acres of the Property to Brett in fee simple. All other aspects of the Trust remained unaltered. In December 2015, Betty executed a quitclaim deed purporting to convey the Property to Barbara and Brett as joint tenants with the right of survivorship while reserving a life estate for herself. Betty died in November 2016.

Brett died in December 2016 without a will or descendants. In April 2021, Barbara executed a warranty deed purporting to convey the Property to herself with a defeasible remainder to appellee and his wife. Barbara retained the right to dispose of the Property during her lifetime, but if she had not done so at the time of her death, the Property would transfer fully to appellee and his wife. Five days later, Barbara died without descendants but with a will devising her estate to appellee. At the time of both Barbara's and Brett's deaths, the Property had not been distributed to them. In fact, the parties agree that the Trust was never properly administered and that no property was ever distributed to Barbara or Brett after the settlors' deaths.

In June 2022, appellee petitioned the probate court to appoint himself as successor trustee. Because of objections, the court appointed a neutral successor trustee. Appellee later petitioned the court for instruction. The crux of his position was that, under the circumstances, the Trust

² The record is bereft of evidence of any other asset held within the Trust.

should be distributed to the estate of Barbara—and ultimately to appellee via Barbara’s will—because this was consistent with the settlors’ intent.

The successor trustee submitted a memorandum opining that the Trust was “confusing, contradictory and incomplete and therefore, in need of court guidance and/or reformation regarding its administration.” She believed that the Property had never properly been conveyed out of the Trust, which meant that the Trust’s terms controlled. However, characterizing the Trust as “a hodgepodge of confusing, inconsistent or inapplicable provisions regarding trust asset distribution after the deaths of the named beneficiaries,” the successor trustee did not believe that the Trust provided for the present situation in which the primary beneficiaries had died without any descendants and without receiving any distributions from the Trust. She opined that, on the basis of the Trust’s terms, there were no beneficiaries who could receive property, and she assumed that the settlors did not anticipate or want this outcome. She discussed mediation as a possible solution or, alternatively, reformation in order to determine the settlors’ intent.

Appellant objected to appellee’s petition for instruction. Appellant argued that the Trust became irrevocable upon the death of Charles Sr., which prevented Betty from transferring Trust property to herself or others. Appellant also pointed to the Trust’s spendthrift clause and contended that it prevented Betty from transferring her interest as a beneficiary. Additionally, appellant maintained that Barbara’s will did not control both because of the Trust’s spendthrift clause and because, as a beneficiary of real property within a trust, Barbara had no interest in that property. The only way for Barbara’s will to control was if she had explicitly referenced the power of appointment in her will and met other certain Trust conditions, which did not occur. Appellant asserted that this was “a rare instance of the trust having truly failed,” and contended that this led to a “resulting trust,” which meant that the Trust’s property should be divided equally among the settlors’ three remaining children.

Appellee countered that Betty’s actions as the surviving settlor provided clear evidence that she intended for Barbara to receive the Property, which by extension meant her estate. In support of this argument, appellee relied heavily on the 2015 deed; he conceded that the deed did not represent a valid conveyance but contended that it represented the best and most recent evidence of Betty’s intent regarding the Property. Namely, it showed that Betty intended for the Property to go to Barbara and Brett, and how, if one of them died, the other would receive a full interest in the Property. Given that Barbara survived Brett, the Property should have gone to her. Appellee argued that the Trust was confusing and ambiguous, which allowed the probate court to look outside the Trust to ascertain intent.

The probate court determined that the Trust did not address the situation in which the parties found themselves—both beneficiaries had died without any descendants and without ever having received distributions from the Trust. The result was that there were no beneficiaries to take from the Trust and fulfill the settlors’ intent. The court determined that the Trust was ambiguous as to how to address this situation, which permitted the court to consider outside evidence along with the Trust’s terms. The court looked to the 2015 deed to ascertain Betty’s intent, and it determined that Betty had clearly intended for the Property to pass to a surviving beneficiary. Given that Barbara outlived Brett, she would have received his full share. Accordingly, the court concluded that Barbara’s will controlled the Property’s disposition. The

court ordered that the Trust be reformed to transfer the Property out of the Trust and into Barbara's estate.

