

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADMINISTRATION OF
THE SSJ'S ISSUE TRUST,

IN THE MATTER OF THE ADMINISTRATION OF
THE SAMUEL S. JAKSICK, JR. FAMILY TRUST.

TODD B. JAKSICK, INDIVIDUALLY AND AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE SSJ'S
ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST; KEVIN
RILEY, INDIVIDUALLY AND AS A FORMER
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
WENDY A. JAKSICK 2012 BHC FAMILY TRUST;
AND STANLEY JAKSICK, INDIVIDUALLY AND AS
CO-TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST,

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

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Case No.: 81470

Appeal from the Second
Judicial District Court,
the Honorable David
Hardy Presiding

**RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S
APPENDIX, VOLUME 9**

Marquis Aurbach Coffing

Chad F. Clement, Esq. (SBN 12192)
Kathleen A. Wilde, Esq. (SBN 12522)
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
cclement@maclaw.com
kwilde@maclaw.com

Spencer & Johnson, PLLC

R. Kevin Spencer (pro hac vice)
Zachary E. Johnson (pro hac vice)
500 N. Akard Street, Suite 2150
Telephone: (214) 965-9999
Facsimile: (214) 965-9500
kevin@dallasprobate.com
zach@dallasprobate.com

Attorneys for Respondent/Cross-Appellant, Wendy Jaksick

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Dated this 14th day of June, 2021.

MARQUIS AURBACH COFFING

By /s/ Chad F. Clement

Chad F. Clement, Esq. (SBN 12192)
Kathleen A. Wilde, Esq. (SBN 12522)
10001 Park Run Drive
Las Vegas, Nevada 89145

SPENCER & JOHNSON, PLLC

R. Kevin Spencer (pro hac vice)
Zachary E. Johnson (pro hac vice)
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
Attorneys for Respondent/Cross-
Appellant, Wendy Jaksick

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 9** was filed electronically with the Nevada Supreme Court on the 14th day of June, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503

Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
Kristen D. Matteoni, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519

Phil Kreitlein, Esq.
Kreitlein Law Group
1575 Delucchi Lane, Ste. 101
Reno, NV 89502

Adam Hosmer-Henner, Esq.
McDonald Carano
100 West Liberty Street, 10th Fl.
P.O. Box 2670
Reno, NV 89505

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

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U.S. v. MARSHALL, Cite as 114 AFTR 2d 2014-6578, Code Sec(s) 6324; 6601; 6621;6901; 2511; 6901, (CA5), 11/10/2014

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE v. Elaine T. MARSHALL, individually, as Executrix of the Estate of E. Pierce Marshall, as Trustee of the E. Pierce Marshall, Jr. Trust and as Trustee of the Preston Marshall Trust; Finley L. Hilliard, individually, as former executor of the Estate of James Howard Marshall, II and as former Trustee of the Eleanor Pierce (Marshall) Stevens Living Trust; E. Pierce Marshall, Jr., individually, and as Executor of the Estate of Eleanor Pierce Stevens; Preston Marshall, Co-Trustee of the Eleanor Pierce (Marshall) Stevens Living Trust, DEFENDANTS-APPELLANTS. **Case Information:**

[pg. 2014-6578]

Code Sec(s):	6324; 6601; 6621;6901, 2511; 6901
Court Name:	U.S. Court of Appeals, Fifth Circuit,

MCL003376

WJ 001896

Docket No.:	No. 12-20804,
Date Decided:	11/10/2014.
Prior History:	District Courts, (2012, DC TX) 110 AFTR 2d 2012-5151, (2012, DC TX) 109 AFTR 2d 2012-2469, and (2012, DC TX) 109 AFTR 2d 2012-1553, affirmed in part and reversed in part.
Tax Year(s):	Years 1992, 1993, 1994, 1995.
Disposition:	Decision for Govt. in part.

HEADNOTE

1. Gift taxes-indirect gifts-interest on donee liability. District court decision that donees were liable for interest on unpaid gift, tax arising from deceased donor/petroleum co. shareholder's indirect gift of co. stock, was affirmed. Contrary to donees' arguments that court's holding was based on improper interpretation of [Code Sec. 6324(b)] and/or erroneous application of [Code Sec. 6901], it was clear that [Code Sec. 6324(b)], [Code Sec. 6601] and [Code Sec. 6901] when read together imposed interest on donee liability from date that donor's gift tax became overdue. This conclusion was also consistent with relevant case law and "traditional rule that one who possesses funds of govt. must pay interest for period that person enjoys benefit of same."

Reference(s): ¶ 66,015.01(10) USTR Estate & Gift Taxes ¶63,245.01(75); 69,015.05(20) [Code Sec. 6324; [Code Sec. 6601; [Code Sec. 6621; [Code Sec. 6901]

2. Gift taxes-to whom taxable-transferees; donees-indirect gifts-grantor retained income trusts-income beneficiary or remainder beneficiary-res judicata. District court decision that deceased donor/petroleum co. shareholder's former wife qualified as donee liable for unpaid gift tax, on indirect gift of co. stock to her and others, was affirmed: contrary to wife's arguments that she didn't qualify as donee because no present interest was transferred, and/or that she didn't personally own any of subject stock but rather was only beneficiary of GRIT to which shares were transferred, record showed that gift did transfer present interest, that wife as income beneficiary was in fact donee, and that other/remainder beneficiaries weren't themselves required to share in payment of gift tax for same. Also,

res judicata barred her from relitigating value of her gift.

Reference(s): USTR Estate & Gift Taxes ¶25,115.01(80); 69,015.05(20) [§]Code Sec. 2511; [§]Code Sec. 6901

3.Estate and gift taxes-personal liability of fiduciary-executors and trustees-summary judgment.

District court decision holding executor and trustee liable under [§]31 USC 3713 for distributions made from decedent's estate and trust to lower priority creditors, before paying federal gift tax debt, was affirmed as to findings that they knew of potential liability to govt. and that they could be held personally liable for charitable set-aside, for selling personal property from estate or paying rent on vacant apartment, and for amount they caused trust to pay for accounting and legal services on behalf of other charitable orgs. But, court erred in finding executor breached his fiduciary duty under state law because he didn't in fact owe any such duty to estate's creditors.

Reference(s): USTR Estate & Gift Taxes ¶20,025.01(15) [§]Code Sec. 2002; [§]Code Sec. 2501

[pg. 2014-6579]**OPINION**

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT,

Appeals from the United States District Court for the Southern District of Texas

Before REAVLEY, PRADO, and OWEN, Circuit Judges.

Judge: EDWARD C. PRADO, Circuit Judge:

In 1995, J. Howard Marshall, II ("J. Howard") made what the IRS later determined was an indirect gift of Marshall Petroleum, Inc. ("MPI") stock to MPI's other shareholders: (1) Eleanor Pierce (Marshall) Stevens ("Stevens"), J. Howard's former wife, who was the beneficiary of a trust that was funded by MPI stock; (2) E. Pierce Marshall ("E. Pierce"), J. Howard's son; (3) Elaine T. Marshall ("Elaine"), E. Pierce's wife; (4) the Preston Marshall Trust ("Preston Trust"), which had been formed for the benefit of J. Howard's grandson, Preston Marshall; and (5) the E. Pierce Marshall, Jr. Trust ("E. Pierce Jr. Trust"), which had been formed for the benefit of J. Howard's grandson, E. Pierce Marshall, Jr. At the time that he made this indirect gift, J.

MCL003378

WJ 001898

Howard did not pay gift taxes. He passed away shortly after making this gift.

After several years of negotiation over J. Howard's tax liability for this indirect gift, the IRS and J. Howard's Estate entered into a stipulation that determined the value and recipients of the indirect gifts. J. Howard's Estate still did not pay the gift tax, and, pursuant to 26 U.S.C. § 6324(b), the IRS tried to collect the unpaid gift tax from the donees. E. Pierce's Estate¹ paid approximately \$45 million toward the unpaid gift tax for the benefit of donees E. Pierce, Elaine, the Preston Trust, and the E. Pierce Jr. Trust. Stevens's Estate² has not paid any gift tax because the Estate disputes that Stevens was a beneficiary of the 1995 gift.

In 2010, the Government brought suit against the donees, seeking to recover the unpaid gift taxes and to collect interest from the beneficiaries. The Government also sought to recover from two individuals-E. Pierce Marshall, Jr. ("E. Pierce Jr.") and Finley L. Hilliard ("Hilliard")-who, as representatives of various estates and trusts, allegedly paid other debts before paying those owed to the Government. In a series of orders issued in 2012, the district court found: (1) the donees' debt under 26 U.S.C. § 6324(b) was a liability independent from that of the donor's unpaid gift tax, and the donees had incurred interest on that independent liability; (2) Stevens was a donee of J. Howard's indirect gift; (3) Hilliard and E. Pierce Jr. were individually liable for several of the debts they paid as executors and trustees before they paid the debt owed to the Government.

On appeal, the Appellants argue the district court erred in each of those rulings. We affirm in part and reverse and render in part.

I. BACKGROUND

A. Legal Background

The Internal Revenue Code imposes a tax on a "transfer of property by gift." 26 U.S.C. § 2501(a)(1). Subject to a few exceptions not presented in this case, this gift tax applies "whether the gift is direct or indirect," and includes transfers of property (like stock) when the transfer was "not made for an adequate and full consideration." 26 U.S.C. § 2511(a); see 26 C.F.R. § 25.2511-1(h). When the gift tax is not paid when it is due, the Internal Revenue Code imposes interest on the amount of underpayment. 26 U.S.C. § 6601(a).

"The donor, as the party who makes the gift, bears the primary responsibility for paying the gift tax." *United*

States v. Davenport, 484 F.3d 321, 325 [99 AFTR 2d 2007-2099] (5th Cir. 2007) (citing I.R.C. § 2502(c)). If the donor fails to pay the gift tax when it becomes due, the Internal Revenue Code provides the donee becomes "personally liable for such tax to the extent of the value of such gift." I.R.C. § 6324(b). The term tax includes interest and penalties, and so the donee can be held liable for the interest and penalties for which the donor is liable. See Treas. Reg. § 301.6201-1(a); 14 *Mertens Law of Federal Income Taxation* § 53:41 (2014). Donee liability is several, meaning that the donee can be held liable for the full amount of the gift tax that the donor owes, "regardless of what portion [of the gift the particular donee] may have received of the total amount distributed," subject to the cap in § 6324(b). 14 *Mertens Law of Federal Income Taxation* § 53:42.

The Government has two means of collecting an unpaid gift tax: (1) it can bring a court proceeding against the donee, and (2) it can initiate a procedure under I.R.C. § 6901. See I.R.C. §§6901, 7402. Section 6901 specifies that donee liability is "subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred." I.R.C. § 6901(a).

B. Factual Background

[pg. 2014-6580]1. The gift

In 1995, J. Howard sold his stock in MPI back to the company. Because he sold the stock back for a price below its fair market value, this sale increased the value of the stock of the remaining stockholders. At the time of the sale, there were five other individuals and trusts that held MPI stock, including E. Pierce, Elaine, the Preston Trust, and the E. Pierce Jr. Trust.

The fifth stockholder of MPI stock at the time was a Grantor Retained Income Trust ("GRIT"), which paid income to Stevens. As part of her divorce settlement with J. Howard, Stevens received shares of MPI stock. In 1984, Stevens transferred all of her shares of MPI to the Eleanor Pierce (Marshall) Stevens Living Trust ("Living Trust"), and a few years later, the Living Trust split those shares into four trusts. Slightly more than half of the shares were transferred into three Charitable Remainder Annuity Trusts ("CRATs"), and the remaining shares were put into the GRIT. The GRIT was designed to pay income to Stevens for ten years and then terminate, with E. Pierce as the remainder beneficiary. When the MPI shares were transferred to the three CRATs and the GRIT, the shares were cancelled and then reissued in the name of the four trusts.³

2. The donor and gift tax

The IRS audited J. Howard's 1992 through 1995 gift taxes. The IRS determined that J. Howard had made an indirect gift to the MPI shareholders when he sold his stock back for below market value and sent notice of deficiency. J. Howard's Estate⁴ challenged the deficiencies. After years of back-and-forth negotiation, in 2002 J. Howard's Estate and the IRS entered into a stipulation ("the Stipulation") regarding J. Howard's Estate's tax liability. The Stipulation provided that, in 1995, J. Howard made indirect gifts to the following people in the following amounts: (1) E. Pierce-\$43,768,091, (2) Stevens-\$35,939,316, (3) Elaine-\$1,104,165, (4) the Preston Trust- \$1,104,165, and (5) the E. Pierce Jr. Trust-\$1,104,165. In 2008, the United States Tax Court issued decisions ("2008 Tax Court decisions") finding, *inter alia*, deficiencies in J. Howard's 1995 gift taxes. J. Howard's Estate never paid the assessed taxes.

3. The donees and gift tax

When Stevens passed away in 2007, E. Pierce Jr. became the executor of her estate, and Hilliard was the trustee for the Living Trust. E. Pierce Jr. and Hilliard were both aware that Stevens's Estate and the Living Trust could be held liable for the unpaid gift tax. Before paying anything toward the unpaid gift tax, E. Pierce Jr. made distributions of personal property from Stevens's Estate, and he also paid rent on Stevens's apartment for one year. Hilliard used funds from the Living Trust to pay accounting and legal fees for charitable organizations other than the Living Trust. Hilliard and E. Pierce Jr. also filed joint tax returns for the Living Trust and Stevens's Estate and permanently set aside \$1,119,127 of the Living Trust's funds for charitable purposes.

In 2008, the IRS assessed gift tax liability for the unpaid donor gift tax against the donees pursuant to I.R.C. § 6324(b). In May and June 2010, E. Pierce's Estate paid the IRS an amount equal to the value of the gift received for E. Pierce, Elaine, the E. Pierce Jr. Trust, and the Preston Trust. Steven's Estate, on the other hand, has not paid the IRS anything towards the unpaid gift tax.

