

Nuts & Bolts of Illinois Probate Estate Administration

Erica E. Lord ¹

I. Who is an Executor?

An executor is a fiduciary, and as such, has a duty to its beneficiaries to carry out the terms of a Will with the highest degree of fidelity and good faith.²

- A. An *Executor* or *Personal Representative* is appointed under the decedent's Will. The document itself and/or state law dictates the applicable nomenclature in a particular case. For convenience, these materials utilize the term *executor* and assume the decedent died testate, but practitioners should keep in mind that separate rules often apply to executors as compared to administrators in an intestacy proceeding.
- B. *Representative* or *Independent Representative* - Illinois Probate Act of 1975, 755 ILCS § 5/1. This includes both an *executor* named under the terms of a Will and an *administrator* in the case of a decedent who dies intestate. 755 ILCS § 5/9-1.
- C. *Statutory Executor* as defined by federal tax laws - IRS Code § 2203:
 - . . . *the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.*

II. To Probate or Not to Probate

A. State Law Considerations

Probate laws vary widely from state to state and even greater variation exists by virtue of the many specific court rules that vary by county. At the decedent's death, a preliminary consideration

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² See *Dick v. Peoples Mid-Illinois Corp.*, 242 Ill. App. 3d 297 (4th Dist. 1993).

is to determine which governing law will apply. For individuals with multiple residences, the answer is not always obvious.

- If the decedent left a Will, does the Will dictate governing law? Check the decedent's Will to see whether it provides for a particular law to govern its terms. If not, look to the governing law of the decedent's domicile.
- Where was the decedent domiciled? Frequently the decedent's *domicile* and the decedent's *residency* may be the same, but the terms are not synonymous. The term domicile commonly means an individual's true, fixed and permanent home based on (1) physical presence in a jurisdiction, and (2) the intent to remain there indefinitely.³ The test for domicile depends on an individual's intention and is based heavily on the facts and circumstances. In cases where domicile is not clear, some indicators include determining the nature of a decedent's residence (temporary or fixed), where the decedent voted, where the decedent claimed a homestead exemption for property tax purposes, which state issued him a driver's license, where his primary banking accounts were located, where his primary physician and other professionals are located, and where the decedent retained memberships or primarily participated in activities.
 - *Practice pointer: When clients change domicile and move to a new state, they should consider retaining an attorney in the new jurisdiction to prepare new estate planning documents for them to help confirm and establish their new domicile.*
- Where did the decedent own property? For real property owned outright by a decedent, the law of the state where real property is located will govern its administration.⁴ If the decedent owns real property in more than one state, it is possible that multiple probate proceedings will be required, known as *ancillary probate proceedings*.
 - *Practice pointer: Consider placing out-of-state real property into trust title or even an LLC or other entity to avoid subjecting the property to ancillary probate proceedings.*

B. Pros and Cons of Probate

Probate is often viewed as something to be avoided at all costs. To some extent, this attitude is rooted in the 1965 self-published book by Norman Dacey entitled "How to Avoid Probate!" in which Dacey argued that "probate serves no purpose, takes too long, and permits

³ 25 Am. Jur. *Domicil* § 1 (2012).

⁴ RESTATEMENT (SECOND) CONFLICT OF LAWS § 239 (1971).

lawyers and personal representatives to enrich themselves at the expense of decedents and their loved ones.”⁵ Commentators have identified this book as fueling “scores of articles in newspapers and law journals that echoed Dacey’s criticisms.”⁶ In some cases, these criticisms have become widely-held views, so that many clients begin with a mindset that a formal probate proceeding should be avoided at all costs. In truth, the probate process varies from one jurisdiction to the next, and these impressions may be simple misconceptions the family has formed based on experiences and impressions heard from others. In Illinois, the added expense and time to open a formal probate proceeding may be insignificant in light of the advantages to be gained in a particular situation.

Some Pros to Consider:

- Provides greater finality in resolving claims and disputes against decedent
- Provides a forum for court guidance and direction regarding uncertain issues
- Can facilitate collection of assets and transfer of title

Some Cons to Balance:

- Can compromise privacy
- Takes Time: Court calendar, statutory notice and time frames
- Requires attorney fees and court filing costs
- Subject to court control (to some extent) – Supervised vs. Independent Administration

C. When is Formal Probate Necessary or Desirable?

Even though probate might not be necessary, the circumstances may make probate a desirable option.⁷ For a decedent with suspected but unknown creditors, a probate proceeding can provide finality to bar claims not filed within the Illinois statutory six-month claims period. See 755 ILCS § 5/18-1 et seq. If a dispute regarding title to property arises, a citation to discover or recover assets could prove helpful in resolving ownership. See 755 ILCS § 5/16-1. Where heirship is uncertain, a probate proceeding can provide a conclusive determination regarding the identity of a decedent’s heirs. See 755 ILCS § 5/5-3. Where a disposition under the Will is ambiguous or a scrivener’s error causes doubt regarding the estate’s administration, a construction action may be desirable to provide the representative with comfort or direction on the proper disposition of assets. Court approval of accounts can help foreclose potential claims by nonresponsive beneficiaries and bless

⁵ Dacey, Norman F., *How to Avoid Probate!*, 8th Ed., Collier Books (1990) at 20.

⁶ Horton, David, *In Partial Defense of Probate: Evidence from Alameda County, California*, 103 Geo. L.J. at 608 (March 2015); see also John T. Brooks and Fredrick B. Weber, *Post-Mortem Administration and Planning: The Relevance of Probate in a Revocable Trust World*, Chicago Estate Planning Council (March 22, 2017).

⁷ Where formal probate is neither necessary nor desirable, a Small Estate Affidavit may be useful in transferring assets owned in the decedent’s individual name. See 755 ILCS § 5/25-1 and Cook County form attached as Exhibit D.

the representative's fees. *See* 755 ILCS § 5/24-2. A trustee may require probate to confirm the validity of a Will before distributing assets in accordance with the exercise of a testamentary of a power of appointment. *See* 755 ILCS § 5/801.

See also Exhibit A attached for a helpful checklist for determining when formal probate is necessary in Illinois.⁸

III. Nuts & Bolts of Formal Probate Court Proceedings

As in the case of the overarching governing law, an attorney should be conscious of the applicable rules that may apply to the probate court proceedings depending on the county in which the probate proceeding will be brought. The probate court clerk of Cook County and clerks in the collar counties provide forms and resources that can be adapted for use in other counties, and frequently a probate court clerk will entertain questions and assist attorneys who simply want to comply with local processes.

A sampling of the probate court forms to open a Cook County probate estate is attached as Exhibit B. For a detailed discussion of the court forms and steps to opening a probate estate, see *Opening the Probate Estate and Alternatives to Probate* by Kim Kamin, Illinois Estate Administration, Volume I, Chapter 2, Institute for Continuing Legal Education (2014).