This appeal followed.

II. ANALYSIS

On appeal, appellant raises a number of issues relating to the Trust's terms, its ambiguity, the court's consideration of evidence outside the Trust's terms, and reformation of the trust. At its core, appellant's position is that the Property within the Trust should have been divided equally between himself and the settlors' two other surviving children instead of going solely to appellee through Barbara's will.

A. STANDARD OF REVIEW

We review de novo the interpretation of a trust. *Bill & Dena Brown Trust v Garcia*, 312 Mich App 684, 693; 880 NW2d 269 (2015). When parties dispute the meaning of a trust, the court must identify and give effect to the settlors' intent, which is accomplished by looking at the trust's terms. *Id.* If unambiguous, the court must enforce the terms as written. *Id.* at 694. The court must look at the entire trust, "harmonizing its terms with the intent expressed, if possible." *Id.* However, if the trust's terms are ambiguous, the court is required to "look outside the document to determine the settlor's intent, and it may consider the circumstances surrounding the creation of the trust and the general rules of construction." *Id.* at 693. Disagreement among parties regarding a trust's meaning does not mean there is an ambiguity. *Id.* We review a probate court's dispositional rulings for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). An abuse of discretion occurs when the court "chooses an outcome outside the range of reasonable and principled outcomes." *Id.*

We also review de novo the interpretation of statutes. *McQueer v Perfect Fence Co*, 502 Mich 276, 285-286; 917 NW2d 584 (2018). "All matters of statutory interpretation begin with an examination of the language of the statute." *Id.* at 286. If a statute is unambiguous, it "must be applied as written." *Id.* (quotation marks and citation omitted). This Court may not read something into the statute "that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Id.* (quotation marks and citation omitted). Further, statutory language "cannot be viewed in isolation, but must be construed in accordance with the surrounding text and the statutory scheme." *Id.* (quotation marks and citation omitted). In other words, a statute must be read as a whole. *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute superfluous or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Finally, courts generally give undefined terms their plain and ordinary meanings. *Id.*

B. DISCUSSION

Appellant first argues that the Trust became irrevocable upon the death of Charles Sr., thereby preventing Betty from amending the Trust or conveying the Property out of the Trust to Barbara and Brett. We disagree.

Trusts are governed by the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.* As defined by MCL 700.7103(h), “‘Revocable’, as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.” A settlor can amend a revocable trust “[b]y substantially complying with a method provided in the terms of the trust.” MCL 700.7602(3)(a). A trust that is “created by an instrument which becomes operative during the settlor’s lifetime” is known as an “inter vivos trust.” *In re Messer Trust*, 457 Mich 371, 374 n 2; 579 NW2d 73 (1998) (quotation marks and citation omitted).

Here, the Trust was created as a “revocable Living Trust” and became operative during the settlors’ lifetimes, thereby making this an inter vivos trust. Under a paragraph entitled, “Revocable Trust,” the Trust provided:

We reserve the right to amend or revoke this Agreement, wholly or partly, by a writing signed by us or on our behalf and delivered to Trustee during our life. However, we cannot change materially the duties or compensation of Trustee without its written approval.

Accordingly, the settlors explicitly reserved the right to amend the Trust during either of their lifetimes. The only limitation was that the duties or compensation of the trustee could not be changed without the trustee’s written approval.