C. Procedural Background

1. Government's lawsuit

On August 6, 2010, the Government sued the E. Pierce Estate, Elaine, the E. Pierce Jr. Trust, the Preston

Trust, and Stevens's Estate as donees of J. Howard's 1995 indirect gift. The Government also brought claims against both E. Pierce Jr. and Hilliard under 31 U.S.C. § 3713, the Federal Priority Statute, alleging that they had made distributions from Stevens's Estate and the Living Trust before paying debts owed to the Government. The Appellants filed motions for summary judgment, and the Government filed cross-motions for summary judgment against each of the Appellants.

2. March 28, 2012 Order

Stevens moved for summary judgment, arguing that she was not the donee of J. Howard's 1995 gift because she did not personally own any MPI stock at the time of the gift. She argued that the GRIT was the donee of the gift and, therefore, liable for any gift tax. In the alternative, she argued that the remainder beneficiary (E. Pierce), not the income beneficiary (Stevens), was the donee of the gift. Finally, she argued that Kansas law applied and that, under Kansas law, the increased value of the MPI stock would be allocated to the corpus (and thus would inure to the remainder beneficiary) instead of the income. The Government [pg. 2014-6581] filed a cross-motion for summary judgment, arguing that the Stipulation and the 2008 Tax Court decisions barred Stevens from "litigating the fact of the gifts, the identity of the donees, and the amount of the gifts."

In the March 28, 2012 Order, the district court held that Stevens was the donee of J. Howard's 1995 gift. The court looked to *Helvering v. Hutchings*, 312 U.S. 393 [25 AFTR 1188] (1941), where the Supreme Court held that gifts to a trust were gifts to the trust beneficiaries and that the trust beneficiaries were eligible for a gift tax exclusion under I.R.C. § 2503(b). Based on that holding, the district court saw no reason why the definition of donee for purposes of the gift tax exclusion would be different than the definition of donee for the purposes of donee gift tax liability.

The district court also rejected Stevens's argument that the remainder beneficiary should be considered the donee for purposes of gift tax liability. Citing *Ryerson v. United States*, 312 U.S. 405 [25 AFTR 1191] (1941) and *United States v. Pelzer*, 312 U.S. 399 [25 AFTR 1194] (1941), the district court noted that "the donee for the purposes of a gift tax exclusion must hold a present interest in and right of enjoyment of the gift," and found that Stevens as the income beneficiary, not the remainder beneficiary, had the present interest and right of enjoyment of the gift when it was made. Finally, the court found that the Kansas definition of income and principal would only apply if the trust document was ambiguous. Because the trust document was unambiguous and because Stevens met the definition of a donee under *Helvering*, Stevens was the donee of J. Howard's 1995 gift.

3. June 7, 2012 Order

The Government also filed a motion for partial summary judgment for donee liability against Elaine in her individual capacity, as executrix of E. Pierce's Estate, as trustee of the Preston Trust, and as trustee of the E. Pierce Jr. Trust. The Government argued that it could "charge interest pursuant to I.R.C. §§ 6601 and 6621 on the unpaid donee liability created by § 6324(b)." The Government claimed that there were two separate obligations: the obligation of the donor and the obligation of the donee. Section 6324(b), according to the Government, only limited the obligation of the donor, and so the donee's liability for the unpaid gift tax was not capped under § 6324(b). Elaine filed a cross-motion for summary judgment, arguing that the plain language of § 6324(b) capped all donee liability at the value of the gift received, and so the donees could not incur unlimited interest on any separate donee liability.

The district court agreed with the Government and found that (1) the donees had an independent liability under § 6324(b) that was not capped at the value of the gift and (2) this independent liability was subject to interest under § 6601. The court noted that the Fifth Circuit had not yet spoken on the issues this case raised. Thus, it looked to three circuit court opinions that had addressed the issue: *Baptiste v. Commissioner* (Baptiste 11), 29 F.3d 1533 [74 AFTR 2d 94-7477] (11th Cir. 1994), *Baptiste v. Commissioner* (Baptiste 8), 29 F.3d 433 [74 AFTR 2d 94-7455] (8th Cir. 1994), and *Poinier v. Commissioner*, 858 F.2d 917 [62 AFTR 2d 88-6006] (3d Cir. 1988).

The district court explained several reasons for its finding. First, the district court disagreed that the language of § 6324(b) unambiguously limited all donee liability. Second, the court found that "[j]ust as there are two parties to a gift-the donor and the donee, there are two different possible deficiencies-that of the donor and that of the donee." While the donor's obligation falls under chapter 12 liability, the donee has liability under I.R.C. § 6601 for interest for use of the government's money. The district court found that "[d]onee liability is not a tax" and could not be collected as such; instead, the Government had to obtain a personal judgment against a donee or make an assessment under § 6901. The donor's gift tax and the donee's liability were both subject to interest under §§ 6601 and 6620, which, the court reasoned, made sense: "The interest is charged based on the failure of the donee to pay, not the donor. It was equitable to cap the donee's responsibility for the actions of another, but if he chooses not to pay his own liability that is a different matter." Additionally, the district court declined to follow the Third Circuit's reasoning in *Poinier* because "the Third Circuit's strongest argument-that § 6601(f) expressly forbids

paying interest on interest-is no longer valid" because Congress removed that provision. Finally, *Baptiste* 11 persuaded the district court, because, under Fifth Circuit precedent discussing § 311 (the predecessor to § 6901), this Court had "allowed the assessment of interest on a transferee's liability." Thus, the district court found that the donees were liable to the Government for interest on their independent liability for the unpaid gift tax.

4. June 25, 2012 Order

Finally, the Government moved for summary judgment against E. Pierce Jr. and Hilliard for violations of 31 U.S.C. § 3713, the Federal Priority Statute, and against E. Pierce Jr. for breach of state law fiduciary duties. The court granted the motion and found E. Pierce Jr. and Hilliard (1) individually liable for money they had distributed from Stevens's Estate and the Living Trust, respectively, in violation of 31 U.S.C. § 3713 and (2) jointly liable for money they set aside for charitable purposes in violation of the government's priority under § 3713.

The main issue before the district court was whether E. Pierce Jr. and Hilliard had knowledge of the Government's claim against Stevens's Estate. The district court explained that "the knowledge requirement is not actual knowledge" and that the requirement could be satisfied with a showing that E. Pierce Jr. and Hilliard had "notice of such facts as would put a reasonably prudent person on inquiry as to the existence of the unpaid claim." The court noted that both E. Pierce Jr. and Hilliard admitted they were told that the Government might assert a claim for the unpaid gift tax against Stevens's Estate.

After determining that E. Pierce Jr. and Hilliard met the test in 31 U.S.C. § 3713 for individual liability, the court then set out to calculate their liability. It found that "the government has priority over debts of the decedent but not of the estate," and then applied Texas law to determine which category the debts E. Pierce Jr. and Hilliard paid fell into. The court found E. Pierce Jr. individually liable for distributing Stevens's personal property and for causing the Living Trust to pay rent on Stevens's apartment. The court found Hilliard individually liable for paying accounting and legal services out of the Living Trust for other charitable organizations. The district court also found Hilliard and E. Pierce Jr. jointly liable for the \$1,119,127 they had set aside in the Living Trust for charitable purposes, for which they claimed charitable deductions. Finally, the district court concluded that E. Pierce Jr.'s personal liability under § 3713 was "coterminous" with his failure to pay taxes on behalf of Stevens's Estate in the order and manner they were due, and thus, he had breached his fiduciary duties under state law.

All Appellants timely appealed.

II. JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 7402 and 7403 and 28 U.S.C. §§ 1340 and 1345. This court has jurisdiction pursuant to 28 U.S.C. § 1291.

III. STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo. *Kimbell v. United States*, 371 F.3d 257, 260 [93 AFTR 2d 2004-2400] (5th Cir. 2004). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). The dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

IV. DISCUSSION

[1] All Appellants argue that the district court erred in finding that the donees incurred an independent interest liability as a result of the donor's unpaid gift tax. Stevens also argues that the district court was incorrect in finding that she was a donee. Finally, Hilliard and E. Pierce Jr. claim that the district court erred when it held them responsible, as fiduciaries and individually, for distributions they made from the Living Trust and Stevens's Estate. We address each issue in turn.

A. Independent Donee Unpaid Gift Tax Liability and Interest

Under the Internal Revenue Code, the federal government can establish a lien for unpaid gift tax:

Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the period for which the return was filed, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be

personally liable for such tax to the extent of the value of such gift.

§ 6324(b). All Appellants argue that the district court erred when it found both that this creates an independent liability on the part of the donee to pay the unpaid gift tax and that the donee can be charged interest until the gift tax is paid. First, they argue that the district court's interpretation of § 6324(b) directly contradicts the plain language of the statute. Second, the Appellants argue that the district court erred in applying § 6901; specifically, they argue that because the Government did not assess transferee liability under § 6901 but instead chose to seek a personal judgment against the donees, § 6901 is irrelevant in this case. Finally, they claim that even if § 6901 applies, the district court's interpretation of § 6324(b) is incorrect for several reasons. For the reasons that follow, we disagree with each of these arguments and hold that interest accrues on donee's liability for the unpaid gift taxes and that interest is not limited to the extent of the value of the gift. [pg. 2014-6583]

1. The plain language of § 6324(b)

The Appellants argue that the language of § 6324(b) is clear on its face: "It imposes only a single liability on donees for the donor's tax and interest." The statutory language includes no exceptions, and, considering the exceptions written into other parts of the Internal Revenue Code, they point out that if Congress had intended to provide an exception, it knew how to include one. The Appellants also argue that both *Poinier* and *Baptiste* held that the plain language of § 6324(b) resolved this question, and they urge this Court to follow those circuits.

The Government responds that there are two distinct liabilities at issue in this case: the donor's liability and the donee's liability. The Government argues that to understand the donee's liability for the unpaid gift tax, the Court must look beyond § 6324(b) and read it in conjunction with §§ 6601 and 6901. According to the Government's reading of the statutes, " § 6901 provides that the amount of a donee's personal liability under ... § 6324(b) is subject to the same provisions as the gift tax that gave rise to such liability," such as the interest provisions in § 6601.

We agree with the Government that the plain language of § 6324(b) does not resolve this issue. First, based on our reading of the plain language of the statute, the liability limitation applies to the donor's unpaid gift tax. See § 6324(b) (explaining that, when the donor's gift tax is unpaid when due, a

donee is personally liable for "*such tax* to the extent of the value of the gift" (emphasis added)). Section 6324(b), however, says nothing about any limit on the donee's liability and the Government's ability to assess interest when the donee fails to fulfill his or her obligation to pay the donor's unpaid gift tax. Further, the district court was correct to read several other portions of the Internal Revenue Code together in reaching its conclusion. Because statutes dealing with the same subject should be read together and "harmonized, if possible," we should not resolve this question without looking beyond Section 6324(b) and attempting to harmonize it with other provisions of the Internal Revenue Code. See *Panama Canal Co. v. Anderson*, 312 F.2d 98, 100 (5th Cir. 1963).

While the Appellants are correct that the Third Circuit observed in *Poinier* that applying the Section 6324(b) cap to limit the donee's liability was "consistent with the plain language of section 6324(b)," *Poinier*, 858 F.2d at 920, we disagree that the court resolved the case solely based on the plain language of Section 6324(b). The Third Circuit still conducted an extensive analysis of the statute's legislative history, compared the case to decisions from other circuits, and examined the policy implications of its decision before reaching its holding. See *id.* at 920-23. Thus, even the *Poinier* court did not rely solely on the plain language of the statute in order to resolve the case.

Finally, other courts that have considered this issue have read Section 6324(b) and concluded that a donee incurs an independent liability that is subject to unlimited interest until paid. See *Baptiste 11*, 29 F.3d at 1541-1543; *Baptiste v. Comm'r (Baptiste TC)*, 100 T.C. 252, 257 (1993). These divergent interpretations of Section 6324(b) suggest that Section 6324(b) is not plain on its face in the way that the Appellants claim. Thus, we conclude the plain language of the statute does not resolve the case.

2. Section 6901 and its implications for this case

The Appellants next argue that the district court erred in looking to *Baptiste 11* and Section 6901 to help resolve this case, because the Government chose to collect the gift taxes from the donees through a personal action, not under Section 6901. They argue that collection under Section 6901 includes certain procedural safeguards, which they were deprived of when Government chose not to collect through Section 6901. Though the Appellants agree that the Government may use whatever method it chooses to collect taxes, they claim the Government is improperly attempting to use one method to collect taxes—a direct judgment under Section 7402—while taking advantage of Section 6901.

The Government rejects the idea that § 6901 is irrelevant to this case simply because it chose to collect the unpaid tax through a direct judgment instead of using the § 6901 procedures. The Government claims § 6901 shows Congress intended for the IRS to be able to collect interest on the donee's unpaid, personal liability under § 6324(b). According to the Government, this congressional intent should guide our decision, regardless of whether the Government collects the tax under § 7402 or § 6901. Finally, the Government disputes the Appellants' allegation that they were denied procedural safeguards available under § 6901 because (1) the Appellants were allowed to have their donee liabilities determined without having to first pay the tax, and (2) the outcome in the district court was the same as it would have been in tax court because of the tax court's decision in *Baptiste TC*.

We conclude the district court did not err in relying on § 6901 to help interpret § 6324(b), [pg. 2014-6584] even though the Government chose to attempt to collect from the Appellants through a personal action, not under § 6901. The Internal Revenue Code gives district courts jurisdiction to render judgments to enforce internal revenue laws, and the statute specifies that the remedies are "in addition to and not exclusive of any and all other remedies of the United States." I.R.C. § 7402(a). Further, nothing in § 6901—which says that transferee liability is "subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred"—imposes that liability *only* when the Government collects under § 6901. *Cf. United States v. Russell*, 461 F.2d 605, 606 [29 AFTR 2d 72-1589] (10th Cir. 1972) (holding that "the collection procedures contained in § 6901 are not exclusive and mandatory, but are cumulative and alternative to the other methods of tax collection recognized and used prior to the enactment of § 6901 and its statutory predecessors"); *see also United States v. Geniviva*, 16 F.3d 522, 525 [73 AFTR 2d 94-2341] (3d Cir. 1994) (holding that "an individual assessment under [§ 6901] is not a prerequisite to an action to impose transferee liability under [§ 6324(a)(2)]").⁵

This Court also disagrees that *Baptiste 11* is as easily distinguishable as the Appellants argue, merely because the Government used a different means of collecting the unpaid gift tax in this case. The holding in *Baptiste 11*—that § 6324(b) imposes an independent liability on a donee that is subject to unlimited interest—does not rely on the fact that the Government was collecting the tax under § 6901. 29 F.3d at 1541. The Eleventh Circuit's holding also does not rely on the fact that the donees had access to § 6901's procedural safeguards, which the Appellants claim they were denied in the instant case. Rather,

the Eleventh Circuit read the statutes together with the interest provision in § 6601 to determine the nature and extent of the donee's obligation, *id.*, and there is nothing in the Eleventh Circuit's reasoning that would apply only when the Government collected from a donee under § 6901.