IV. Basic Powers and Duties of an Executor in Independent Administration (755 ILCS § 5/28-1)

The primary duties and powers of an executor are often stated in a decedent's Will and are *in addition to* the duties and powers detailed in the Illinois Probate Act, unless the Will provides otherwise.⁹ In addition to the terms of the document and statutory laws, Illinois common law imposes fiduciary duties on an executor, a few of which are highlighted below. In the ordinary course of estate administration, the primary focus of an executor's time will be on marshalling and collecting the decedent's assets, communicating with beneficiaries, accounting for income and disbursements, managing property, and making distributions to beneficiaries.

A. Duties of Loyalty and Care

One seemingly obvious but sometimes overlooked duty is the duty to administer the estate in accordance with the terms of the Will. Occasionally what is provided for in the Will may seem contrary to the decedent's intent, as described by his beneficiaries or other advisors. It is important to keep in mind that the decedent and his attorney prepared this document, presumably after

⁸ Reprinted with permission, John T. Brooks and Fredrick B. Weber.

⁹ *See* Exhibit C for a sample annotated form of Will (Executor Powers Article SIXTH). Readers, including professionals, should not rely on the form as a complete or current form and are cautioned that this form may not suit a client's particular needs. Readers, including legal professionals, are fully responsible for ensuring a Will suits the circumstances and/or client's legal needs, including those subscribed by the Illinois Rules of Professional Conduct.

consultation and advice, so that the executor does not have liberty to interpret the document by adding or substituting terms. This can be particularly challenging where a scrivener's error affects the dispositive provisions, where tax clauses lead to an unequal result, or where relationships have changed and the decedent failed to update his Will to reflect those changes. Notwithstanding these changes, the executor is bound to abide by the document's terms unless a construction action or judicial modification can be approved by the probate court.

B. Pay Expenses, Satisfy Debts, and Pay Taxes

In some cases, an executor may play a role in making burial arrangements at death. In the vast majority of cases, an executor will be involved in at least paying for burial expenses and determining their tax treatment.

To the extent the decedent had any outstanding debts (including insolvency or bankruptcy), was involved in ongoing litigation, or had obligations that are not otherwise extinguished by death, the executor (as fiduciary) steps into the decedent's shoes and is required to continue or settle those matters subject to the fiduciary duties of care and loyalty. *See e.g.*, 755 ILCS §§ 5/19-14, 5/19-11, 5/20-16, 5/20-17, 5/18-15, 5/27-6.

Because some expenses may be deductible for estate tax or income tax purposes (or both), as noted below, the executor should keep careful records of all payments made and keep funds carefully segregated in a separate estate account.

C. Duties to Collect Assets, Inform and Account

The admission of a Will to probate and the appointment of the executor by the probate court serves as the executor's authority to collect the decedent's assets.¹⁰ An executor should begin by making a complete inventory of the decedent's assets and keep careful records of items received, payments disbursed and distributions made. *See* 755 ILCS § 5/24-1 *et seq.* Before the probate proceeding can be closed in Independent Administration, the executor will need the beneficiaries to approve his accounts and administration, so keeping good records is essential to providing accurate and complete information to the estate's beneficiaries and the court. 755 ILCS § 5/28-11.

D. Invest and manage funds

With respect to managing and investing estate assets, it is important to carefully review any provisions of the Will that address investments or could affect the sale or retention of particular assets. In addition to the investment provisions contained in the Will, the Illinois Probate Act

¹⁰ For a helpful guide to types of assets and how to collect them, see Stacy E. Singer, *Counseling the Personal Representative, Marshaling Assets, and Inventory*, Illinois Estate Administration (Volume I, Chapter 3) (2014).

identifies a number of approved investment vehicles and imposes some limitations. See 755 ILCS § 5/21-1 *et seq.* For example, section 5/21-2.12 limits investments in stock concentrations unless permitted by the terms of the Will.

The standards of the Prudent Investor Rule have been incorporated into the Trusts and Trustees Act to impose the prudent investor rule on trustees. See 760 ILCS § 5/5. Depending on the terms of the Will, these principles might be extended to executors; however, it is important to keep in mind that the process of estate administration differs from trust administration in several key aspects, one in particular being that the estate administration period is generally shorter and so “prudent investment” of estate funds will often involve a shorter time horizon, differing cash needs, and fixed deadlines for tax and other payments owing.

E. Distribute Assets

Before the probate court will discharge an executor, a final report is required to be filed to confirm that all taxes, expenses and debts have been satisfied, claims settled, and assets distributed to the proper beneficiaries. See Sample Cook County Probate Court forms attached, Exhibit B. The beneficiaries of the estate will be required to receive a copy of the final report and to either receive formal notice of the executor’s petition for discharge and to close the estate, or alternatively, they must waive formal notice and confirm each beneficiary has received the share to which he or she is entitled. Where a decedent’s trust is a beneficiary of a pour-over will, the Illinois Appellate Court has held that the beneficiaries of the trust are required to receipt for the property received from the estate. See *Norris v. Estate of Norris*, 143 Ill. App. 3d 741 (1986); Rules of the Circuit Court of Cook County, Rule 12.9(c)(iii).

- *Practice pointer: An executor should consider asking beneficiaries to execute a formal agreement acknowledging the receipt of the share to which the beneficiary is entitled, approving the executor’s accounts, waiving formal notice, releasing the executor for all claims relating to the administration of the estate, and agreeing to refund any funds distributed if liabilities subsequently arise. If an executor distributes assets without such refunding protection and liabilities later arise, the executor could have personal liability for satisfying those amounts and would need to seek refunding in court.*
- *Practice pointer: For amounts distributable to charitable organizations or other entities, the executor should obtain a copy of the charitable organization’s tax-exemption letter and ensure that any individual signing on behalf of the entity is authorized to do so.*

V. Common Questions and Troubleshooting

A. Is an Executor Entitled to Compensation?

This question often arises when a family member is designated as executor or administrator. First, look to the terms of the document to determine whether it imposes any limitations on or offers parameters for an executor's compensation. If the document does not provide otherwise, a representative in Illinois is entitled to reasonable compensation for his services. 755 ILCS § 5/27-1. What does "reasonable" mean? There is no statutory definition, but in determining what is reasonable, courts have considered factors such as an executor's hourly rate (particularly if the executor is an attorney or accountant), the complexity and time required to administer the estate, whether the executor brings special skills to the role, and the overall market value of the assets in the estate (*e.g.*, if fees are charged as a percentage of the estate's value).