Appellant’s reliance on the language in § VIII, ¶ c, of the Trust stating that “Trust B shall be irrevocable” is misplaced.³ When one of the settlors died and the other settlor survived, the Trust’s property was supposed to be reorganized into three trusts (Trust A, Trust B, and Trust C), apparently to reduce tax liability. Trust B was to receive property only if Trust A received property over a certain threshold for federal estate tax and state death tax purposes. There is no evidence that this reorganization occurred after the death of Charles Sr. or that there was enough property to even trigger Trust B. The primary asset of the Trust was the Property, and there was no evidence of any other property. Accordingly, appellant’s assumption that Trust B even existed is speculative. Regardless, the irrevocability of Trust B was limited to retirement assets that the surviving settlor disclaimed in favor of Trust B. No such assets have been identified in this case; instead, this case involved real property. Accordingly, the irrevocability language is inapplicable because Trust B is not at issue.

³ Appellant cites this language to § VIII, ¶ d, of the Trust, but the pertinent language appears in § VIII, ¶ c.

Next, appellant argues that the spendthrift clause prevented Betty from conveying the Property out of the Trust to Barbara or Brett. We disagree.

A spendthrift clause prevents certain creditors from reaching a beneficiary's interest by limiting the beneficiary's interest in trust property. *Miller v Dep't of Mental Health*, 432 Mich 426, 430; 442 NW2d 617 (1989). Such clauses restrict the beneficiary's ability to transfer her interest as a beneficiary to others. See *id.* at 430 & n 8. However, a spendthrift clause is invalidated "to the extent it is intended to apply to any interest of a beneficiary who is also the settlor of the trust." Restatement Trusts, 3d, § 58, comment *b*. Here, Betty was a settlor, so the clause could not be applied against her, contrary to appellant's argument.⁴

Appellant next argues that Barbara could not transfer her beneficiary interest in the Property to appellee via her will because of the power of appointment clause. We disagree.

Under the Powers of Appointment Act of 1967, MCL 556.111 *et seq.*, a power of appointment is

a power created or reserved by a person having property subject to his or her disposition that enables the donee of the power to designate, within any limits that may be prescribed, the transferees of the property or the shares or the interests in which it shall be received. [MCL 556.112(c).]

Under EPIC:

If a governing instrument creating a power of appointment *expressly requires* that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, *in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.* [MCL 700.7206 (emphasis added).]

Here, the power of appointment was contained within § XIII, ¶ b, which provided that "if the beneficiary dies before being entitled to distribution of the remaining trust property, Trustee shall distribute the remaining trust property to . . . person or persons among our descendants . . . as the deceased beneficiary appoints by will which specifically refers to this power of appointment." (Emphasis added.) Accordingly, application of this power of appointment was expressly limited to a beneficiary dying *before* being entitled to distribution. Although there is no dispute that Barbara's will did not expressly make reference to the power of appointment in the Trust, it did not need to do so because she died *after* becoming entitled to distribution.

⁴ To the extent that appellant contends as part of this argument that provisions pertinent to Trust B controlled, that argument is without merit because, again, nothing suggests that the at issue property was held in Trust B.

Appellant further argues that the Trust ran out of identifiable beneficiaries and that a resulting trust arose and should have governed distribution. While we agree that there remained no beneficiaries who could take under the Trust, we disagree that a resulting trust arose.

There were several provisions in the Trust dealing with the deaths of settlors and beneficiaries, but none of these addressed the situation before the probate court. As previously discussed, § XIII, ¶ b, applied only if a beneficiary died “before being entitled to distribution,” and Barbara died after she was entitled to distribution. Section XIII, ¶ j, provided that if a beneficiary died prior to receiving their entire share, that beneficiary’s share would be divided equally among the remaining primary beneficiaries. Here, Brett died prior to Barbara, which meant that his share transferred to Barbara and made her entitled to all remaining Trust property. However, the Trust was never properly administered, and Barbara never received the property to which she was entitled.

Pursuant to § XXIII, ¶ l:

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

Any descendants of the beneficiaries were to receive their share after they attained the age of 25. Although Barbara and Brett both died before complete distribution of their shares and without other directions or guidance provided by the Trust, neither of them had any descendants, which made this provision inapplicable. Section XXIII, ¶ m, which appears to act as a sort of “catch-all” provision, applied only if “all the issue of the Grantor(s) are deceased and no other disposition of the property is directed in this Trust.” This provision was inapplicable because there *were* issue still living, namely appellant, appellee, and Charles, Jr.