Finally, we note that it would be possible to hold that under § 6324(b) the donees have a personal liability, which accrues interest that is not limited by § 6324(b), even without relying on § 6901. In *Baptiste TC*, the majority of the Tax Court reached this conclusion without ever mentioning § 6901. See 100 T.C. at 252-57. One of the concurring opinions in the same decision also concluded that the transferees' personal liability to pay the gift tax was subject to unlimited interest without relying on § 6901. See *id.* at 258-60 (Ruwe, J., concurring).

3. The correct interpretation of § 6324(b)

Finally, the Appellants claim that the district court misinterpreted § 6324(b) in several ways. First, they argue that § 6901 is only a procedural statute that does not create substantive liability, see *Comm'r v. Stern*, 357 U.S. 39, 42-44 [1 AFTR 2d 1899] (1958), so the donee's personal liability that incurs interest must come from a statute other than § 6901. Next, the Appellants claim that the district court's interpretation of § 6324(b) was improper because it allows the Government to collect double interest, something Congress did not intend. The Appellants then look to legislative history, which they argue shows no intent to impose unlimited interest on transferees. Finally, they again argue that the plain language of § 6324(b) is clear, and, as such, policy considerations cannot sway this Court's holding.

The Government responds that read together, §§ 6324(b), 6601, and 6901 impose interest on the donee's liability from the date that the donor's gift tax becomes overdue. The Government also disagrees that the legislative history favors the Appellants' arguments and instead claims that the legislative history actually shows congressional intent to "expand the Government's right to interest." Finally, the Government claims that general taxation principles and other policy considerations compel the result the district court reached in this case.

After carefully considering the arguments on each side, we hold that the district court correctly interpreted § 6324(b). While the Appellants are correct that *Stern* says § 6901 does not create substantive liability, see *Stern*, 357 U.S. at 42-44, our holding does not run afoul of that rule. The substantive liability in

this case comes from § 6324(b), and § 6901 and § 6601 help explain the nature of that obligation. Section 6901 explains that transferee liability imposed under § 6324(b) is "subject to the same provisions" as the underlying gift tax. I.R.C. § 6901(a). One of those provisions that the underlying gift tax is subject to is § 6601, which imposes interest when the tax is unpaid. I.R.C. § 6601. Thus, read together, these sections explain that the donee's personal, independent liability for the unpaid gift tax is subject to the interest provisions of § 6601. ⁶ [pg. 2014-6585]

Though both the Appellants and the Government claim the legislative history supports their position, our reading of the legislative history comports with the Government's view. As Judge Halpern explained in his concurring opinion in *Baptiste TC*, see 100 T.C. at 264-67 (Halpern, J., concurring), § 311 (the precursor to § 6901) in the 1939 Code provided that the Government could apply the interest provisions to transferee liability; when Congress enacted § 6901 in 1954, it removed the interest provision but gave no other indication that it intended to depart from § 311 under the 1939 Code. *Id.* at 264-66. Judge Halpern offered two alternative explanations for the differences between the 1939 and 1954 Internal Revenue Code:

First, Congress may have intended to continue the general rule that respondent would be entitled to appropriate interest on transferee liability (as if it were tax liability), but determined that interest more appropriately should be payable from (generally) the time of the transfer rather than the time of notice and demand. Second, Congress may have intended to abandon the general rule that respondent was entitled to interest on transferee liability as on tax liability.

Congress made no announcement of a drastic change, in this regard, from the 1939 scheme, and I therefore conclude that whichever interpretation of section 6901 is most consistent with the preceding scheme is the better. As suggested above, I believe Congress would have considered the fundamental characteristic of the 1939 scheme to be that transferee liability is treated like tax liability for the purpose of [the Government's] entitlement to appropriate interest thereon.

Id. at 266-67. Thus, Judge Halpern concluded, "section 6901 entitles [the Government] to interest on the transferee liability, as if it were tax liability, under section 6601." *Id.* at 267. Like the Eleventh Circuit,

we find this interpretation of the legislative history persuasive and use it to inform our decision that the Government may collect unlimited interest on a donee's personal liability for any unpaid gift tax. See *Baptiste 11*, 29 F.3d at 1542 n.7.

We are also unpersuaded by concerns about double collection of interest that the Appellants urged before this Court and that influenced the Third Circuit's decision in *Poinier*. The Appellants claim that the district court's interpretation allows a double interest charge because the donee must pay both the interest that the donor would have been charged on the unpaid gift tax and the interest on the donee's own independent liability for paying the gift tax. The *Poinier* court's double interest concerns were motivated by an older version of the Internal Revenue Code, which provided in 26 I.R.C. § 6601(f)(2) that "[n]o interest under this section shall be imposed on the interest provided by this section." See *Poinier*, 858 F.2d at 921-22. But Congress repealed 26 I.R.C. § 6601(f)(2), and there is no longer a specific prohibition on collecting interest on the interest assessed under 26 I.R.C. § 6601. The Internal Revenue Code also now specifically allows for compound interest. See 26 I.R.C. § 6622. Contrary to the Appellants' position, it appears that Congress is not concerned with the possibility of collecting interest on interest, and so that consideration does not influence our decision.

Finally, our decision here is consistent with Fifth Circuit precedent and best serves the principles and policies this Court and others have recognized in interpreting the Internal Revenue Code. We have previously observed that it is unlikely that Congress intended that the accrual of interest be treated differently in tax underpayment and tax overpayment cases. See *Dresser Indus., Inc. v. United States*, 238 F.3d 603, 616 [87 AFTR 2d 2001-506] (5th Cir. 2001). If the Appellants had overpaid the amount they owed in gift taxes, the Government would have been required to pay back the overpayment with interest. See 26 I.R.C. § 6611. Holding the Appellants liable for unlimited interest on their personal liability for the unpaid gift tax treats interest for overpayment and underpayment the same. Further, when we considered former 26 I.R.C. §§ 294 and 311 (the predecessors to 26 I.R.C. §§ 6601 and 6901), this Court held that the Government could collect interest on the transferee's liability for the transferor's unpaid taxes, see *Patterson v. Sims*, 281 F.2d 577, 578-79 [6 AFTR 2d 5288], 581 (5th Cir. 1960), and our decision today follows naturally from that holding.⁷

Moreover, our conclusion today is consistent with "the traditional rule that one who possesses funds of the government must pay interest for the period that person enjoys the benefit of [the] same." See *Baptiste 11*, 29 F.3d at [pg. 2014-6586] 1542; *Baptiste TC*, 100 T.C. at 259 (Ruwe, J., concurring) ("Were we to adopt

petitioners' view of the liability limitation ... we would be radically changing the concept of limited transferee liability"). Finally, our decision encourages transferees to fulfill their obligation to pay any unpaid gift taxes in a timely manner, rather than "reward[ing] those who delay in paying their obligations." *Baptiste TC*, 100 T.C. at 259 (Ruwe, J., concurring). As the Eleventh Circuit opined, "[t]o hold otherwise would create a system which encourages transferees to retain assets of the estate, at the expense of the government, for as long as possible with no adverse consequences." *Baptiste 11*, 29 F.3d at 1542-43 n.9.

⁸ Thus, we conclude the district court did not err in its interpretation of § 6324(b).

B. Stevens as Donee of J. Howard's Indirect Gift

[2] Stevens argues that the district court erred in finding that she was a donee of J. Howard's 1995 indirect gift. First, she claims that res judicata- because of the Stipulation and the 2008 Tax Court decisions-does not bar her from contesting her status as a donee or the amount of the gift. Second, Stevens presents several alternative explanations for why she is not the donee. We consider each of these in turn.

1. Whether res judicata applies

We must find four requirements satisfied in order for res judicata to apply: "(1) the parties must be identical in both suits; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same cause of action must be involved in both cases." *Meza v. Gen. Battery Corp.*, 908 F.2d 1262, 1265 (5th Cir. 1990) (citations omitted).

Stevens claims that several of those requirements are not satisfied, and so the Stipulation and 2008 Tax Court decisions do not bind her. First, she argues that the parties are not identical. While acknowledging the exception to the identical party requirement if the non-party is a successor in interest to the party's interest in the property, see *Meza*, 908 F.2d at 1266-67, she claims this exception cannot apply here because whether she is a successor in interest to J. Howard (i.e., whether she was a donee) is the same issue she is contesting. Stevens also claims that there was not a final judgment on the merits, because "an agreed judgment does not have the same effect as a contested judgment." (citing *Arizona v. California*, 530 U.S. 392, 414-16 (2000)). The Government, however, responds that our decision in *United States v. Davenport*, 484 F.3d 321 [99 AFTR 2d 2007-2099] (5th Cir. 2007) controls. Because "[a] prior decision determining the liability of the donor binds the donee," *Davenport*, 484 F.3d at 327, the Government claims that the Stipulation and 2008 Tax Court decisions bind Stevens.

We agree with Stevens that, in order for *Davenport* (and res judicata) to apply, we must first determine whether Stevens is a donee. In *Davenport*, this Court considered whether res judicata bound a transferee, Gordon Davenport, from whom the Government sought to recover unpaid gift tax (under § 6324(b)). *Id.* at 322, 324. Before her death, Birnie Davenport transferred stock to her niece and nephews, including Gordon. *Id.* at 323. After Birnie's death, the IRS audited her estate tax return and found that Birnie had undervalued the stock she transferred, creating a large gift tax deficiency. *Id.* at 324. Birnie's estate challenged the alleged deficiency in tax court. *Id.* The tax court found that Birnie had made *inter vivos* gifts to Gordon and her other nephew and niece, and the court determined the value of the gift. *Id.* Her estate never paid the gift tax, and the Government then sought to collect the unpaid gift tax from Gordon pursuant to § 6324(b). *Id.* at 324-25 (explaining that liability under § 6324(b) is several). The district court agreed with Gordon that res judicata applied to the tax court's finding that he was a donee but did not preclude him from litigating the value of the gift or the amount of his liability. *Id.* at 325.

This Court reversed, holding that res judicata applied and that Gordon could not contest his status as a donee, the value of his gift, or the amount of his liability. *Id.* at 329. The Court noted that "[a]s transferee, Gordon Davenport was in privity with a party to the tax court proceeding, Birnie Davenport's estate, the transferor." *Id.* at 326 (citation omitted). "A prior decision determining the liability of the donor binds the donee, ... [a]nd the tax court, a court of competent jurisdiction, rendered final judgment on the merits." *Id.* at 327 (citation omitted). The "same ... transactions and factual events" were present in both cases; both cases concerned Birnie's gift. *Id.* The Court also observed that its decision was consistent with the Eighth and Eleventh Circuits' decisions in the *Baptiste* cases. *Id.* at 327-28. In each *Baptiste* case, the court reasoned that the [pg. 2014-6587] estate's liability, which the tax court had already calculated, determined the donee's liability under § 6324(b) and held that the donees could not challenge the amount of the gift. *Id.* at 327.

Despite our holding in *Davenport*, res judicata does not attach until we determine that Stevens is, in fact, a donee. "Once a court determines the tax liability of the transferor, "the decision is res judicata of the liability with regard to the transferee for the same tax if transferee status can be established."" *Id.* at 328 (emphasis added) (quoting 14 Edward J. Smith, *Mertens Law of Federal Income Taxation* § 53:31 (2004)). Thus, determining transferee (or donee) status is the first step. Here, Stevens challenges her status as a donee, and so the requirements for res judicata are not satisfied until we determine that she was a donee.

If we determine that Stevens is a donee, see *infra* Part IV(B)(2), then *Davenport* is clear that Stevens is bound by the tax court's determination of the value of the gift. See *id.* (explaining that determining the

value of the stock was "a fundamental part of calculating the tax due" and that "[t]he tax court's determinations of the value of the stock and the tax due are not separable"). Stevens's argument that there was no final judgment on the merits because it was an agreed, not a contested, judgment lack merit. *Davenport* clearly states that "[t]he final judgment element does not require contested litigation." *Id.* at 327 n.10 (citing *United States v. Shanbaum*, 10 F.3d 305, 313 [73 AFTR 2d 94-571] (5th Cir. 1994) and *In re W. Tex. Mktg. Corp.*, 12 F.3d 497, 500-01 [73 AFTR 2d 94-889] (5th Cir. 1994)). Thus, res judicata does not bar Stevens from arguing that she is not a donee. But, if we determine that Stevens is a donee, then res judicata applies and bars her from relitigating the value of the gift she received.

2. Whether Stevens was the donee

Stevens next claims that she is not the donee for several reasons. First, she argues that the GRIT was not even the donee of J. Howard's gift because it did not receive a present interest in property when J. Howard sold his MPI stock back to MPI. Second, she argues that the trust was the donee and so the trustee is the proper party to be held liable under § 6324(b). In the alternative, Stevens claims that the remainder beneficiary is the donee, or, at the very least, partly responsible for any donee liability. Finally, Stevens argues that even if the trust, the trustee, and the remainder beneficiaries are not the donees, the Government still has failed to prove that J. Howard made a gift to her because J. Howard's sale of MPI was "an arm's length transaction in the ordinary course of business" and free from donative intent.

i. Present interest in property from J. Howard's indirect gift

Stevens argues that, when J. Howard made his indirect gift, the GRIT did not receive a present interest in property because the GRIT, a minority shareholder, could not access the increased value of the shares. Because the shareholder has no individual control over the gift of increased value in his shares, Stevens claims that there is a "postponement of enjoyment" that makes the gift a gift of future interests. Citing *Tilton v. Commissioner*, 88 T.C. 590 (1987), she asserts that, until the district court's opinion in this case, "[n]o court appears to have held a shareholder liable as a transferee for the unpaid gift taxes incurred on a transfer to the corporation." Stevens urges this Court to look to *Fidelity Trust Company v. Commissioner*, 141 F.2d 54 [32 AFTR 236] (3d Cir. 1944), where, according to Stevens, the Third Circuit considered a situation similar to this one and held that the life insurance beneficiaries were not liable for unpaid gift taxes under § 6324(b) because the gift was of a future interest.