B. What if the Executor Isn't Doing His Job?

The process of estate administration is necessarily complex, as it can combine elements of family disharmony, surprise, financial windfall (or disappointment), and may prompt beneficiaries to recall promises made by the decedent. The decedent is no longer available to speak for himself, so the executor can easily find himself in a situation where one or some of the beneficiaries are displeased. It is important to distinguish between scenarios where a beneficiary is unhappy with the *result created* (*i.e.*, by the document, applicable law, or tax consequences) as compared to the actions of the executor. In the latter, a beneficiary may have a valid claim against an executor for neglecting his duties, making errors, or intentional wrongdoing that damages the estate, and consequently, the beneficiary's interest.

1. Communication and Resignation

In scenarios where an executor is either not responsive or uncooperative, for whatever reason, one option may be to discuss resignation. See 755 ILCS § 5/23-1. For instance, a family member may have agreed to act as executor only to later learn how time consuming the obligation can be when juggled with ordinary work, family and other obligations. Under those circumstances, the option of resignation may even come as a relief for an overextended executor who lacks time to give proper attention to administration demands. If no successor executor is named in the Will, the Illinois Probate Act provides a process for appointing a successor executor by petition in the probate court. See 755 ILCS 5/6-2.

2. Judicial Relief

In circumstances where an executor has failed to perform duties or has committed fraud, waste, or other malfeasance, a beneficiary of the estate may have standing to bring a court action against the executor. As a fiduciary, the executor owes duties to the beneficiaries and can be held

accountable by the probate court for both money damages and equitable relief. In instances where the executor's behavior is particularly egregious, the court may remove the executor and impose personal liability. In terms of equitable relief, a beneficiary could seek removal of the executor, which requires a higher standard of misconduct. 755 ILCS § 5/23-2. It is also important to note that the Will itself may limit an executor's liability so that simple negligence alone may not create liability even if a technical error is committed by the executor.

3. Alternative Dispute Resolution

While alternative dispute resolution (ADR) techniques like mediation and arbitration are becoming increasingly more common ways for resolving trust and estate disputes, the nature of trust and estate disputes often requires a mediator or arbitrator to possess specialized, technical legal knowledge; otherwise, unintended or adverse tax effects could result as a consequence of settlement.

Courts have been reluctant to bind beneficiaries to ADR clauses contained in Wills and trusts because the beneficiaries are not "parties" to the Will; therefore, public policy has favored allowing beneficiaries to seek court remedies notwithstanding provisions of a Will requiring non-judicial settlements. From a practical standpoint, ADR may be worth exploring when intangible remedies are sought that could not be obtained judicially, where privacy is particularly important to a family, or where a family relationship would be irreparable if court resolution is the only option pursued.

C. Practical Solutions and Executor Liability

Because an executor, as a fiduciary, is subject to a very high standard of care, it is advisable for an executor to consult with an attorney who specializes in estate administration to obtain advice regarding the process, duties and requirements for administering the decedent's estate. To mitigate executor liability, an executor could enter into a formal agreement with the estate's beneficiaries to obtain a release for claims relating to the estate's administration as well as an agreement to refund amounts to the estate if subsequent liabilities arise. The most effective way to mitigate liability can often be to simply establish positive communication with beneficiaries, provide regular updates as the estate's administration progresses, listen and be responsive to beneficiary concerns, and finally, establish a relationship of trust and confidence with beneficiaries by learning about their concerns, needs and questions throughout the process.

A

EXHIBIT A

Checklist to Determine the Need for Formal Probate in Illinois

1. Does the value of the assets titled in the name of the decedent alone at death and not payable on death by operation of law to a named beneficiary (other than to the decedent's estate) exceed \$100,000?
2. Is there disharmony among the heirs, legatees or other interested parties that could potentially lead to a will contest or other litigation against the estate?
3. Was the decedent in a risky profession (i.e. law, medicine, etc.) or did the decedent have an ownership interest (either individually or through a trust or other entity) in risky assets (i.e. commercial or residential real estate) that may result in claims from unknown creditors that are not immediately identifiable or ascertainable?
4. Has the decedent disinherited any heirs pursuant to the terms of the will and/or a revocable trust to which the residue of the probate estate is payable?
5. Are there insufficient assets in the estate such that legitimate claims of creditors may need to be disallowed or reduced or such that specific legacies may need to be eliminated or partially abated?
6. Are there debts owed to the decedent or assets owned by the decedent that may necessitate the opening of a probate estate in order to pursue litigation or a citation action in order to collect them?
7. Is there a need to initiate or continue litigation on behalf of the decedent for a personal injury, wrongful death or some other cause of action to which the decedent may have been a party?
8. Did the decedent possess a testamentary power of appointment that may require probate in order to affect the exercise or non-exercise of said power?
9. Is there a family member or tenant who is refusing to vacate real estate owned the estate or by the revocable inter vivos trust?
10. Will ancillary administration in a foreign jurisdiction be required?
11. Are there any out-of-wedlock children or other persons claiming heirship who have surfaced since the decedent's death or who were previously unknown to the decedent's other heirs?
12. Are there any other reasons why the executor may need to shorten the period for claims against the estate from two years (from the date of death) to six months (from the date of publication of notice to unknown creditors)?
13. Is there something that just doesn't smell right?

9

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION

Estate of _____

No. _____

Deceased

Will File Date: _____

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY

_____ states under the penalties of perjury:
1. _____, whose place of residence at the time of death was
(Address) _____ (City) _____ (County) _____ (State) _____ (Zip Code) _____
died _____, at _____ leaving a will
(Date) _____ (City) _____ (State) _____
dated _____ (and codicil dated _____, _____)
which petitioner believes to be the valid last will of the testator.

2. The approximate value of the estate in this state is:

Personal \$ _____ Real \$ _____ Annual Income from Real Estate \$ _____

3. The names and post office addresses of the testator's heirs and legatees are set forth on Exhibit A made a part of this petition. (List heirs first, indicate the relationship of each heir and legatee and, if the heir or legatee is a minor or disabled person, so state.)

4. The testator nominated as executor of the following, qualified and willing to act:

Name

Post Office Address

* 5. The name and post office address of the personal fiduciary designated to act during independent administration for each heir or legatee who is a minor or disabled person are shown on Exhibit A, a part of this petition. 3004

Petitioner asks that the will be admitted to probate and that letters testamentary issue.

Atty. No.: _____

Name: _____

Petitioner

Firm Name: _____

Attorney for the Petitioner: _____

Address

Address: _____

City/State/Zip Code: _____

City/State/Zip Code

Telephone: _____

If a consul or consular agent is to be notified, name
country: _____

Attorney Certification

*If supervised administration is requested, so state and strike Paragraph 5.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Estate of _____

No. _____

Deceased

PETITION FOR LETTERS OF ADMINISTRATION

_____, states under the penalties of perjury:
1. _____, whose place of residence at the time of death was

(address) (city) (county) (state) (zip)
died _____, at _____ leaving no will.
(city) (state)

2. The approximate value of the estate in this state is:

Personal	Real	Annual Income From Real Estate
\$ _____	\$ _____	\$ _____

3. The names and post-office addresses of decedent's heirs are set forth on Exhibit A and made a part of this petition. (Indicate the relationship and whether an heir is a minor or disabled person.)