Accordingly, there were no Trust terms that either contemplated the unusual set of circumstances present in this case or otherwise provided guidance. No other beneficiaries could take under the Trust’s terms.

Contrary to appellant’s argument, however, a resulting trust was not the natural consequence of this situation. A resulting trust is a trust that

arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest therein and where the inference is not rebutted and the beneficial interest is not otherwise effectively disposed of. Since the person who holds the property is not entitled to the beneficial interest, and since the beneficial interest is not otherwise disposed of, it springs back or results to the person who made the disposition or to his estate, and the person holding the property holds it upon a resulting trust for him or his estate. [*Potter v Lindsay*, 337 Mich 404, 410; 60 NW2d 133 (1953) (quotation marks and citation omitted).]

This type of situation was not present here. Appellant makes no argument that there was any disposition of Trust property under circumstances raising an inference that the person taking the property should not have received the beneficial interest of that property.

Appellant next argues that the Trust was not ambiguous, which prevented the probate court from considering evidence outside the Trust's terms. We disagree.

The successor trustee concluded that the Trust was "confusing, contradictory and incomplete and therefore, in need of court guidance and/or reformation regarding its administration." She characterized it as "a hodgepodge of confusing, inconsistent or inapplicable provisions regarding trust asset distribution after the deaths of the named beneficiaries." The probate court agreed and concluded that the Trust's terms were ambiguous with respect to how to approach the scenario presented in this case. We discern no error in this conclusion. Having reviewed the Trust, we agree that it was confusing, incomplete, and sometimes contradictory. Moreover, for the reasons already discussed, we agree that it did not address the present situation in which the primary beneficiaries died without any issue and without receiving any distributions from the Trust. The settlors made clear their intention to distribute Trust property to Barbara, Brett, and Brett's and Barbara's descendants to the exclusion of the other children. Yet, under the Trust's terms, this could not occur.

We discern no error in the probate court's consideration and reliance on the 2015 deed along with the Trust's terms. In this deed, Betty attempted to convey the Property to Barbara and Brett with full rights of survivorship with a life estate reserved to Betty. This deed provided evidence of Betty's intent to follow the Trust's purpose of providing Trust property to Barbara and Brett to the exclusion of appellant and the other children. Moreover, by attempting to provide Barbara and Brett with rights of survivorship, Barbara as the surviving grantee would have received Brett's interest upon his death. See *Schaaf v Forbes*, 338 Mich App 1, 16-17; 979 NW2d 358 (2021) ("Upon the death of one joint tenant, the surviving tenant or tenants take the whole estate."). Once Barbara died, her interest in the Property would have passed via her own estate, which is what the probate court ordered should happen. Nothing about the 2015 deed contradicted the Trust's terms; in fact, it was in keeping with the settlors' overall desire to provide property to Barbara and Brett to the exclusion of the other children.

Finally, appellant argues that the probate court erred by reforming the Trust. We disagree.

"The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement." MCL 700.7415. Here, there was no evidence or even argument offered to show that the settlors were affected by a mistake of fact or law, and the probate court made no findings on this. Accordingly, we agree with appellant that this statute is simply inapplicable.

MCL 700.7411(1) permits a court to terminate or modify a noncharitable, irrevocable trust under certain conditions:

- (a) By the court on the consent of the trustee and the qualified trust beneficiaries, if the court concludes that the modification or termination of the trust

is consistent with the material purposes of the trust or that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b) On the consent of the qualified trust beneficiaries and a person or committee that is given the power under the terms of the trust to grant, veto, or withhold approval of termination or modification of the trust.

(c) By a trustee or other person or committee that is given a power by the terms of the trust to direct the termination or modification of the trust.