The Government responds that Stevens received a present interest. Pointing to Treasury Regulation § 25.2511-1(h)(1) and *Kincaid v. United States*, 682 F.2d 1220, 1224 [50 AFTR 2d 82-6175] (5th Cir. 1982), the Government also claims that "[i]t is well-settled that a transfer of property to a corporation for less than adequate consideration is to be treated as a gift to the shareholders to the extent of their proportionate interests in the corporation." The Government also rejects Stevens's reliance on *Fidelity Trust* and argues that it is distinguishable from this case.

We hold that J. Howard's indirect gift was a transfer of a present interest. It is clear under our holding in *Kincaid* and the Treasury Regulations that a shareholder's transfer of property to a corporation for less than full consideration is generally considered a gift to the individual shareholders. See *Kincaid*, 682 F.2d at 1223-25 (applying Treasury Reg. § 25.2511-1(h)(1) and concluding that, when Kincaid transferred property to a corporation she formed with her two sons, she made a gift to her sons as shareholders of the corporation's stock); Treasury Reg. § 25.2511-1(h)(1) ("A transfer of property by B to a corporation generally represents gifts by B to the other individual shareholders of the corporation to the extent of their proportionate interests in the corporation."). That is exactly [pg. 2014-6588] what happened here, and there is nothing in the Treasury Regulations or *Kincaid* to suggest that the rule is somehow different for a minority shareholder.

We also disagree with Stevens that *Tilton* should lead us to a different result. First, *Tilton* does not state exactly what Stevens claims; instead, the tax court said "[w]e have been unable to locate, and respondent has not cited, any case in which a shareholder of a corporation was charged with donee-transferee liability for gift taxes payable on a nonshareholder's transfer to the corporation." *Tilton*, 88 T.C. at 599 (emphasis added). J. Howard was a shareholder when he made the transfer that resulted in the indirect gift, so the statement in *Tilton* is inapplicable to the situation in the instant case. In addition, the tax court did not say that transferee liability could never occur in the situation at play in *Tilton*; it simply found that the Government had failed to prove that the transfer resulted in any indirect gift because there was no evidence the transfer increased the value of the stock. *Id.* ("Even assuming, without deciding, that an indirect donee-shareholder under section 2511(a) may be charged with transferee liability as a result of a gratuitous transfer to a corporation by a nonshareholder"). Thus, *Tilton* does not support holding that the GRIT-and by extension, Stevens-did not receive a present interest.

Further, the Third Circuit's reasoning in *Fidelity Trust* does not persuade us to agree with Stevens. In *Fidelity Trust*, the settlor of several life insurance policies had transferred the policies to a trust. 141 F.2d at 55. The terms of the trust required the trustee to pay out the money from the policies after the settlor died,

and it laid out several alternate scenarios for paying the beneficiaries, depending on which beneficiaries were still alive at the time the settlor died. *Id.* The Government tried to argue that beneficiaries of the life insurance policies were donees and attempted to collect gift tax from them. *Id.* at 55-56. The Third Circuit rejected that argument and held that the trust was the donee. *Id.* at 57. The court characterized the interests of the beneficiaries as "future interests" because "the beneficiaries who will ultimately receive the income and the corpus [were] not [then] determinable." *Id.* at 56. The settlor had not yet died, so it was unclear who would survive him and unclear what they would take. *Id.* The situation here is a very different one: J. Howard made the indirect gift, and there is no uncertainty regarding the identity of the other five shareholders who benefited from that gift. In fact, Stevens herself admits that she received additional distributions after JHM's gift. Thus, we conclude J. Howard's gift transferred a present interest.

ii. The donee of J. Howards' gift

Stevens next argues that the trustee is the donee of J. Howard's gift. She claims that the district court erred in relying on *Helvering*, which determined who was a donee for purposes of the gift tax exclusion under § 2503. Stevens argues that § 2503 and § 6324(b) have different purposes and use different language: § 6324(b) is a collection statute and uses the terms "donee" and "property comprised of the gift," while § 2503 confers a benefit on the taxpayer and talks about "person" and "interests in property." She also argues that, instead of looking to *Helvering*, the panel should look to case law that interprets who is a donee in cases involving estate tax transfer liability under § 6324(a)(2). According to Stevens, courts have held that trustees-not beneficiaries of trusts-are transferees for purposes of determining transferee liability for the estate tax. Finally, Stevens argues that this court should follow *Fidelity Trust*, which rejected the construction the Government urges here of § 6324(b)'s predecessor statute and held that the trust was the beneficiary of the gift.

In the alternative, Stevens argues that the remainder beneficiary was the donee of the gift, or at least shares some responsibility for the gift tax lien. She claims that the GRIT only paid distributions equal to the estimated quarterly tax liability she owed due to MPI's pass-through taxation, and so the only increase in value she saw was the increased distributions in order to pay higher taxes. Stevens then argues that the remainder beneficiary should share some of the responsibility for the unpaid gift tax because, when the trust terminated, the remainder beneficiary received what remained of the principal and, thus, actually received the increased value from J. Howard's gift. She further argues that the district court misconstrued *Ryerson* and *Pelzer*. Even if those two cases and *Helvering* say that the income beneficiary is a donee for

purposes of unpaid gift tax, she contends she should only be held liable for the benefit that she actually received (that is, any increased dividends she was paid because of the higher value of the MPI stock in the GRIT).

The Government, citing [§] Treasury Regulation § 25.2503-2(a) and *Helvering*, 312 U.S. at 396-98, responds that "[t]he law is well settled that, for gift tax purposes, trust beneficiaries holding a beneficial interest in trust property are treated as the donees of gratuitous transfers of property or wealth to the trust." [pg. 2014-6589] While the Government agrees that there is case law stating that the estate tax and gift tax are *in pari materia*, the Government disagrees that principle is controlling here the statute imposing a lien for estate taxes differs from the statute imposing a lien for gift taxes. Even if the statutes on liens for estate and gift taxes should be construed together, that does not mean that we should ignore the clear differences in the language of the two statutes.

We hold that Stevens, as trust beneficiary, was the donee of J. Howard's gift. When determining who qualifies as a donee under [§] § 6324(b), we know that statutory language "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 132 S. Ct. 1350, 1357 (2012) (quoting *Davis v. Mich. Dep't of Treasury*, [§] 489 U.S. 803, 809 [63 AFTR 2d 89-1174] (1989)) (internal quotation marks omitted). "Where possible, statutes must be read in harmony with one another so as to give meaning to each provision." *United States v. Caldera-Herrera*, 930 F.2d 409 (5th Cir. 1991).

The Supreme Court's decision in *Helvering* helps guide our decision because it determined who qualified as a donee in another part of the same statutory scheme. In *Helvering*, the Supreme Court considered if, when a donor made a gift to a trust, the trustee was the only donee-and so the donor could only claim one gift tax exclusion-or if instead each beneficiary of the trust was a donee-and so the donor could claim as many gift tax exclusions as there were beneficiaries. 312 U.S. at 396-98. The Supreme Court held that "the beneficiary of the trust to whose benefit the surrender inures ... is the "person" or "individual" to whom the gift is made." *Id.* at 396. "One does not speak of making a gift to a trust rather than to his children who are its beneficiaries." *Id.* Applying the "natural sense" of the words, the Supreme Court held that, when a donor makes a gift to a trust, the beneficiary of the trust is the donee and the donor can claim as many exclusions as beneficiaries. *Id.* at 396-97.

Helvering determined who the donee was for purposes of the gift tax exclusion under the statute that was the predecessor to [§] § 2504, and in the current Internal Revenue Code, [§] § 2504 is part of chapter 12.

§ 2504. Chapter 12 is the proper place to look to understand whether Stevens is a donee: chapter 12 governs gift taxes, the issue we are deciding, and both §§ 6324(b) 6901 refer back to chapter 12 when defining transferee liability for unpaid gift taxes. See § 6324(b) (imposing personal liability on a transferee for unpaid gift tax "unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable"); § 6901(a)(1)(A) ("The liability, at law or in equity of a transferee of property ... of a donor in the case of a tax imposed by chapter 12"). Thus, all of the statutes that help us to understand the nature of the transferee's obligation for unpaid gift taxes do so by reference to chapter 12. *Helvering* tells us that the beneficiary of the trust is the donee for purposes of the gift tax under chapter 12. 312 U.S. at 396. ("[I]t would seem to follow that the beneficiary of the trust to whose benefit the surrender inures ... is the "person" or "individual" to whom the gift is made."). Applying *Helvering's* determination that the trust's beneficiary was the donee to the instant case, we conclude that Stevens, as beneficiary of the trust, was the donee of J. Howard's gift.

Admittedly, as Stevens points out, §§ 2503 and 6324(b) do not use the same words. Thus, the canon of statutory construction that "assumes that "identical words used in different parts of the same act are intended to have the same meaning"" might not apply because the words are not, strictly speaking, identical. See *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 860 [57 AFTR 2d 86-1189] (1986) (quoting *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 [14 AFTR 675] (1934)). However, our reasoning does not rely on §§ 2503 and 6324(b) using the same words. Instead, we rely on the fact that whenever the Internal Revenue Code defines the transferee's liability for unpaid gift taxes, it refers to chapter 12. Our conclusion simply applies a consistent definition of the person who is the donee under chapter 12 throughout the Code.

Further, although the statutes on gift taxes and estate taxes are meant to be construed in light of each other, that guiding principle does not require us to agree with Stevens's argument. Though our Court has not addressed the specific issue, Stevens is correct that some other courts have interpreted the estate taxes lien provision of the Internal Revenue Code, § 6324(a), and held that trust beneficiaries do not have personal liability for unpaid estate tax. See *Higley v. Comm'r*, 69 F.2d 160, 163 [13 AFTR 663] (8th Cir. 1934) ("It is very natural to presume that Congress deemed payment of the tax sufficiently secured by a lien on the property and by imposing a *personal liability on the trustee* without going further and placing this real hardship on beneficiaries who would often be hopelessly unable to bear it." (emphasis added)); *Englert v. Comm'r*, 32 T.C. 1008, [pg. 2014-6590] 1015-16 (1959) (finding that a trust beneficiary was not personally liable for unpaid estate taxes because the trustee, not the beneficiary, held



the property in question). But, there is an important difference between §§ 6324(a)(2) and §6324(b). The liens for estate tax statute, § 6324(a)(2), explicitly imposes personal liability on trustees, but the word "trustee" is conspicuously missing from the liens for gift tax statute, §6324(b). Given the clear differences in the plain language of these statutes, we are not persuaded to follow the courts who have interpreted the statute imposing a lien for estate taxes on the trustee, not the beneficiary of the trust.

We also hold that the remainder beneficiary does not share responsibility for the unpaid gift tax. First, those arguments appear to be another way of arguing about the amount of the gift Stevens received. And as we discussed above, see *supra* Part IV(B)(1), if Stevens was a donee, she cannot relitigate the amount of the gift because of the Stipulation and the 2008 Tax Court decisions. Second, despite her argument to the contrary, there is evidence that Stevens received a present benefit because the distributions from the trust increased after J. Howard made his gift. Finally, neither *Ryerson* nor *Pelzer* compel a different result. Although the Supreme Court held that the interests at issue in *Ryerson* and *Pelzer* were future interests (and, therefore, not eligible for a gift tax exclusion), the interests at issue in those cases are different from the interest Stevens received. In both *Ryerson* and *Pelzer*, the gifts were put in trusts that were not to be distributed to the beneficiaries until a certain period of time passed, the beneficiaries reached a certain age, or the beneficiaries survived a certain individual. *Ryerson*, 312 U.S. at 409; *Pelzer*, 312 U.S. at 402. Unlike Stevens, who was already receiving distributions from the GRIT and who earned higher payouts because of J. Howard's gift, the trust beneficiaries in *Ryerson* and *Pelzer* truly received no present benefit from the gift to the trust. *Ryerson*, 312 U.S. at 409; *Pelzer*, 312 U.S. at 402. Thus, we conclude that the remainder beneficiary is not required to share payment of the gift tax.

iii. Ordinary course of business exception

Finally, Stevens claims that, even if the income beneficiary of a trust is a donee for gift tax purposes, the ordinary course of business exception applies because the Government did not prove that there was donative intent. She argues that, in other cases involving indirect gifts, the ordinary course of business exception did not apply because, given the close family relationship between the donor and the shareholders, courts were able to infer donative intent. Here, however, at the time the gift was made, J. Howard and Stevens had been divorced for more than thirty-five years and each had remarried (J. Howard was married to his third wife at the time of the indirect gift). Thus, according to Stevens, the Government failed to prove that there was a close family relationship and that this was a gift.

We disagree. Under the ordinary course of business exception, "a sale, exchange, or other transfer of

property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth." See  Treas. Reg. § 25.2512-8. But, courts look to the donor's intent to determine whether a gift has been made, and the term gift is used in a very broad sense when talking about the gift tax. *Comm'r v. Wemyss*,  324 U.S. 303, 306-07 [33 AFTR 584] ("If we are to isolate as an independently reviewable question of law the view of the Tax Court that money consideration must benefit the donor to relieve a transfer by him from being a gift, we think the Tax Court was correct."). Here, the Stipulations and 2008 Tax Court decisions are clear that J. Howard made a gift to Stevens. So because we determine that Stevens was a donee, res judicata bars her from arguing that J. Howard did not make a gift to her.

C. The Federal Priority Statute

[3] The Federal Priority Statute provides that:

(a)(1) A claim of the United States Government shall be paid first when-

((A)) a person indebted to the Government is insolvent and-

((i)) the debtor without enough property to pay all debts makes a voluntary assignment of property;

((ii)) property of the debtor, if absent, is attached; or

((iii)) an act of bankruptcy is committed; or

((B)) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

...