4. The names and post-office addresses of persons who are entitled to nominate and/or administer in preference to (P) or equally with (E) petitioner are set forth on Exhibit A of this petition. If none, so state:

5. Petitioner is a _____ of decedent and is legally qualified to act (or to nominate a resident of Illinois to act) as administrator.

*6 The name and post-office address of the personal fiduciary designated to act during independent administration for each heir, who is a minor or disabled person, are shown on Exhibit A of this petition.

Petitioner asks that Letters of Administration issue to the following person(s), qualified and willing to act:

Name

Post-Office Address

Atty. No. _____

Atty. Name: _____

Firm Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Petitioner

Address: _____

City/State/Zip: _____

Telephone: _____

Atty. Certification _____

If a consul or consular agent is to be notified, name country: _____

*If supervised administration is requested, so state and strike Paragraph 6.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - PROBATE DIVISION

Estate of _____

No. _____

OATH AND BOND OF REPRESENTATIVE-NO SURETY

I, _____, on oath state that I will discharge faithfully the duties of the office of representative, and I acknowledge that I am bound to the People of the State of Illinois to the faithful discharge of those duties in an amount equal to double the value from time to time of the personal estate.

APPROVED:

Address __________
Judge_____
Judge's No.

Signed and sworn to before me

Atty. No.: _____

Name: _____

Firm Name: _____

Atty. for Representative: _____

Address: _____

City/Zip: _____

Telephone: _____

(Clerk of Court)_____
(Notary Public)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-PROBATE DIVISION

Estate of _____

No. _____

ACCEPTANCE OF OFFICE

The undersigned, qualified to accept and administer trusts in this state, accepts the office of representative of this estate.

(Date)

Atty. No. _____

Name: _____

Attorney for Representative: _____

Address: _____

City/Zip: _____

Telephone: _____

By _____

Title

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION**

ESTATE OF

No. _____

Deceased

COPY OF WILL

The undersigned states under penalties of perjury that the attached facsimile is a copy of the will filed for admission to probate.

(Petitioner)

(Attorney)

Atty. No.: _____

Atty. Name: _____

Firm Name: _____

Atty. for Petitioner: _____

Address: _____

City/Zip: _____

Telephone: _____

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-PROBATE DIVISION

Estate of _____

Deceased

No. _____

ORDER DECLARING HEIRSHIP

After considering evidence concerning heirship, the court declares that the following are the only heirs of the decedent:

_____,
ENTER:_____
Judge_____
Judge's No.

Atty. No. _____

Atty. Name: _____

Firm Name: _____

Address: _____

City/Zip: _____

Telephone: _____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - PROBATE DIVISION

NOTICE TO HEIRS AND LEGATEES - WILL ADMITTED

Attached to this notice are copies of a petition to probate a will and an order admitting the will to probate. You are named in the petition as an heir or legatee of the decedent.

Within forty-two (42) days after the effective date of the original order of admission, you may file a petition with the court to require proof of the will by testimony of the witnesses to the will in open court or other evidence, as provided in section 5/6-21 of the Probate Act of 1975. (755 ILCS 5/6-21).

You also have the right under section 5/8-1 of the Probate Act of 1975 (755 ILCS 5/8-1) to contest the validity of the will by filing a petition with the court within six (6) months after admission of the will to probate.

NOTE: *This notice must be mailed within 14 days after admission of the will.*
The attached order must show the date of entry.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Estate of _____

Deceased

No. _____

WAIVER OF NOTICE

The undersigned heirs of the decedent, *or legatees under decedent's will dated _____, _____,
 (and codicil dated _____, _____)

having been advised that a petition has been filed by _____

* (a) for the admission to probate of that will, and

(b) for the appointment of _____ as

_____ of the estate,

(representative)

(independent representative)

consent to that appointment and waive:

(a) notice of the hearing on the petition.

* (b) notice of rights to require formal proof of the will and to contest the admission or denial of admission of the will to probate.

** (c) notice of rights in independent administration.

* Strike if no will.

** Strike if supervised administration.

SEE REVERSE SIDE

*Fill in the blanks in 1 and 2 with the appropriate notices under the Probate Act. The more frequently used forms are listed below:

<u>PROBATE ACT §</u>		<u>DESCRIPTION OF NOTICE</u>
<u>Mailed Notices</u>		
Form # 1020	6-10	Notice to heirs and legatees -- will admitted
Form # 1003 A-B	28-2	Notice to heirs and legatees of rights in independent administration
Form # 1004	9-5 and 6-2	Notice to heirs of hearing on petition for letter of administration (or L/A with will annexed)
Form # 1007	28-4(a)	Notice of termination of independent administration
Form # 1008	28-11(e)	Notice of final report-- independent administration
<u>Published Notices</u>		
(A)	18-3	Claims notice
(B)	6-10 and 18-3	Notice to unknown heirs and legatees of admission of will, and claims notice
(C)	9-5 and 18-3	Grant of independent administration in intestacy and claims notice
(D)	28-11 (e)	Final report filed -- independent administration
(E)	9-8(g)	Summary administration notice

Name

Address

City/Zip

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - PROBATE DIVISION

Estate of _____

No. _____

Deceased

PROOF OF MAILING AND PUBLICATION

The undersigned states under the penalties of perjury:

1. On _____, _____, the following required notices* were mailed to each person whose name and address are stated on the reverse side: (Please list notices mailed.)

Copies of each notice and the required documents, as mailed, are in the possession of the attorney.

2. The following notices * have been published:

The publisher's certificate for each notice is attached hereto or is on file with the clerk of the court.

Atty. No.: _____

Name: _____

Firm Name: _____

Atty. for Representative: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Petitioner/Representative/Attorney_____
Date_____
Attorney Certification if signed by Petitioner
or Representative (Sup. Ct. Rule 137)

(*SEE REVERSE SIDE)

RIGHT OF HEIRS OR LEGATEES (APPLICABLE WHERE DECEDENT LEFT A WILL)

Within 42 days after the effective date of the original order of admission, any heir or legatee may file a petition with the court to require proof of the will by testimony of the witnesses to the will in open court or other evidence, as provided in section 6-21 of the Probate Act of 1975. (755 ILCS 5/6-21)

Each heir or legatee also has the right under section 8-1 or 8-2 of the Illinois Probate Act of 1975 (755 ILCS 5/8-1, 8-2) to contest the validity of the will or the denial of admission by filing a petition with the court within six months after entry of the order admitting or denying the will.