Here, at the time of the probate court proceedings, there were no trustees or beneficiaries to consent to any modification because they were deceased, thereby making this provision inapplicable.

Nonetheless, another method for terminating or modifying a trust exists under MCL 700.7412, which states:

(1) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(2) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, *because of circumstances not anticipated by the settlor, modification or termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention.*

(3) If a trust is terminated under this section, the trustee shall distribute the trust property as ordered by the court.

(4) Notice of any proceeding to terminate or modify a trust shall be given in the manner described in section 7411(3). [Emphasis added.]

Here, MCL 700.7412 was applicable. As previously discussed, the Trust explicitly provided for Barbara and Brett to receive property to the exclusion of the other three children. The clear purpose was to provide Barbara and Brett with Trust property, and the 2015 deed provided further evidence of this purpose. However, because the Trust was never properly administered, neither Barbara nor Brett ever received distributions from the Trust, and they died without any descendants. This was a situation not addressed by the Trust or anticipated by the settlors. By modifying the Trust to allow for distribution of the Property to Barbara's estate, the probate court was furthering the Trust's purpose of providing property to the primary beneficiaries in the manner that most closely followed the original Trust's terms. By outliving Brett, Barbara received his share, thereby entitling her to the entirety of the Trust's property. Accordingly, she would have received the Property via the Trust's terms, and her decision to devise this to appellee was her prerogative. Nothing in the Trust prevented beneficiaries from disposing of Trust property after receiving it. Additionally, notice was not required pursuant to MCL 700.7411(3), as there were no settlors or trustees because all were deceased, and there was no indication of a "trust director" or any other "powerholder described in subsection (1)(b) or (c) . . ." MCL 700.7411(3). There was also no other person listed in the Trust who was to receive notice of a modification proceeding.

Appellant's argument that the court's actions rendered large portions of the Trust meaningless is essentially a reiteration of his prior arguments, which are without merit.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello

MEMORANDUM

To: Probate Council
From: Andrew W. Mayoras, Chair of Amicus Committee
Subject: Amicus Application
Date: November 11, 2025

Note - this appeal involves a client represented by Nathan Piwowarski, so he is to be excluded from all discussions of this case.

Overview/Basic Facts

Counsel for Appellant, a non-beneficiary son of deceased, married settlors of a joint trust, submitted an amicus application for a case that has been submitted on leave to the Supreme Court. The case involves a convoluted joint ABC trust instrument that, by its terms, excluded three of five children and benefitted only two children. Both of these two children died prior to distribution, leaving no descendants, and none of the trusts arising under the trust agreement were ever funded. The joint trust contained a provision indicating that if a power of appointment was not exercised effectively, and if the beneficiaries died without living descendants, then the trust property was to be distributed among the settlors' living descendants – the three excluded children.

The conflict arose because after the first settlor died, the surviving settlor executed an amendment purporting to include a specific bequest of real estate to two of her children, and then later executed a quit claim deed purporting to convey the property to these children as joint tenants with rights of survivorship while reserving a life estate for herself. After the surviving settlor's death, one child died, and then the surviving child, executed a ladybird deed with a defeasible remainder to appellee and his wife, and a Will devising her estate to appellee. She then died. Notably, the deed and Will did not reference a power of appointment as required by the terms of the trust. Both deceased children of the Settlors died without issue, and the property was never conveyed out of the trust.

Despite that, the probate court ruled that the trust instrument was ambiguous and that the surviving settlor's new deed and will constituted admissible extrinsic evidence of her intent. It also ruled that trust should be reformed to effectuate the transfer of the real estate as set forth in the deed and will. The Court of Appeals affirmed. One of the aggrieved children filed an application for leave to appeal to the Supreme Court, which has not yet been ruled upon.

The Amicus Committee recommends, in a divided vote, against filing an amicus brief.