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

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31 U.S.C. § 3713.

Hilliard and E. Pierce Jr. argue that the district court committed several errors in holding them liable for distributions from the Living Trust and Stevens's Estate in violation of the Federal Priority Statute. First, they argue that the Government did not prove that they knew about Stevens's potential liability for the unpaid gift tax, and, therefore, they cannot be found to have violated the Federal Priority Statute. Next, they argue there was insufficient evidence for the district court to find them personally liable for: (1) the charitable set-aside; (2) the distribution of personal property and apartment rent from Stevens's Estate; or (3) the payment of legal and accounting fees from the Living Trust. Last, E. Pierce Jr. claims the district court erred in finding that he breached his fiduciary duty under Texas law.

1. E. Pierce Jr. and Hilliard's knowledge of Stevens's gift tax liability

E. Pierce Jr. and Hilliard argue that the Government failed to show that they knew about the potential liability to the Government. They acknowledge that, under *United States v. Renda*, 709 F.3d 472, 484-85 (5th Cir. 2013), erroneous legal advice as to the validity of a claim is not an excuse under the Federal Priority Statute. But, they argue that *Renda* only applies when the claim has actually been made, and therefore does not apply here where they allegedly had knowledge of the potential claim while the Government delayed in making the claim. They also point to *Little v. Commissioner*, 113 T.C. 474 (1999) to argue that advice of legal counsel is a defense under the Federal Priority Statute with regard to potential claims. The Government flatly rejects any argument about E. Pierce Jr.'s and Hilliard's lack of knowledge because they both admitted during depositions that they knew of the potential donee gift tax liability to the Government in excess of \$35 million.

Liability under the Federal Priority Statute requires that (1) a fiduciary (2) distributed the estate's assets before paying a claim of the Government and (3) knew or should have known of the Government's claim. See *Renda*, 709 F.3d at 480-81. The only dispute in this case is whether E. Pierce Jr. and Hilliard met the knowledge requirement. Actual knowledge is not required; "[t]he knowledge requirement of [31 U.S.C. § 3713] may be satisfied by either actual knowledge of the liability or notice of such facts as would put a reasonably prudent person on inquiry as to the existence of the unpaid claim of the United States." *Leigh v. Comm'r*, 72 T.C. 1105, 1110 (1979) (citations omitted).

We hold that Hilliard and E. Pierce Jr. knew of the potential liability to the Government, and thus, the

Federal Priority Statute applies. In *Renda*, this Court held that "a representative's actual knowledge of a federal claim is sufficient, notwithstanding that representative's reliance on the erroneous advice of counsel as to how to address the claim." *Renda*, 709 F.3d at 484. We are unpersuaded by E. Pierce Jr.'s and Hilliard's reliance on *Little* to distinguish their case from *Renda* based only on the fact that the Government had not made an actual claim against Stevens's Estate when they received the erroneous legal advice. This Court has already declined to follow *Little* to the extent that its analysis of the effect of erroneous legal advice "is inconsistent with the weight of authority on this issue." *Renda*, 709 F.3d at 484 n.15. The same considerations that, in *Renda*, led us to refuse to read an exception due to erroneous legal advice into the Federal Priority Statute apply with equal force here: (1) "the statute does not provide for an attorney-reliance exception," and (2) "a contrary interpretation would create an exception to the Priority Statute that might swallow the rule." *Id.* at 485. Thus, because erroneous legal advice as to the validity of a claim is not an excuse for violating the Federal Priority Statute and E. Pierce Jr. and Hilliard both admitted in depositions that they had knowledge of the potential claims against Stevens's Estate, we hold that the Federal Priority Statute applies.

2. E. Pierce Jr. and Hilliard's personally liability

E. Pierce Jr. and Hilliard argue that the district court erred in granting the Government's motion for summary judgment in two ways. First, they claim E. Pierce Jr. should not have been held personally liable for the 501(c)(3) R.C. § 642(c) charitable set-aside. Second, they argue that the evidence was insufficient to support the claims against them related to (1) distribution of personal property from Stevens's Estate, (2) rent payments on Stevens's apartment, and (3) legal and accounting fees paid from the Living Trust to other charitable organizations.

i. Personal liability for the charitable set-aside

E. Pierce Jr. points out that, under 26 Treasury Regulation § 1.642(c)-2(d), funds permanently set aside for a charitable purpose are subject to invasion. So if the Government disallows the set-aside, he argues, the funds will be available to pay the Government. Thus, he should not be personally liable for the charitable set-aside. The Government responds that by arguing that [pg. 2014-6592] the charitable set-aside funds are subject to invasion, E. Pierce Jr. and Hilliard are trying to have things both ways. The Government says that, when the Government tried to disallow the charitable set-aside, E. Pierce Jr. filed a petition in tax court challenging the disallowance. In response, E. Pierce Jr. claims that it is not inconsistent to challenge

the attempt to disallow the charitable set-aside. He argues that his position in the petition before the tax court was that the money will be spent on charity because, after he succeeds in the case before the panel (and is not required to pay that money to the Government), the money will go to charity.

We hold that the district court did not err in finding E. Pierce Jr. and Hilliard jointly liable for the charitable set-aside. First, although E. Pierce Jr. claims that the Government can disallow the charitable set-aside, it is far from clear that is the case. In fact, the Government has tried and failed to disallow the charitable deduction in this case. Further, the Federal Priority Statute does not appear to limit liability even if we assume that the distribution can be returned. See 31 U.S.C. § 3713(b) ("A representative of a person or an estate ... paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government."). Thus, Hilliard and E. Pierce Jr. are liable under the Federal Priority Statute for the amount of the charitable set-aside.

ii. Sufficiency of the evidence

E. Pierce Jr. argues that the Government did not present enough evidence to hold him personally liable for distributing personal property from Stevens's Estate. He claims that the district court wrongly discredited his statement that had he not sold the personal property, Stevens's Estate would have been charged to store it. E. Pierce Jr. further claims the Government proffered insufficient evidence for the district court to find him liable for disbursing funds from Stevens's Estate to pay for rent on her vacant apartment. According to E. Pierce Jr., the Government failed to prove conclusively that his payments on the apartment exceeded an amount that was reasonable and necessary. Finally, Hilliard argues the evidence did not support holding him personally liable for the accounting and legal fees he paid to other charitable organizations from the Living Trust, as trustee. Hilliard claims he did not cause any damage in paying the fees because Stevens told him to pay them, he could have reclaimed the fees under Louisiana law, and all the funds that were disbursed have already been repaid.

Turning first to E. Pierce Jr.'s liability for selling personal property from Stevens's Estate, we hold that the district court did not err in finding him personally liable. E. Pierce Jr.'s primary argument-that he had to sell the property in order to avoid having to make expenditures to store it-does not change his liability under § 3713. As the district court correctly observed, "the proceeds from the sale of [Stevens's] car did not require storage ... [and] could have been held in [Stevens's] Estate's account." E. Pierce Jr. was not found liable under the Federal Priority Statute merely because he sold the personal property; instead, he was found liable for distributing the personal property to others before paying the debt to the Government.

Thus, we hold E. Pierce Jr. is individually liable for the value of the personal property he distributed from Stevens's Estate.

We turn next to E. Pierce Jr.'s claims regarding his liability for the rent he paid on Stevens's vacant apartment, and we again hold that the district court did not err in finding him personally liable for those payments. Before the district court, E. Pierce Jr. argued that he paid the rent to allow a "Quaker-style memorial service in [Stevens's] home." The district court accepted that argument as true, as it should have. Texas law limits the amount of funeral expenses that can be characterized as debts of the estate-and, as such, payable before paying the Government-to \$15,000. See Tex. Est. Code Ann. § 355.103.⁹ The district court found that E. Pierce Jr. was not liable for the first \$15,000 that he spent on rent for the funeral service but that he was liable for the amount he spent above the \$15,000 allowed under Texas law. See *id.* We find no error in the district court's analysis, and so we hold E. Pierce Jr. is personally liable for the amount above the \$15,000 allowed under Texas law that he, as executor, caused Stevens's Estate to pay in rent on Stevens's apartment.

Finally, we hold that Hilliard is personally liable for the amount he caused the Living Trust to pay for accounting and legal services on behalf of other charitable organizations. Texas law allows accounting and legal fees to be classified as expenses of the estate (and therefore payable before debts to the Government) if they were "incurred in preserving, safekeeping, and managing *the estate*." See Tex. Est. Code [pg. 2014-6593] Ann. § 355.103 (emphasis added). Hilliard does not dispute that he paid accounting and legal fees that were the benefit of other organizations, not for the management of the estate. In spite of Hilliard's arguments that he should not be held liable because the funds could be reclaimed, we have not found, nor does Hilliard cite, any law to show that this impacts his liability under the Federal Priority Statute. See *also supra* Part IV(C)(2)(i). Thus, the district court did not err in holding Hilliard personally liable for paying the accounting and legal fees.

3. E. Pierce Jr.'s fiduciary duty

Finally, E. Pierce Jr. argues that the district court erred in finding he breached his fiduciary duty under state law. He claims that under Texas law, advice of counsel is a factor to be considered in determining whether there was a breach of fiduciary duty. See *Griffin v. Box*, No. 94-10348, 1996 WL 255296, at 11 (5th Cir. May 2, 1996) (unpublished) ("Under Texas law, advice of counsel is a factor to be considered in determining whether a breach of fiduciary duty has occurred." (citation omitted)); see *also Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707, 722-23 (5th Cir. 1984) (directors' reliance on professional advice

supported judgment that directors did not breach fiduciary duty). Further, he claims that under Texas law, an executor does not owe a fiduciary duty to an estate's creditors, including the Government. The Government argues that Texas case law supports holding that E. Pierce Jr. owed a fiduciary duty to the estate's creditors as executor, but the Government did not respond to his claim that advice of legal counsel can be a defense for breach of fiduciary duty under Texas law.

We hold that E. Pierce Jr. did not breach his fiduciary duty under state law because he did not owe a fiduciary duty to Stevens's Estate's creditors. Texas case law appears to conflict regarding whether an executor owes a fiduciary duty to an estate's creditors. *Compare FCLT Loans, L.P. v. Estate of Bracher*, 93 S.W.3d 469, 481-82 (Tex. App.-Houston [14th Dist.] 2002, no pet.) ("However, no such formal recognition [of a fiduciary duty as a matter of law] exists for the relationship between an independent executor and the estate's creditors. ") with *Ertel v. O'Brien*, 852 S.W.2d 17, 20-21 (Tex. App.-Waco 1993, writ denied) (describing the relationship between the executor and a creditor as fiduciary). It appears that the Supreme Court of Texas has not addressed this issue, and so we must make an "Erie guess" and "determine as best [we] can" what the Supreme Court of Texas would decide. See *Howe v. Scottsdale Ins. Co.*, 204 F.3d 624, 627 (5th Cir. 2000) (citations and internal quotation marks omitted).

We hold that the district court erred in finding E. Pierce Jr. breached his fiduciary duty under Texas law. *Bracher* provides useful guidance in reconciling this seemingly contradictory Texas case law. As the *Bracher* court explained, the two Texas intermediate appellate court cases that suggested an executor owes a fiduciary duty to an estate's creditor, *Ertel* and *Ex parte Buller*, 834 S.W.2d 622 (Tex. App.-Beaumont 1992, orig. proceeding [pet. denied]), are distinguishable from a situation like the one presented in the instant case. See *Bracher*, 93 S.W. 3d at 481. In the *Bracher* court's view, *Ertel* held that an executor had a statutory duty to pay a claim against the estate and was "held to the same fiduciary standards as a trustee"; but, the *Ertel* court did not provide any "analysis or explanation why an independent executor's fiduciary duty to the estate should be expanded to include a duty to the estate's creditors." See *id.* at 481 (discussing *Ertel*). And the cases on which *Buller* based its holding do not discuss whether an independent executor, like E. Pierce Jr., owes a fiduciary duty to the estate's creditors. See *id.* (discussing *Buller*). So, we agree with *Bracher's* view that "under [Texas's] statutory scheme," it seems unlikely that "an independent executor automatically holds the estate assets in trust for the benefit of the estate creditors." See *id.* Thus, because we conclude that E. Pierce Jr. did not owe Stevens's Estate's creditors a fiduciary duty under Texas law, we hold that E. Pierce Jr. did not breach his state law fiduciary duties.

V. CONCLUSION

For the foregoing reasons, we REVERSE the district court's judgment that E. Pierce Jr. breached his fiduciary duties under state law, and we RENDER judgment in his favor on this point. As to all other issues, we AFFIRM.

Judge: PRISCILLA R. OWEN, Circuit Judge, concurring in part, dissenting in part:

I agree with the Third Circuit's resolution of the question of whether a donee's liability for the donor's unpaid gift tax and interest on that tax is limited under 26 U.S.C. § 6324(b) to the value of the gift to the donee.¹ The Third Circuit gave effect to the express limiting language in § 6324(b). The Eighth Circuit likewise limited a transferee's liability for unpaid estate tax and interest based on language in § 6324(a)(2) that is similar to the limiting language in § [pg. 2014-6594] 6324(b).² Three amicus briefs, representing numerous entities, urged our court to follow the Third and Eighth Circuit courts' approach.³ Much of the reasoning in those amicus briefs is persuasive. Because the panel's majority opinion incorrectly construes the limiting language of § 6324(b) and the effect of other Tax Code sections on that limitation, I respectfully dissent. I otherwise concur in the resolution of the issues presented in this appeal.

I

The Appellees in this case, to whom I will refer collectively as "the Marshalls," recognize, with exceptions not material to the question of the proper construction of § 6324(b), that they received gifts from the JHM Living Trust. They also recognize that they are liable for the gift tax that was not paid by the JHM Living Trust and interest on that unpaid gift tax up to a point. That point, the Marshalls contend, is "the extent of the value of such gift," as specified in § 6324(b).⁴ The Government seeks to hold the Marshalls personally liable for almost \$75 million over and above the value of the gifts that were made to them. Most of that \$75 million is interest. The gift tax owed and some of the interest the Government seeks, was, for the most part, paid in 2010. The district court held that the language in § 6324(b) that limits a donee's personal liability "to the extent of the value of such gift" did not limit the Marshalls' liability. The panel's majority opinion affirms the district court's judgment in this regard.