**RIGHTS OF INTERESTED PERSONS DURING INDEPENDENT ADMINISTRATION
(APPLICABLE WHERE AN INDEPENDENT REPRESENTATIVE IS APPOINTED)**

Independent administration means that the executor or administrator will not have to obtain court orders or file estate papers in court during probate. The estate will be administered without court supervision unless an interested person asks the court to become involved.

Under section 28-4 of the Probate Act of 1975 (755 ILCS 5/28-4), any interested person may terminate independent administration at any time by mailing or delivering a petition to terminate to the clerk of the court. However, if there is a will which directs independent administration, independent administration will be terminated only if the court finds there is good cause to require supervised administration; and if the petitioner is a creditor or nonresiduary legatee, independent administration will be terminated only if the court finds that termination is necessary to protect the petitioner's interest.

In addition to the right to terminate independent administration, any interested person may petition the court to hold a hearing and resolve any particular question that may arise during independent administration, even though supervised administration has not been requested (755 ILCS 5/28-5). The independent representative must mail or deliver a copy of the estate inventory and accounting to each interested person, and must send notice to or obtain the approval of each interested person before the estate can be closed (755 ILCS 5/28-6, 28-11). Any interested person has the right to question or object to any item included in or omitted from any inventory or account or to insist on a full court accounting of all receipts and disbursements with prior notice, as required in supervised administration (755 ILCS 5/28-11).

Atty. No. _____
Atty. Name: _____
Firm Name: _____
Atty. for: _____
Address: _____
City/State/Zip: _____
Telephone: _____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-PROBATE DIVISION

Estate of _____

No. _____

Deceased

FINAL REPORT OF INDEPENDENT REPRESENTATIVE

_____, independent representative of this estate, states under the penalties of perjury that the administration of this estate has been completed and in accordance with 755 ILCS 5/28-11 further states as follows:

1. Notice of probate has been given in compliance with 755 ILCS 5/6-10 or 5/9-5.
2. The notice to creditors required by 755 ILCS 5/18-3 has been published, reasonable care was used to determine the creditors of the decedent and all known creditors have been given notice as required under 755 ILCS 5/18-3.
3. Copies of the inventory and accounting have been mailed or delivered to the extent required by 755 ILCS 5/28-6 and 5/28-11.
4. Each claim filed has been allowed, disallowed, compromised, dismissed or is barred; and
 - *(a) all claims allowed have been paid in full.
 - *(b) the estate was not sufficient to pay all of the claims in full, and all claims allowed have been paid according to their respective priorities.
5.
 - *(a) A spouse's award (has been paid) (has been waived) (is barred) (is not applicable).
 - *(b) A child's award (has been paid) (is not applicable).
6.
 - *(a) All death taxes have been determined and paid or otherwise provided for.
 - *(b) The estate is not subject to death taxes.
7. All administration expenses and other liabilities of the estate have been paid and the administration
 - *(a) has been completed;
 - *(b) has not been completed, but has been provided for (see attached).
8. Notice of probate and release of the estate's interest in real estate has been recorded to the extent required by 755 ILCS 5/20-24 and 5/28-10(a).
9. The remaining assets of the estate have been distributed to the persons entitled thereto.
10. *The fees paid or payable to the independent representative and attorney (have been) (have not been) approved by all interested persons.
11. Receipts have been obtained from all heirs or legatees and written approvals have been obtained from unpaid creditors and are filed with this report, except as attached.

Atty. No.: _____

Atty. Name: _____

Firm Name: _____

Atty. for Representative: _____

Address: _____

City/Zip: _____

Telephone: _____

Independent Representative

Date

Attorney Certification

*FINAL REPORT MUST BE COMPLETED BEFORE FILING; STRIKE ANY PORTION(S) NOT APPLICABLE.

CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - PROBATE DIVISION

NOTICE OF FINAL REPORT - INDEPENDENT ADMINISTRATION

Attached to this notice is a copy of the report filed by the independent representative for this estate in order that the estate be closed and the independent representative discharged.

If no objection to the attached report is filed with the court within 42 days after the date the report was filed, the independent representative will be discharged and the estate closed.

In the absence of fraud, accident, or mistake, the order discharging the independent representative and declaring the estate closed is binding on all persons to whom this notice is given.

NOTE: This notice must be mailed within 14 days after the filing of the report.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JD

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-PROBATE DIVISION

Estate of _____

Deceased

No. _____

RECEIPT AND APPROVAL ON CLOSING OF
DECEDENT'S ESTATE IN INDEPENDENT ADMINISTRATION*

I, _____, acknowledge that I have received my
distributive share of the estate in full. I have also received copies of the representative's inventory, accounting, and final
report.

I approve the accounting and consent to the fees of the representative in the amount of \$ _____
and the fees of the attorney for the probate estate in the amount of \$ _____, as set forth in the accounting.

Date: _____, _____

Distributee

Address

City/State/Zip

*To be signed by the heirs in an intestate estate or by the residuary legatees in a testate estate

Atty. No.: _____

Name: _____

Atty. for Representative: _____

Address: _____

City/State/Zip: _____

Telephone: _____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - PROBATE DIVISION

Estate of

No. _____

Deceased

RECEIPT ON DISTRIBUTION

I, _____, acknowledge receipt of
(name)

my share of this estate as follows:

I appear, waive notice, and consent to the approval of the _____
(current) (final)

account of _____
(name and office)

and I consent to the fees of the representative in the amount of \$ _____ and the fees
of the attorney in the amount of \$ _____ as set forth in the accounting.

Atty. No.: _____

Firm Name: _____

Name: _____

Atty. for Petitioner: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Distributee

Address _____

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION

Estate of _____

Deceased

No. _____

APPROVAL BY BENEFICIARY OF TRUST
ON CLOSING OF DECEDENT'S ESTATE*

I, _____, acknowledge that I have received copies of the representative's inventory and accounting and (if independent administration) a copy of the representative's final report.

I approve the accounting, and I consent to the fees of the representative in the amount of \$ _____ and the fees of the attorney for the probate estate in the amount of \$ _____ as set forth in the accounting.

Date: _____

Trust Beneficiary

Address: _____

City/State/Zip: _____

Primary Email: _____

*To be signed by a beneficiary of a trust to which a part or all of the residuary estate is distributable but to whom no share of the residuary estate is directly distributable.