Court of Appeals Ruling

The Court of Appeals issued an unpublished decision that affirmed the probate court but for slightly different reasons. In doing so, it rejected the arguments of Appellant - the same party who seeks amicus support. It also appears to have confused the funding formula as between Trust A and Trust B – likely due to the less-than-ideal wording of the trust instrument. Trust B was the operative Trust, not Trust A, but the COA held otherwise. In addition, the COA made this other rulings, many of which appear to be erroneous.

First, the Court of Appeals rejected Appellants' argument that the joint trust became irrevocable after the death of the first settlor, based on the language of the trust instrument. It did not discuss MCL 700.7602(2), which addresses when a joint trust can be amended or revoked by a single surviving settlor (although this was a pre-2010 Trust so that statute may not apply). It also, in the opinion of the Committee, misapplied the operative trust language that addressed when the survivor of this Joint Trust had authority to amend or revoke: "We reserve the right to amend or revoke this Agreement, wholly or partly, by a writing signed by us or on our behalf and delivered to Trustee during our life." The terms "we" and "our" suggest that the survivor alone lacked the ability to amend or revoke, but the COA held otherwise.

Second, the Court of Appeals determined that the power of appointment was validly exercised, without discussing whether the will contained sufficient reference to the power for it to apply.

Third, the Court of Appeals ruled that no language of the trust agreement addressed the situation where both settlors and the named beneficiaries were deceased prior to distribution, and the beneficiaries lacked descendants. Again, it appeared to misapply the language of the trust instrument.

Fourth, the Court of Appeals found the instrument to be confusing, contradictory and incomplete, justifying acceptance of the deed as extrinsic evidence to interpret what the Court deemed to be an ambiguous trust instrument. However, the Committee questioned whether this made the instrument actually ambiguous, but instead, may have been the produce of lazy work by the COA.

Fifth, the Court of Appeals relied on MCL 700.7412 (not cited by the probate court) and the resulting confusion of the trust instrument and failure to fund any of the Trusts created by the instrument as being unanticipated circumstances that justified modification of the trust in a manner consistent with the deed. Specifically, it determined that these circumstances permitted the probate court to modify the Trust to permit the surviving settlor to devise the Trust property to whomever she wanted through the deed. The Committee believes that evidence from the

surviving settlor alone should not have supported modification.

Sixth, there is a question whether a distribute date should be construed to be actual receipt of property, as opposed to eligibility for distribution. Again, the trust agreement language, while confusing, was not necessarily ambiguous on this point.

Analysis

Despite the many apparent errors, the COA opinion was unpublished and based on a set of facts not likely to lead to widespread application. Some of the Committee members believed that it would be beneficial to advocate for the Supreme Court to grant leave to encourage more thorough analysis in the future, and in particular, a helpful opinion on revocability of a joint trust after the first spouse dies (and, by extension, when extrinsic evidence from the survivor alone can be used to modify the trust) would be useful. Better analysis of the date of distribution would also be useful.

However, the majority of members who participated in the discussion voted that this was a case of bad facts and sloppy analysis by the courts, but not one that would justify using Section resources given the low chance of future application to other cases or drafting.

MEMORANDUM

TO: Probate & Estate Planning Council
FROM: Nick Reister – Tax Committee
DATE: November 4, 2025
RE: November 2025 Tax Nugget

On October 9, 2025, the Internal Revenue Service published Revenue Procedure 2025-32 containing the 2026 tax year annual inflation adjustments. Noteworthy estate planning-related adjustments include:

	2025	2026
Gift and Estate Tax Basic Exclusion Amount	\$13,990,000	\$15,000,000
Annual Gift Exclusion	\$19,000	\$19,000 (remains the same)
Top Trust Tax Bracket (37%)	\$15,650	\$16,000
Reporting Threshold for Aggregated Gifts from Foreign Persons (IRC Section 6039F)	\$20,116	\$20,573
Annual Exclusion for Gift to Non-Citizen Spouse	\$190,000	\$194,000
IRC Section 6166 Installment Payment of Estate Tax “2-percent portion” dollar amount for calculation of interest	\$1,900,000	\$1,940,000