II

The Tax Code provides in § 6324(b) for a lien to secure the payment of gift taxes. This section says, in pertinent part:

(b) Lien for gift tax.-Except as otherwise provided in subsection (c) [not applicable in this case], unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the period for which the return was filed, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift....⁵

This is the *sole* basis under the Tax Code for the imposition of liability on a donee for gift taxes unpaid by the donor. There is no other basis for a donee's liability for unpaid gift tax, and the panel's majority opinion does not conclude otherwise.

Other provisions in the Tax Code provide that interest on a "tax," with exceptions not applicable here, "shall be deemed also to refer to interest imposed by this section [6601] on such tax."⁶ As indicated, the Marshalls do not dispute that they are liable for the gift tax as well as the interest that the donor did not pay on the gift tax, but only "to the extent of the value of such gift."⁷ The language of § 6324(b) clearly supports their position. It provides that "such tax," which would include the gift tax and interest, "shall be a lien upon all gifts made during the period for which the return was filed," and "[i]f the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift."⁸ Accordingly, if "the tax," meaning the gift tax plus interest, is not paid, the donee of any gift is personally liable for "*such tax*," again meaning the gift tax and interest, but only "to the extent of the value of such gift."⁹ The donee's personal liability is for "such tax," and that personal liability is limited to the value of the gift to the donee.

In spite of the clear language of § 6324(b), the panel's majority opinion concludes that "[s]ection 6324(b), however, says nothing about any limit on the donee's liability and the Government's ability to assess interest when the donee fails to fulfill his or her obligation to pay the donor's unpaid gift tax."¹⁰ But if, as all concede, the words "personally liable for such tax" in § 6324(b) include liability for interest, then the words "to the extent of the value of such gift" are a limit on the amount of interest that can be collected. As an example, if a gift of \$10,000 was made, and the unpaid tax on that gift was \$5,000, "such tax" would

refer to the \$5,000 tax and interest that began accruing as of the time the gift tax was [pg. 2014-6595] unpaid. Let us assume that at the time that the Government demanded that the donee pay the gift tax, interest in the amount of \$1,000 had accrued. The donee would be liable for the \$5,000 plus \$1,000 of interest. Let us further assume that the donee did not pay until interest in the amount of \$4,000 had accrued. The Government could collect this interest when the donee failed to fulfill his or her obligation to pay, but only "to the extent of the value of such gift." Since \$9,000 is less than the \$10,000 value of the gift, the donee would be personally liable for the interest. But once the interest reached \$5,000, the donee would not be personally liable for further interest because § 6324(b) limits the donee's personal liability to \$10,000 in this example.

Contrary to the reasoning of the panel's majority opinion,¹¹ a donee does have an incentive to pay the gift tax in order to stop the accrual of interest. The sooner that a donee pays the gift tax, the less interest that will be owed, at least until the initial tax plus accrued interest equals the value of the gift to the donee. However, once the combined amount of the gift tax unpaid on the due date and accrued interest equals the value of the gift to the donee, the donee's liability is capped at "the value of [the] gift" to the donee.¹²

Section 6324(b) undoubtedly addresses a "limit on the donee's liability and the Government's ability to assess interest when the donee fails to fulfill his or her obligation to pay the donor's unpaid gift tax" and the majority opinion is mistaken in concluding otherwise.¹³

Nothing in § 6901(a) affects the limitation of liability in § 6324(b). Section 6901(a) provides that the amounts of a donee's liability relating to gift taxes are to "be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred"¹⁴ The United States Supreme Court has held that § 6901 is a procedural provision and does not create any substantive liability.¹⁵ The panel's majority opinion acknowledges the Supreme Court's interpretation of § 6901(a) and recognizes that "the donee's personal liability that incurs interest must come from a statute other than § 6901."¹⁶ But the majority opinion then engages in circular reasoning, concluding that because "[s]ection 6901 explains that transferee liability imposed under § 6324(b) is "subject to the same provisions" as the underlying gift tax," all interest imposed by § 6601 is owed by a donee, notwithstanding the express limitation in § 6324(b).¹⁷ The majority opinion says, "read together, these sections [6901 and 6601] explain that the donee's personal, independent liability for the unpaid gift tax is subject to the interest provisions of § 6601." If, as the Supreme Court has held, § 6901 does not create any substantive rights and is procedural only, then § 6901 should play no part in determining the extent of a donee's personal liability created by § 6324(b). We should

consider only § 6324(b) to determine whether the generally applicable Tax Code provision regarding accrual of interest on unpaid taxes, which is § 6601, overrides the express limitation in § 6324(b).

The first paragraph of § 6601, which is subsection (a), is denominated the "[g]eneral rule" and provides that if a tax is not paid on or before the last date for payment, then interest must be paid on that amount from the last date prescribed for payment until the date paid.¹⁸ It is hornbook law that a more specific statute, such as § 6324(b), governs over a more general statute, such as § 6601. It is also a "longstanding canon of construction" that if "the words of a tax statute are doubtful, the doubt must be resolved against the government and in favor of the taxpayer."¹⁹ There is certainly room for doubt that a donee is liable for the full amount of interest that accrues on an unpaid gift tax, regardless of the value of the gift to the donee, in light of the express limitation in § 6324(b).

The Third Circuit has held that a donee's liability under § 6324(b) is limited to the value of the gift to the donee.²⁰ Similarly, the Eighth Circuit has held that "a transferee's personal liability [for unpaid estate tax], is limited [by § 6324(a)(2)] 'to the extent of the value at the [pg. 2014-6596] time of decedent's death' of the property actually transferred."²¹ A third circuit court, the Eleventh Circuit, construing § 6324(a), pertaining to a transferee's liability for estate tax, has disagreed with the Third and Eighth Circuits.²² The Commissioner argued in each of those three cases that the liability of a donee for gift tax, or a transferee for estate tax, and accrued interest is not a gift tax or an estate tax but instead is purely a personal liability under § 6324. Only the Eleventh Circuit agreed with the Government, holding that "the obligation imposed by § 6324(a)(2) is a nontax liability."²³

The Government similarly argues in the present case that "the limitation imposed by I.R.C. § 6324(b) applies only to interest that accrued on the underlying *gift tax* liability; that limit does not apply to the interest accruing on the donee's *personal* liability under I.R.C. § 6324(b)." The dichotomy that the Government draws between a donee's liability for gift tax and that donee's personal liability is patently contradicted by the text of § 6324(b). A donee's personal liability under § 6324(b) is anchored solely to, and is referable only to, the unpaid gift tax and interest thereon. The donee's personal liability is plainly denominated as liability for gift tax. Section 6324(b) says that "such tax," unmistakably referring to "the gift tax imposed by chapter 12," "shall be a lien upon all gifts made" and that "[i]f the tax [clearly meaning the gift tax] is not paid when due, the donee of any gift shall be personally liable for *such tax* [here again, the gift tax imposed by chapter 12] to the extent of the value of such gift."²⁴ A donee is "personally liable" only for "such tax"-the gift tax and accrued interest-"to the extent of the value of such gift." The text could

not be plainer.

III

The panel's majority opinion unnecessarily engages in an analysis of the legislative history of § 6901. As discussed above, that Tax Code section does not create any substantive liability. Nor does its text purport to override the specific limitation of a transferee's liability in § 6324(b). In any event, since § 6324(b)'s limitation is clear on its face, there is no reason to consider § 6901's legislative history.²⁵ Reliance on legislative history is suspect even if a tax statute is ambiguous because, as noted above, there is a "longstanding canon of construction" that if "the words of a tax statute are doubtful, the doubt must be resolved against the government and in favor of the taxpayer."²⁶

The conclusions drawn by the majority opinion from the legislative history of § 6901, a procedural statute, are tenuous, at best.²⁷ Attempting to divine congressional intent based on scraps of legislative history is more likely to result in the effectuation of a court's policy preferences than those of Congress.

The panel's majority opinion notes that after the Third Circuit decided *Poinier*,²⁸ "Congress repealed § 6601(f)(2), and there is no longer a specific prohibition on collecting interest on the interest assessed under § 6601."²⁹ While the Third Circuit's decision in *Poinier* did discuss former § 6601(f)(2), that was not the sole basis for its holding.³⁰ The Third Circuit held that the "limitation on donee liability is both consistent with the plain language of section 6324(b) and sensible."³¹ The Third Circuit also rejected the Government's argument that a transferee has an independent liability for interest that is separate and distinct from the gift tax liability.³² The Third Circuit said:

The Commissioner's position, accepted by the Tax Court, is that there is an entirely independent liability for interest, placed directly on the transferee, which arises at the time of service of a notice of transferee liability. This is not an easy argument to articulate, for unlike the donee liability provision in section 6324(b), the Commissioner can point to no specific code provision imposing such an independent liability on a transferee.³³

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I agree with the Third Circuit.

The panel's majority opinion also relies on this court's decision in *Patterson v. Sims*,³⁴ asserting that "our decision today follows naturally from that holding."³⁵ However, the decision in *Patterson* involved income tax liability, and there was no Tax Code provision that had a limitation even remotely similar to that contained in § 6324(b).³⁶

Finally, the panel's majority opinion says that its decision "is consistent with the "traditional rule that one who possesses funds of the government must pay interest for the period that person enjoys the benefit of [the] same,"" citing the Eleventh Circuit's decision in *Baptiste*.³⁷ But "traditional rule[s]" cannot override contrary statutory provisions.

Because § 6324(b) unambiguously limits a donee's personal liability to the value of the gift to the donee, I would reverse the district court on this issue.

¹ E. Pierce passed away in 2006.

² Stevens passed away in 2007.

³ In 1989, well before J. Howard sold all of his shares of MPI stock back to the company, the three CRATs all sold their shares of MPI back to MPI. Thus, only the GRIT, not the CRATs, had MPI stock at the time of J. Howard's indirect gift, and so the CRATs are not part of this suit.

⁴ J. Howard passed away in 1995.

⁵ I.R.C. § 6324(a)(2) imposes personal liability on transferees for unpaid estate taxes. Because the gift tax and estate tax provisions are *in pari materia* and should be construed together, see *Estate of Sanford v. Comm'r*, 308 U.S. 39, 44 [23 AFTR 756] (1939), we look to cases construing estate tax transferee liability to help us in resolving this case.

⁶ The dissent characterizes this as "circular reasoning." *Post* at 44. Circular reasoning occurs only if the conclusion to be proven is included in the premises. Here the premises follow from case law principles of statutory interpretation and they do not mention, let alone include, the ultimate conclusion that the statutory text does not resolve the issue *sub judice*.

⁷ *Patterson* concerned "the extent of the liability for interest of a transferee of property of a delinquent income taxpayer," 281 F.2d at 578, unlike this case which concerns the liability for interest of a donee of a gift of a donor who was delinquent in paying gift tax. Of course, the existence and extent of income tax transferee liability is determined under state law, *see Stern*, 357 U.S. at 44-45, unlike gift tax transferee liability which is determined under federal law. But, state law did not determine our decision in *Patterson*; rather, we concluded that once the IRS sent the transferee a notice of deficiency, the question of transferee liability-and the interest chargeable thereon-became a question of federal law. *Patterson*, 281 F.2d at 580 ("State law is therefore not a determinant of transferee liability subsequent to the notice of the transferee assessment under [§] Section 311. Rather, [§] Section 294(b), Internal Revenue Code 1939, furnishes the applicable rule."). So *Patterson* provides useful guidance even though it dealt with unpaid income taxes, not gift taxes.

⁸ The dissent is correct to note that "the sooner that a donee pays the gift tax, the less interest that will be owed." *Post* at 43. But it acknowledges that this is only true "until the initial tax plus accrued interest equals the value of the gift to the donee." Thus, once the sum of the tax and accrued interest surpasses the value of the gift, as is the case here, the parties have no incentive to pay what they owe.

⁹ On January 1, 2014, the Texas Probate Code was repealed and the Texas Estates Code became effective. The district court relied on former Texas Probate Code § 322 in making its decision. Texas Estates Code § 355.103 includes the portions of Texas Probate Code § 322 on which the district court relied. Thus, the repeal of the Texas Probate Code and the enactment of the Texas Estates Code does not impact our decision to affirm the district court.

¹ *Poinier v. Comm'r*, 858 F.2d 917, 920 [62 AFTR 2d 88-6006] (3d Cir. 1988).

² *Baptiste v. Comm'r*, 29 F.3d 433, 437-38 [74 AFTR 2d 94-7455] (8th Cir. 1994).

³ See Brief of National Black Chamber of Commerce, Sixty Plus Association, National Garage, Taxpayers Protection Alliance, Center for Individual Freedom, and National Taxpayers Union as Amici Curiae Supporting Appellants and Reversal; Brief of Johnson C. Smith University, Barber-Scotia College, Bennett College, Clinton Junior College, and Wilberforce University as Amici Curiae in Support of Defendants-Appellants and Reversal; and Brief of Tax Foundation & Law Professors as Amici Curiae in Support of Appellants and Urging Reversal.

⁴ 26 U.S.C. § 6324(b).

⁵ *Id.*

⁶ *Id.* § 6601(e)(1).

⁷ *Id.* § 6324(b).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Ante* at 12-13.

¹¹ *Ante* at 20 (reasoning that "our decision encourages transferees to fulfill their obligation to pay any unpaid gift taxes in a timely manner").

¹² 26 U.S.C. § 6324(b).

¹³ *Ante* at 12-13.

¹⁴ 26 U.S.C. § 6901(a).

¹⁵ *Comm'r v. Stern*, 357 U.S. 39, 42-44 [1 AFTR 2d 1899] (1958) ("The courts have repeatedly recognized that [§ 6901's predecessor statute] neither creates nor defines a substantive liability but provides merely a new procedure by which the Government may collect taxes.").

¹⁶ *Ante* at 16.

¹⁷ *Ante* at 17.

¹⁸ 26 U.S.C. § 6601(a).