Atty. No.: _____

Atty. Name: _____

Atty. for Representative: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Primary Email: _____

Secondary Email: _____

Tertiary Email: _____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-PROBATE DIVISION

Estate of _____

No. _____

Deceased

STATEMENT RELATING TO TRUST BENEFICIARIES

Then undersigned states under the penalties of perjury that:

1. A part or all of this estate is distributable to the trustee(s) of a trust, and each trustee of the trust is also representative of this estate;
2. *(a) Notice of the hearing on the representative's account under Section 24-2 of the Probate Act of 1975 (755 ILCS 5/1 et seq.) has been given to or waived by, or the account has been approved by,
or
**(b) Notice of the filing of the representative's final report under Section 28-11 of the Probate Act has been given to or waived by, or the representative's accounting and final report have been approved by, all of the beneficiaries who are currently entitled to receive or eligible to have the benefit of the income from the trust (including any of those beneficiaries who are minors or disabled persons); and
3. In the case of each of those beneficiaries of the trust who is a minor or disabled person, notice has also been given to or waived by, or the account or the final report and the representative's accounting, as the case may be, has been approved by, the guardian of the estate of the beneficiary or, if no guardian of the estate has been appointed, the personal fiduciary for the beneficiary under Section 28-3 of the Probate Act or, if none, the spouse, parent, adult child or guardian of the person of the beneficiary.

Representative or Attorney

Date: _____, _____

*Strike if independent administration.

**Strike if supervised administration.

Attorney Certification if signed by
Representative (Sup. Ct. Rule 137)

Atty. No.: _____

Name: _____

Atty. for Petitioner: _____

Address: _____

City/State/Zip: _____

Telephone: _____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION

Estate of:

No. _____

A Minor

ORDER CLOSING ESTATE

ALL VOUCHERS PRODUCED SHOWING
BALANCE OF ESTATE DEPOSITED IN THE
_____ BANK
AS PER ORDER OF COURT OF _____,
(DATE)

BOND IS CANCELLED AND
ESTATE CLOSED.

Atty. No.: _____

ENTERED:

Name: _____

Atty. for: _____

Dated: _____

Address: _____

City/State/Zip Code: _____

Judge_____
Judge's No.

Telephone: _____

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DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT C

WILL

OF

I, _____, of _____,
_____, make this my will and revoke all prior wills and codicils.

[OPTION 1 for 1st ¶ of Tax Clause: If Client Married or Widowed]

FIRST: Payment of Taxes and Expenses. My executor shall pay from the residue of my estate all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering legacies, debts allowable as claims against my estate (excluding debts secured by real property or life insurance), and other proper charges against my estate. My executor shall also pay from the residue of my estate all estate and inheritance taxes [and generation-skipping taxes on direct skips of which I am the transferor, which are] assessed by reason of my death, including such taxes on property passing outside this will, except that (a) the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion in my estate for tax purposes of property in which I may have a qualifying income interest for life (hereinafter in this article referred to as "QTIP property"), [and] (b) the amount of estate and inheritance taxes, if any, which would be deemed attributable to property under Internal Revenue Code Section 2207 (as in effect on the date of this instrument), computed on the assumption that QTIP property was not included in my gross estate, [and (c) the amount, if any, of generation-skipping taxes caused by a disclaimer or by a direct skip from a trust not established by me,] shall be paid by the person

holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. I hereby waive for my estate all rights of reimbursement for any payments made pursuant to this article. **[CONSIDER:** If, however, the cash and readily marketable assets in my estate are insufficient to make the foregoing payments in full, my executor shall certify to the then acting trustee[s] of the [trust agreement/declaration of trust] hereafter mentioned the amount of the insufficiency for payment.]

[OPTION 2 for 1st ¶ of Tax Clause: If Client Not Married]

FIRST: Payment of Taxes and Expenses. My executor shall pay from the residue of my estate all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering legacies, debts allowable as claims against my estate (excluding debts secured by real property or life insurance), and other proper charges against my estate. My executor shall also pay from the residue of my estate all estate and inheritance taxes [and generation-skipping taxes on direct skips of which I am the transferor, which are] assessed by reason of my death, including such taxes on property passing outside this will, except that [(a)] the amount of estate and inheritance taxes, if any, attributable to any property over which I may have power of appointment[,] [and (b) the amount, if any, of generation-skipping taxes caused by a disclaimer or by a direct skip from a trust not established by me,] shall be paid by the person holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. I hereby waive for my estate all rights of reimbursement for any payments made pursuant to this article. **[CONSIDER:** If, however, the cash and readily marketable assets in my estate are insufficient to make the foregoing payments in full, my executor shall certify to the then

acting trustee[s] of the [trust agreement/declaration of trust] hereafter mentioned the amount of the insufficiency for payment.]

[Remainder of tax clause in all instances]

Assets or funds otherwise excludable in computing federal estate taxes shall not be used to make the foregoing payments. My executor's selection of assets to be sold to make the foregoing payments or to satisfy any pecuniary legacies, and the tax effects thereof, shall not be subject to question by any beneficiary.

My executor shall make such elections and allocations under the tax laws as my executor deems advisable. Elections and allocations shall be made without regard to the relative interests of the beneficiaries and shall not be subject to question by any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor [**CONSIDER:** or by the trustee[s] under the [trust agreement/declaration of trust] hereafter mentioned].

SECOND: Family Information. My husband/wife's name is _____ and he/she is herein referred to as "my husband/wife." I have _____ children now living, namely:

_____, born _____, 19__/20__;

_____, born _____, 19__/20__; and

_____, born _____, 19__/20__.

[**CONSIDER:** I intend by this will to provide for all my children, including any hereafter born or adopted.]

THIRD: Bequest of Personal Effects. I give all my personal and household effects, collections, automobiles, boats and transferable reward program miles or points, and any insurance policies thereon, to my husband/wife, if he/she survives me by 30 days, otherwise to my children who so survive me to be divided equally [between/among] them as they agree. My executor shall sell any property as to which there is no agreement within 90 days after my death and shall add the proceeds to the residue of my estate.

[CONSIDER: I may leave a written memorandum (which is not part of this will) listing some of the items described above which I wish certain persons to have. I request (but do not require) that my beneficiaries hereunder observe my wishes as set forth in that memorandum.]

[CONSIDER: If a child of mine is a minor at the time of distribution, the guardian of or person in loco parentis to the child shall represent him or her in the division of the property, receipt for and hold his or her share or sell all or any part of it, and deliver the share or proceeds to the child when he or she reaches majority, or earlier if the guardian or person considers it to be for the child's best interests.]

**[CONSIDER: Option 2: Assignment of Personal Effects To Dec;
Bequest of Personal Effects in Dec]**

THIRD: Personal Effects. I have executed and have delivered to [myself, as trustee/the trustee] of the [trust agreement/declaration of trust] hereafter mentioned, an Assignment of Personal Effects and Household Property, which assignment conveyed all of the personal and household effects, collections, automobiles, boats and transferable reward program miles or points then owned by me, and any insurance policies thereon, together with any such property subsequently acquired by me, to be added to the trust estate held under that [trust agreement/declaration of trust] and subject to my right to the use thereof during my lifetime. If and to the extent I own or continue to

own any such property at the time of my death, I give such property to the then acting trustee[s] under the [trust agreement/declaration of trust] to be added to the trust estate held under that [trust agreement/declaration of trust] as in effect at my death.