¹⁹ *Exxon Mobil Corp. & Affiliated Cos. v. Comm'r*, 689 F.3d 191, 199-200 [110 AFTR 2d 2012-5491] (2d Cir. 2012) (quoting *United States v. Merriam*, 263 U.S. 179, 188 [4 AFTR 3673] (1923)); *see also* *United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 839 [87 AFTR 2d 2001-2377] (2001)

(Thomas, J., concurring) (noting the "traditional canon" of construing revenue laws against the drafter); *id.* at 839 n.1 (Stevens, J., dissenting) (acknowledging this canon).

²⁰ *Poinier v. Comm'r*, 858 F.2d 917, 920 [62 AFTR 2d 88-6006] (3d Cir. 1988).

²¹ *Baptiste v. Comm'r*, 29 F.3d 433, 437 [74 AFTR 2d 94-7455] (8th Cir. 1994) (quoting 26 U.S.C. § 6324(a)(2)).

²² *Baptiste v. Comm'r*, 29 F.3d 1533 [74 AFTR 2d 94-7477] (11th Cir. 1994).

²³ *Id.* at 1541.

²⁴ 26 U.S.C. § 6324(b) (emphasis added).

²⁵ See *United States v. Woods*, 134 S. Ct. 557, 567 [112 AFTR 2d 2013-6974] n.5 (2013) ("Whether or not legislative history is ever relevant, it need not be consulted when, as here, the statutory text is unambiguous."); *Kornman & Assocs., Inc. v. United States*, 527 F.3d 443, 451 [101 AFTR 2d 2008-2132] (5th Cir. 2008) ("Only after application of the principles of statutory construction, including the canons of construction, and after a conclusion that the statute is ambiguous may the court turn to legislative history.") (quoting *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 518-19 (5th Cir. 2004)).

²⁶ *supra* note 19.

²⁷ See *Ante* at 17-18.

²⁸ *Poinier v. Comm'r*, 858 F.2d 917 [62 AFTR 2d 88-6006] (3d Cir. 1988).

²⁹ *Ante* at 18.

³⁰ *Poinier*, 858 F.2d at 920-21.

³¹ *Id.* at 920.

³² *Id.*

³³ *Id.*

³⁴ 281 F.2d 577 [6 AFTR 2d 5288] (5th Cir. 1960).

³⁵ *Ante* at 19.

³⁶ *Patterson*, 281 F.2d at 578-79, 581.

³⁷ *Ante* at 19 (citing *Baptiste v. Comm'r*, 29 F.3d 1533, 1542 [74 AFTR 2d 94-7477] (11th Cir. 1994)).

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CHAPTER 143 - POWERS AND DUTIES OF PERSONAL REPRESENTATIVES

ADMINISTRATION OF ESTATES GENERALLY

<u>NRS 143.010</u>	Multiple personal representatives: Effect of absence or disability; sufficiency of acts of majority.
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<u>NRS 143.188</u>	Power to direct termination of certain electronic or digital accounts or assets.
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INDEPENDENT ADMINISTRATION OF ESTATES

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<u>NRS 143.340</u>	Personal representative required to petition for full or limited authority to administer estate.
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<u>NRS 143.365</u>	Authority to administer estate without court supervision; request for court supervision.
<u>NRS 143.370</u>	Court approval or supervision required for certain actions; exceptions.
<u>NRS 143.375</u>	Powers of personal representative granted independent administration authority.
<u>NRS 143.380</u>	Sale of property of estate; court confirmation of sales not required.

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<u>NRS 143.400</u>	Requirements for exercise of powers by personal representative.
<u>NRS 143.405</u>	Sale or exchange of real property.
<u>NRS 143.410</u>	Sale or incorporation of business or joint venture.
<u>NRS 143.415</u>	Abandonment of tangible personal property.
<u>NRS 143.420</u>	Power to borrow and to encumber property of estate.
<u>NRS 143.425</u>	Grant of option to purchase real property of estate.
<u>NRS 143.430</u>	Transfer of property to person exercising option to purchase provided in will.
<u>NRS 143.435</u>	Conveyance or transfer of real or personal property under certain circumstances.
<u>NRS 143.440</u>	Determination of claims to property.
<u>NRS 143.445</u>	Disclaimers.
<u>NRS 143.450</u>	Preliminary distributions authorized under certain circumstances.
<u>NRS 143.455</u>	Actions concerning claims by, for the benefit of, or against the estate.
<u>NRS 143.460</u>	Commencement and defense of certain actions and proceedings.
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POWERS THE EXERCISE OF WHICH REQUIRE GIVING NOTICE OF PROPOSED ACTION UNDER CERTAIN CIRCUMSTANCES

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<u>NRS 143.520</u>	Continuation of partnership or other business.
<u>NRS 143.525</u>	Payment of family allowance.
<u>NRS 143.530</u>	Lease of property of estate.
<u>NRS 143.535</u>	Sale or exchange of personal property.
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POWERS EXERCISABLE WITHOUT GIVING NOTICE OF PROPOSED ACTION

<u>NRS 143.600</u>	Exercise of powers by personal representative.
<u>NRS 143.605</u>	Additional powers of personal representative.
<u>NRS 143.610</u>	Conveyance or transfer of property under certain circumstances.
<u>NRS 143.615</u>	Payment of taxes, assessments and expenses.
<u>NRS 143.620</u>	Purchase of annuity under certain circumstances.
<u>NRS 143.625</u>	Exercise of option.
<u>NRS 143.630</u>	Purchase of securities or commodities to perform incomplete contract of sale.
<u>NRS 143.635</u>	Holding securities in name of nominee or in any other form for certain purposes.
<u>NRS 143.640</u>	Exercise of security subscription or conversion rights.
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<u>NRS 143.710</u>	Consent to proposed action.
<u>NRS 143.715</u>	Waiver of notice for particular proposed action; general waiver of notice of proposed action.
<u>NRS 143.720</u>	Revocation of consent to proposed action or waiver of notice of proposed action.
<u>NRS 143.725</u>	Contents of notice of proposed action.
<u>NRS 143.730</u>	Requirements for delivery of notice of proposed action.
<u>NRS 143.735</u>	Objection to proposed action; requirements for delivery; form; notice of objection to personal representative.
<u>NRS 143.740</u>	Restraining order prohibiting proposed action without court supervision; notice of restraining order to personal representative.
<u>NRS 143.745</u>	Court authorization or confirmation required if personal representative receives notice of objection or of restraining order.
<u>NRS 143.750</u>	Effect of failure to object to proposed action; court review of action by personal representative under certain circumstances.
<u>NRS 143.755</u>	Failure of personal representative to comply with certain requirements; validity of actions taken without such compliance.
<u>NRS 143.760</u>	Court authorized to remove personal representative from office under certain circumstances.

FORMS

<u>NRS 143.800</u>	Letters testamentary or letters of administration.
<u>NRS 143.805</u>	Notice of proposed action.
<u>NRS 143.810</u>	Objection to proposed action.
<u>NRS 143.815</u>	Consent to proposed action.

ADMINISTRATION OF ESTATES GENERALLY

NRS 143.010 Multiple personal representatives: Effect of absence or disability; sufficiency of acts of majority. If there are two personal representatives, the acts of one alone are valid if the other is absent from the state, or for any cause is laboring under any legal disability, and if there are more than two, the acts of a majority are sufficient.
[Part 44:107:1941; 1931 NCL § 9882.44]—(NRS A 1999, 2289)

NRS 143.020 Right to possession of decedent's property. Except as otherwise provided in NRS 143.030 and 146.010, a personal representative has a right to the possession of all the real, as well as personal, property of the decedent and may receive the rents and profits of the property until the estate is settled, or until delivered over by order of the court to the heirs or devisees, and shall make a reasonable effort to keep in good tenable repair all houses, buildings and appurtenances thereon which are under the control of the personal representative.
[106:107:1941; 1931 NCL § 9882.106]—(NRS A 1999, 2290; 2009, 1665)

NRS 143.030 Duty to take possession of estate and collect debts; exception for certain assets held by guardian.
1. A personal representative shall take into possession all the estate of the decedent, real and personal, except that exempted as provided in this title, and shall collect all receivables due the decedent or the estate.
2. For the purpose of bringing actions to quiet title or for partition of the estate, the possession of the personal representative shall be deemed the possession of the heirs or devisees. The possession of heirs or devisees is subject, however, to the possession of the personal representative for all other purposes.
3. A personal representative shall not take into possession any assets held by a guardian of the decedent pursuant to chapter 159 of NRS until the guardianship is terminated according to the provisions of NRS 159.1905 or 159.191 and the guardian is ordered to distribute the assets to the personal representative.
[191:107:1941; 1931 NCL § 9882.191]—(NRS A 1999, 2290; 2009, 1665)

NRS 143.035 Duty to use reasonable diligence; report required if estate not closed within certain times; hearing and determinations by court.

1. A personal representative shall use reasonable diligence in performing the duties of the personal representative and in pursuing the administration of the estate.
2. A personal representative in charge of an estate that has not been closed shall:
 - (a) Within 6 months after the personal representative's appointment, where no federal estate tax return is required to be filed for the estate; or
 - (b) Within 15 months after the personal representative's appointment, where a federal estate tax return is required to be filed for the estate,→ file with the court a report explaining why the estate has not been closed.
3. Upon receiving the report, the clerk shall set a time and place for a hearing of the report. The personal representative shall send a copy of the report and shall give notice of the hearing, for the period and in the manner provided in NRS 155.010, to:
 - (a) Each person whose interest is affected as an heir or devisee; and
 - (b) The Department of Health and Human Services, if the Department has filed a claim against the estate.
4. At the hearing, the court shall determine whether or not the personal representative has used reasonable diligence in the administration of the estate, and if the personal representative has not, the court may:
 - (a) Subject to the provisions of NRS 143.037:
 - (1) Prescribe the time within which the estate must be closed; or
 - (2) Allow the personal representative additional time for closing and order a subsequent report; or
 - (b) Revoke the letters of the personal representative, appoint a successor and prescribe a reasonable time within which the successor shall close the estate.

(Added to NRS by 1975, 1765; A 1997, 336; 1999, 2290; 2003, 880)

NRS 143.037 Duty to close estate within 18 months after appointment; exceptions.

1. Except as otherwise provided in this section, a personal representative shall close an estate within 18 months after appointment.
2. If a claim against the estate is in litigation or in summary determination pursuant to subsection 5 of NRS 145.060 or subsection 2 of NRS 147.130 or the amount of federal estate tax has not been determined, the court, upon petition of a devisee, creditor or heir, shall order that:
 - (a) A certain amount of money, or certain other assets, be retained by the personal representative to:
 - (1) Satisfy the claim or tax; and
 - (2) Pay any fees or costs related to the claim or tax, including fees for appraisals, attorney's fees and court costs;and
- (b) The remainder of the estate be distributed.
3. If a contest of the will or a proceeding to determine heirship is pending, the court which appointed the personal representative:
 - (a) Shall order that a certain amount of money, or certain other assets, be retained and the remainder of the estate distributed; or
 - (b) May, for good cause shown, order that the entire distributable estate be retained pending disposition of the contest or proceeding.

(Added to NRS by 1997, 335; A 1999, 2291; 2001, 2344)

NRS 143.040 Rights of surviving partner.

1. If a partnership existed between the decedent, at the time of death, and any other person, the surviving partner may continue in possession of the effects of the partnership and settle its business, but the interest of the decedent must be included in the inventory and appraised as an asset of the estate.

2. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account to the personal representative and pay over such balance as may be, from time to time, payable to the estate of the decedent.

3. Upon the petition of the personal representative, the court may, whenever it may appear necessary, order the surviving partner to render an accounting, and in case of neglect or refusal, may, after notice, compel it by any lawful process, and the personal representative may maintain against the surviving partner any action which the decedent could have maintained.

4. Upon any sale of a partnership interest, the surviving partner may be a bidder.

[Part 195:107:1941; 1931 NCL § 9882.195]—(NRS A 1999, 2291)

NRS 143.050 Continuing business of decedent. Except as otherwise provided in NRS 143.520, after notice given as provided in NRS 155.010 or in such other manner as the court directs, the court may authorize the personal representative to continue the operation of the decedent's business to such an extent and subject to such restrictions as may seem to the court to be for the best interest of the estate and any interested persons.

[Part 195:107:1941; 1931 NCL § 9882.195]—(NRS A 1975, 1766; 1999, 2292; 2011, 1454)

NRS 143.060 Extent of power to sue and be sued. Actions for the recovery of any property, real or personal, or for the possession thereof, or to quiet title thereto, or to determine any adverse claim thereon, and all actions founded upon contracts, may be maintained by and against a personal representative in all cases in which the actions might have been maintained by or against the decedent.

[192:107:1941; 1931 NCL § 9882.192]—(NRS A 1999, 2292)

NRS 143.065 Statute of limitations for cause of action of decedent. A statute of limitations running on a cause of action belonging to a decedent, that was not barred as of the date of death, does not bar the cause of action sooner than 1 year after the death. A cause of action that, but for this section, would be barred less than 1 year after the death of the decedent is barred after 1 year unless the running of the statute is tolled under other law.

(Added to NRS by 1999, 2289; A 2003, 2510)

NRS 143.070 Actions by personal representative for conversion or trespass.

1. A personal representative may commence or maintain an action against any person who has wasted, destroyed, taken, carried away or converted the goods of the decedent.

2. A personal representative may also commence or maintain an action for trespass committed on the real property of the decedent while living.

[193:107:1941; 1931 NCL § 9882.193]—(NRS A 1999, 2292)

NRS 143.080 Actions against personal representative for conversion or trespass. Any person or the personal representative has a right of action against the personal representative of a decedent who, in the lifetime of the decedent wasted, destroyed, took, carried away or converted the goods or chattels of that person, or committed any trespass on the real property of that person.

[194:107:1941; 1931 NCL § 9882.194]—(NRS A 1999, 2292)

NRS 143.090 Action on bond of former personal representative. A successor personal representative may, for the use and benefit of all interested persons, maintain an action on the bond of a former personal representative of the same estate.

[196:107:1941; 1931 NCL § 9882.196]—(NRS A 1999, 2292)

NRS 143.100 Action for conversion before letters granted. If any person, before the granting of letters, converts, takes or alienates any of the money, goods, chattels or effects of a decedent, that person is chargeable and liable to an action by the personal representative for triple the value of the property so converted, taken or alienated, to be recovered for the benefit of the estate.