[CONSIDER: Option 1: Pour Over to Trust Agreement]

FOURTH: Bequest of Residue. All the residue of my estate, wherever situated, including lapsed legacies, but expressly excluding any property over which I may have power of appointment at my death, I give to the then acting trustee[s] under the trust agreement executed by me on _____, 19___/20___, [and [most recently] amended on _____, 20___,] before the execution of this will, with _____ [and _____] as trustee[s], [designated as trust number _____/known as the _____ TRUST], to be added to the trust estate held under that trust agreement as in effect at my death.

[CONSIDER: Option 2: Pour Over to Declaration]

FOURTH: Bequest of Residue. All the residue of my estate, wherever situated, including lapsed legacies, but expressly excluding any property over which I may have power of appointment at my death, I give to the then acting trustee[s] under the declaration of trust executed by me on _____, 19___/20___, [and [most recently] amended on _____, 20___,] before the execution of this will, known as the _____ DECLARATION OF TRUST, and under which _____ [and _____] [are/is] now named as successor trustee[s], to be added to the trust estate held under that declaration of trust as in effect at my death.

FIFTH: Guardian Designation. If my husband/wife does not survive me or dies after my death without providing for the custody of a minor child of mine, I name _____ as guardian of the person of that child] _____ and _____, jointly, if both are able and willing to act, otherwise the one of them who is able and willing to act, as co-guardians or sole guardian of the person of that child, as the case may be]. If a guardian of the estate of a minor child is necessary, I name _____ to serve in that capacity] _____ and _____, jointly, if both are able and willing to act, otherwise the one of them who is able and willing to act, to serve in that capacity]. If _____ fails to become or ceases to act] _____ and _____ both fail to become or cease to act] as guardian of the person, of the estate, or both, of any minor child of mine, I name _____ as guardian of the person, of the estate, or both, of any minor child of mine, as the case may be. No bond or security shall be required of any guardian.

[CAUTION: Only use if applicable: In deciding whether to accept or decline his/her appointment as successor to _____ as guardian of the person of any minor child of mine, I request that _____ consider the best interests of my minor children. I ask that _____ consider such factors as the relationship between each minor child and _____, the integration of any minor child of mine into the _____ family, and any other factors that _____ in his/her sole discretion, deems pertinent.]

SIXTH: Designation and Powers of Executor. I name my husband/wife [and _____] as executor[s] of this will. [If my husband/wife fails to become or ceases to act as executor, no successor to him/her shall be appointed and the remaining executor shall act as sole executor of this will.] If _____ fails to become or ceases to act as [co-executor or sole executor, as the case may be/executor], I name _____ as [co-executor or sole executor, as the case may be/executor] of this will. If for any reason any executor named herein is unwilling or unable to act as executor as to any property, I name as executor as to that property such person or qualified corporation as my domiciliary executor shall designate in writing. [The term “executor” shall mean the executor or executors from time to time qualified and acting hereunder.]

I give my executor power to retain any property that I own at my death, and to invest in bonds, stocks, notes, bank deposits, shares of registered investment companies, or other property, and to retain or make any investment without liability, regardless of type, quality, marketability or any rule requiring diversification; to lease, borrow with or without security from any lender including an executor hereunder individually, [**CONSIDER:** or a parent or affiliate company,] sell or exchange all or any part of my estate, real or personal, for such prices and upon such terms as my executor deems proper; to compromise, contest, prosecute or abandon claims in favor of or against my estate; to distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets (and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes), and to value my estate in order to make allocation or distribution, and no action taken by my executor pursuant to this power shall be subject to question by any beneficiary; to determine in cases not covered by statute the allocation of receipts and disbursements

between income and principal; to deal with the fiduciary of any trust or estate in which any beneficiary under this will or under the aforementioned [trust agreement/declaration of trust] has an interest, though an executor hereunder is such fiduciary; and to execute and deliver necessary instruments and give full receipts and discharges.

[CONSIDER: I also give my executor the power to retain any business interest (specifically including any interest in _____), without application to any court, as shareholder, security holder, creditor, partner, member, or otherwise, for any period of time whatsoever, even though it may constitute all or a large portion of my estate; to comply with the provision of any agreement restricting transfer of any business interest; to exercise any and all stock options which I may possess at the time of my death; to participate in the conduct of any business or rely upon others to do so, and to take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as owner of such business interest, including, but not limited to, (a) voting of stock and determination of all questions of policy, (b) execution of partnership agreements, operating agreements, and amendments to such agreements, (c) participation in any incorporation, formation, reorganization, merger, consolidation, sale of assets, recapitalization, liquidation or dissolution of any such business or any change in its nature, or buy-sell, stock restriction or stock redemption agreements, (d) investment in additional stock or securities of, or making secured, unsecured or subordinated loans to, any such business, with estate funds, and (e) election or employment with compensation, as directors, officers, general partners, managers, employees or agents of any business, of any persons, including any executor hereunder or any director, officer, employee or agent of a corporate executor; to rely upon reports of certified public accountants as to the operations and financial

condition of any such business, without independent investigation; and, if any such business is so continued, my executor shall incur no liability for any loss to my estate arising therefrom.]

[CONSIDER: My executor shall have power to inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, limited liability company, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; and to abandon or refuse to accept property that may have environmental damage. My executor may expend estate funds to do the foregoing, and no action or failure to act by my executor pursuant to this power shall be subject to question by any beneficiary.]

The foregoing powers shall be exercised by my executor without authorization by any court and, as to property subject to administration outside the state of my domicile, only with the approval of my domiciliary executor. No bond or security shall be required of any executor wherever acting. The administration of my estate shall be independent of the supervision of any court, if permitted by law and if my executor does not otherwise elect.

If any property hereunder would upon receipt by the trustee[s] of the aforementioned [trust agreement/declaration of trust] be required to be distributed to a beneficiary of that trust, my executor may make distribution without the intervention of the trustee[s].

SEVENTH: Titles. The headings, titles and subtitles in this will have been inserted for convenient reference only and shall be given no legal effect.

IN WITNESS WHEREOF, I have signed this will, consisting of _____ () pages, the following page[s] included, and for the purpose of identification have placed my initials at the foot of each preceding page, this _____ day of _____, 20__.

(Name)_____

We certify that the above instrument was on the date thereof signed and declared by _____ as his/her will in our presence and that we, at his/her request and in his/her presence and in the presence of each other, have signed our names as witnesses thereto, believing him/her to be of sound mind and memory at the time of signing.

_____ Residing at _____

_____ Residing at _____

_____ Residing at _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

We, the undersigned, being _____, the testator, and the witnesses, respectively, whose names are signed to the foregoing instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator, in the presence of the witnesses, signed the instrument as his/her last will and that he/she signed willingly, and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness and that to the best of his or her knowledge the testator was at that time of legal age, of sound mind and under no constraint or undue influence.

(Name)

Witness

Witness

Witness

Signed and sworn to before me by _____, the testator, and by each of the above witnesses, this _____ day of _____, 20__.

Notary Public

My commission expires: _____

AND STATUTORY ELEMENTS ARE MET

SMALL ESTATE AFFIDAVIT

(To be used only when decedent died on or after September 4, 1991)

I, _____, on oath state:
(name of affiant)

1. (a) My post office address is: _____
- (b) My residence address is: _____
- (c) I understand that, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:
Name _____ Address _____
City/Zip Code _____ Telephone _____

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person cannot be effectuated, the Clerk of the Circuit Court of Cook County, Illinois is recognized by Illinois law as my agent for service of process.

2. The decedent's name is _____.
3. The date of the decedent's death was _____, and I have attached a copy of the death certificate.
4. The decedent's place of residence immediately before his death was _____.
5. No Letters of Office are now outstanding on the decedent's estate and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge.
6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000. (Attach a list of each asset, e.g. cash, stock and its fair market value.)*
7. (a) *All of the decedent's funeral expenses and other debts, have been paid, **OR**
(b) All of the decedent's known unpaid debts are listed and classified as follows (include the name, post office address and amount): **Strike either 7(a) or 7(b).**

Class 1: funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt, or niche; expenses of administration; and statutory custodial claims as follows:

Name and Post Office AddressAmount

Class 2: the surviving spouse's award or child's award, if applicable, as follows:

Name and Post Office AddressAmount

Class 3: debts due the United States, as follows:

Name and Post Office Address

Amount

Class 4: money due employees of the decedent of not more than \$800 for each claimant for services rendered within four (4) months prior to the decedent's death and expenses attending the last illness, as follows:

Name and Post Office Address

Amount

Class 5: money and property received or held in trust by the decedent which cannot be identified or traced, as follows:

Name and Post Office Address

Amount

Class 6: debts due the State of Illinois and any county, township, city, town, village, or school district located within Illinois, as follows:

Name and Post Office Address

Amount

Class 7: all other claims, as follows:

Name and Post Office Address

Amount

- 7.5 I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.
8. There is no known unpaid claimant or contested claim against the decedent, except as stated in paragraph 7.
9. (a) The names and places of residence of any surviving spouse, minor child(ren) and adult dependent* child(ren) of the decedent are as follows:

Name and RelationshipPlace of ResidenceAge of Minor Child

(*Note: An adult dependent child is one who is unable to maintain him/herself and is likely to become a public charge.)

- (b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of decedent's death. If any such child(ren) did not reside with the surviving spouse at the time of the decedent's death, so indicate.)
- (c) If there is no surviving spouse, the award allowable to minor children and adult dependent children of a decedent who was an Illinois resident is \$ _____ (\$20,000 plus \$10,000 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.
10. (a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where decedent died intestate are as follows:

Name, Relationship
and Place of Residence

Age of
Minor

Portion of
Estate

OR

- (b) The decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief, the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

Name, Relationship
and Place of Residence

Age of
Minor

Portion of
Estate

Strike either 10(a) or 10(b).

- (c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.
- 10.3 My relationship to the decedent or the decedent's estate is as follows: _____.
- 10.5 I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of

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DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

recovery.

11. After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be distributed as follows:

Name

Specific Sum or Property to be Distributed

The foregoing statement is made under the penalties of perjury*.

Signature of Affiant

Signed and sworn before me on _____, 20____

(Notary Seal)

Notary Public

*(Note: A fraudulent statement made under the penalties of perjury is perjury, as defined in Section 32-2 of the Criminal Code of 2012.)

(c) Appointment of Agent. If safe deposit access is involved or if sale of any personal property is desirable to facilitate distribution pursuant to the small estate affidavit, the affiant under the small estate affidavit may in writing appoint one or more persons as the affiant's agent for that purpose. The agent shall have power, without court approval, to gain access to sell, and distribute the property in the manner specified in paragraphs 7.5 and 11 of the affidavit; and the payment, delivery, transfer, access or issuance shall be made or granted to or on the order of the agent. The affiant may appoint himself or herself as the designated representative to exercise the powers and perform the duties of an agent described in this subsection (c).

(d) Reliance and Release. Any person, corporation, or financial institution who acts in good faith reliance on a copy of a document purporting to be a small estate affidavit that is substantially in compliance with subsection (b) of the Section shall be fully protected and released upon payment, delivery, transfer, access or issuance pursuant to such a document to the same extent as if the payment, delivery, transfer, access or issuance had been made or granted to the representative of the estate. Such person, corporation, or financial institution is not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, access or issuance is made or given is answerable therefor to any person having a prior right and is accountable to any representative of the estate.

(e) Distributions pursuant to an affidavit substantially in the form set forth in subsection (b) of the Section may be made to the affiant, if so specified in paragraph 11, notwithstanding the disclosure of known unpaid debts. The affiant, acting on behalf of the decedent's estate, is obligated to pay all valid claims against the decedent's estate before any distribution is made to any heir or legatee. The affiant signing the small estate affidavit prepared pursuant to subsection (b) of this Section shall indemnify and hold harmless all creditors, heirs, and legatees of the decedent and other persons, corporations, or financial institutions relying upon the affidavit who incur loss because of such reliance. That indemnification shall only be up to the amount lost because of the act or omission of the affiant. Any person, corporation, or financial institution recovering under this subsection (e) shall be entitled to reasonable attorney's fees and the expenses of recovery.

(f) The affiant of a small estate affidavit who is a non-resident of Illinois submits himself or herself to the jurisdiction of Illinois courts for all matters related to the preparation or use of the affidavit. The affidavit shall provide the name, address, and phone number of a person whom the affiant names as his agent for service of process. If no such person is named or if, for any reason, service on the named person cannot be effectuated, the clerk of the circuit court of the county or judicial circuit of which the decedent was a resident at the time of his death shall be the agent for service of process.

(g) Any action properly taken under this Section, as amended by Public Act 93-877, on or after August 6, 2004 (the effective date of Public Act 93-877) is valid regardless of the date of death of the decedent.

(h) The changes made by this amendatory Act of the 96th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 96th General Assembly.

(i) The changes made by this amendatory Act of the 98th General Assembly apply to a decedent whose date of death is on or after the effective date of this amendatory Act of the 98th General Assembly.