[107:107:1941; 1931 NCL § 9882.107]—(NRS A 1999, 2292; 2007, 895)

NRS 143.110 Procedure when conversion alleged: Citation; examination; allowance of necessary expenses.

1. If a personal representative or other interested person alleges in a petition to the court that any person has, or is suspected to have, concealed, converted, conveyed away or otherwise disposed of any money, goods, chattels or effects of the decedent, or that the person has possession or knowledge of any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title or interest of the decedent in or to any real or personal property, or any claim or demand, or any last will of the decedent, the court may cause that person to be cited to appear before the court to answer, upon oath, upon the matter of the petition.

2. If the person is not in the county where letters have been granted, the person may be cited and examined either before the court of the county where the person may be found, or before the court issuing the citation. If the person appears, and is found innocent, his or her necessary expenses must be allowed out of the estate.

[108:107:1941; 1931 NCL § 9882.108]—(NRS A 1999, 2293)

NRS 143.120 Procedure when conversion alleged: Commitment for refusal to appear for examination; order requiring delivery of property to personal representative.

1. If the person so cited refuses to appear and submit to examination or to testify concerning the matter of the complaint, the court may commit the person to the county jail, there to remain confined until the person obeys the order of the court or is discharged according to law.

2. If, upon examination, it appears that the person has concealed, converted, smuggled, conveyed away, or in any manner disposed of any money, goods or chattels of the decedent, or that the person has possession or control of any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the decedent to any real or personal property, claim or demand, or any last will of the decedent, the court may enter an order requiring the person to deliver any such property or effects to the personal representative at such time as the court may fix. If the person fails to comply with the order, the court may commit the person to the county jail until the order is complied with or the person is discharged according to law.

3. The order of the court for the delivery of the property is prima facie evidence of the right of the personal representative to the property in any action that may be brought for its recovery, and any judgment recovered must be for treble damages equal to three times the value of the property.

4. In addition to the examination of the party, witnesses may be produced and examined on either side.
[109:107:1941; 1931 NCL § 9882.109]—(NRS A 1999, 2293; 2003, 2511)

NRS 143.130 Accounting by person holding assets of estate for personal representative; penalty for failure or refusal to comply with order. The court, upon the petition of a personal representative, may require any person entrusted by the personal representative with any part of the estate of the decedent to appear before the court and render on oath a full accounting of any money, goods, chattels, bonds, accounts, or other papers or effects belonging to the estate which have come into the possession of the person in trust for the personal representative. If the person so cited fails or refuses to appear and render the accounting, the court may proceed against the person as provided in NRS 143.120.

[110:107:1941; 1931 NCL § 9882.110]—(NRS A 1999, 2294)

NRS 143.140 Discharging debtor of estate, compromising claims and renewing obligations: Procedure.

1. Except as otherwise provided in NRS 143.440, 143.455, 143.465, 143.650 or 143.655, if a debtor of the decedent is unable to pay all debts, the personal representative, with the approval of the court, may give the person a discharge upon such terms as may appear to the court to be for the best interest of the estate.

2. A compromise may also be authorized by the court when it appears to be just and for the best interest of the estate.

3. The court may also authorize the personal representative, on such terms and conditions as may be approved by it, to extend or renew, or in any manner modify the terms of, any obligation owing to or running in favor of the decedent or the estate of the decedent.

4. To obtain approval or authorization the personal representative shall file a petition showing the advantage of the settlement, compromise, extension, renewal or modification. The clerk shall set the petition for hearing by the court, and the petitioner shall give notice for the period and in the manner required by NRS 155.010.

[198:107:1941; 1931 NCL § 9882.198]—(NRS A 1999, 2294; 2011, 1454)

NRS 143.150 Action to recover fraudulently conveyed property for benefit of creditors.

1. If the decedent conveyed any real property or any rights or interests therein, with intent to defraud creditors or to avoid any obligation, debt or duty owed another, or so conveyed the property that by law the deeds of conveyance are void as against creditors, or made a gift of property in contemplation of death, and there is a deficiency of assets in the hands of the personal representative to pay all the expenses and debts of the estate, the personal representative, on petition of any creditor, shall commence and prosecute to final judgment any proper action for the recovery of the property for the benefit of the creditors.

2. The personal representative may also, for the benefit of the creditors, maintain an action for and recover all goods, chattels, rights or credits, or their value, which may have been so fraudulently conveyed by the decedent, whatever may have been the manner of fraudulent conveyance.

[199:107:1941; 1931 NCL § 9882.199]—(NRS A 1999, 2294)

NRS 143.160 Costs; disposal of property recovered; proceeds.

1. A personal representative is not bound to maintain an action for the estate, pursuant to NRS 143.150, for the benefit of the creditors, unless a creditor of the decedent:

(a) Files a petition; and

(b) Pays the costs and expense of the litigation or gives such security as the court directs.

2. All real property so recovered must be sold for the payment of debts in the same manner as prescribed in this title for sales of real property by personal representatives.

3. The proceeds of all goods, chattels, rights or credits so received, after reimbursement of costs and expenses of litigation advanced by the creditor, must be applied in payment of debts in the same manner as other personal property in the hands of a personal representative.

[200:107:1941; 1931 NCL § 9882.200] + [201:107:1941; 1931 NCL § 9882.201]—(NRS A 1999, 2295)

NRS 143.165 Temporary order to restrain personal representative from performing administration, disbursement or distribution of estate: Issuance; hearing.

1. On petition of an interested person, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercising any powers or discharging any duties of the office, or enter any other order to secure proper performance of the duties of the office, if it appears to the

court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner or of some other interested person. A person with whom the personal representative may transact business may be made a party to the temporary order.

2. The matter must be set for hearing within 10 days after entry of the temporary order unless the parties otherwise agree. Notice as the court directs must be given by the petitioner to the personal representative and the attorney of record of the personal representative, if any, and to any other party named as a party in the temporary order.

(Added to NRS by 1997, 1485; A 1999, 2295)

NRS 143.170 Purchase of property of estate by personal representative. Unless approved in advance by a court after application, notice and a hearing on the matter, a personal representative shall not directly or indirectly purchase any property of the estate represented by the personal representative.

[190:107:1941; 1931 NCL § 9882.190]—(NRS A 1999, 2295; 2001, 2345)

NRS 143.175 Power to make certain investments.

1. Except as otherwise provided in NRS 143.515, a personal representative may, with court approval:

(a) Invest the property of the estate, make loans and accept security therefor, in the manner and to the extent authorized by the court; and

(b) Exercise options of the estate to purchase or exchange securities or other property.

2. A personal representative may, without prior approval of the court, invest the property of the estate in:

(a) Savings accounts in a bank, credit union or savings and loan association in this State, to the extent that the deposit is insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755;

(b) Interest-bearing obligations of, or fully guaranteed by, the United States;

(c) Interest-bearing obligations of the United States Postal Service or the Federal National Mortgage Association;

(d) Interest-bearing obligations of this State or of a county, city or school district of this State;

(e) Money-market mutual funds that are invested only in obligations listed in paragraphs (a) to (d), inclusive; or

(f) Any other investment authorized by the will of the decedent.

(Added to NRS by 1975, 1766; A 1999, 1458, 2295; 2001, 91; 2011, 1454)

NRS 143.180 Power to make loans, advances of credit and other investments insured by Federal Housing Administrator; validation of loans, advances of credit and purchases of obligations made before October 1, 1999.

1. Subject to such regulations as may be prescribed by the Federal Housing Administrator, a personal representative may:

(a) Make such loans and advances of credit, and purchases of obligations representing the loans and advances of credit, as are eligible for insurance by the Federal Housing Administrator, and obtain such insurance.

(b) Make such loans secured by mortgage on real property as are eligible for insurance by the Federal Housing Administrator, and obtain such insurance.

(c) Purchase, invest in, and dispose of notes or bonds secured by mortgage insured by the Federal Housing Administrator, securities of national mortgage associations, and debentures issued by the Federal Housing Administrator.

2. No law of this State prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, applies to loans, advances of credit or purchases made pursuant to subsection 1.

3. All above-described loans, advances of credit, and purchases of obligations made and insured pursuant to the terms of the National Housing Act before October 1, 1999, are hereby validated and confirmed.

[Part 1:58:1935; A 1937, 147; 1939, 43; 1931 NCL § 3652.01] + [Part 2:58:1935; 1931 NCL § 3652.02] + [3:58:1935; 1931 NCL § 3652.03]—(NRS A 1999, 2296)

NRS 143.185 Power to invest in farm loan bonds and other obligations issued by federal land banks and banks for cooperatives. A personal representative may purchase, invest in, and dispose of:

1. Farm loan bonds, consolidated farm loan bonds, debentures, consolidated debentures and other obligations issued by federal land banks and federal intermediate credit banks under the authority of the Federal Farm Loan Act, formerly 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021 to 1129, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq., as amended; and

2. Bonds, debentures, consolidated debentures and other obligations issued by banks for cooperatives under the authority of the Farm Credit Act of 1933, formerly 12 U.S.C. §§ 1131 to 1138e, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq., as amended.

(Added to NRS by 1959, 33; A 1973, 1088; 1991, 461; 1999, 2297)

NRS 143.187 Power to hold stock in name of nominee; personal liability of personal representative.

1. A personal representative holding certificates of stock in that capacity may hold the stock in the name of a nominee without mention in the stock certificate or registration books, if:

(a) The records of the personal representative and all reports and accountings the personal representative renders clearly show the holding and the facts regarding it; and

(b) The nominee deposits with the personal representative a signed statement of the true interest of the personal representative.

2. A personal representative is personally liable for any loss to the estate resulting from any act of the nominee in connection with stock so held.

(Added to NRS by 1961, 471; A 1999, 2297)

NRS 143.188 Power to direct termination of certain electronic or digital accounts or assets.

1. Except as otherwise provided in subsection 2, subject to such restrictions as may be prescribed in the will of a decedent or by an order of a court of competent jurisdiction, a personal representative has the power to direct the termination of any account of the decedent, including, without limitation:

- (a) An account on any:
 - (1) Social networking Internet website;
 - (2) Web log service Internet website;
 - (3) Microblog service Internet website;
 - (4) Short message service Internet website; or
 - (5) Electronic mail service Internet website; or
- (b) Any similar electronic or digital asset of the decedent.

2. The provisions of subsection 1 do not authorize a personal representative to direct the termination of any financial account of the decedent, including, without limitation, a bank account or investment account.

3. The act by a personal representative to direct the termination of any account or asset of a decedent pursuant to subsection 1 does not invalidate or abrogate any conditions, terms of service or contractual obligations the holder of such an account or asset has with the provider or administrator of the account, asset or Internet website.

(Added to NRS by 2013, 1524)

NRS 143.190 Cumulative method of service of process on personal representative; written statement containing permanent address of personal representative to be filed with clerk.

1. Before letters are delivered to a personal representative, the personal representative shall file with the county clerk of the county in which the administration of the estate is pending a written statement containing the name and permanent address of the personal representative. The permanent address may, from time to time, be changed by filing with the county clerk a written statement giving the changed address. The permanent address shall be deemed to be that contained in the last statement so filed by the personal representative.

2. The taking of his or her oath of office by a personal representative constitutes an appointment of the county clerk of the county in which the administration of the estate is pending to be the true and lawful attorney, upon whom all legal process in any action or proceeding against the personal representative may be served, with the same legal force and effect as if served upon the personal representative personally within the State of Nevada.

3. Service of process may be made by mailing by registered or certified mail a copy of the process, and if the process is a summons, there must be attached thereto a copy of the complaint certified by the clerk or the plaintiff's attorney, directly to the personal representative at the address contained in the statement filed with the clerk. This service is sufficient personal service upon the personal representative if proof of the service is filed with the clerk.

4. The court in which the action is pending may order such continuances as may be necessary to afford the personal representative reasonable opportunity to defend the action.

5. The foregoing method of service is cumulative, and does not prevent the personal service of process upon the personal representative within the State of Nevada.

[324:107:1941; 1931 NCL § 9882.324]—(NRS A 1969, 95; 1983, 262; 1999, 2297)

NRS 143.200 Actions not to abate on death, disqualification, resignation or removal of personal representative; substitution of successor. No action to which a personal representative is a party abates by reason of the death, disqualification, resignation or removal of the personal representative, but the person who is appointed, qualifies and is acting as the successor must, upon motion, be substituted as a party to the action.

[325:107:1941; 1931 NCL § 9882.325]—(NRS A 1999, 2298)

NRS 143.210 Necessary parties to actions. In actions brought by or against personal representatives, it is not necessary to join those as parties who have not qualified.

[197:107:1941; 1931 NCL § 9882.197]—(NRS A 1999, 2298)

INDEPENDENT ADMINISTRATION OF ESTATES

General Provisions

NRS 143.300 Short title. NRS 143.300 to 143.815, inclusive, may be cited as the Independent Administration of Estates Act.

(Added to NRS by 2011, 1437)

NRS 143.305 Definitions. As used in NRS 143.300 to 143.815, inclusive, unless the context otherwise requires, the words and terms defined in NRS 143.310, 143.315 and 143.320 have the meanings ascribed to them in those sections.

(Added to NRS by 2011, 1437)

NRS 143.310 "Court supervision" defined. "Court supervision" means the judicial order, authorization, approval, confirmation or instructions that would be required if authority to administer the estate had not been granted pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1437)

NRS 143.315 "Full authority" defined. "Full authority" means the authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, that includes all the powers granted pursuant to NRS 143.300 to 143.815, inclusive.
(Added to NRS by 2011, 1437)

NRS 143.320 "Limited authority" defined. "Limited authority" means authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, that includes all the powers granted pursuant to NRS 143.300 to 143.815, inclusive, except the power to do any of the following:

1. Sell real property.
2. Exchange real property.
3. Grant an option to purchase real property.
4. Borrow money with the loan secured by an encumbrance upon real property.

(Added to NRS by 2011, 1437)

NRS 143.325 Applicability. The provisions of NRS 143.300 to 143.815, inclusive, apply in any case where authority to administer the estate is granted pursuant to NRS 143.300 to 143.815, inclusive.
(Added to NRS by 2011, 1437)

NRS 143.330 Effect of provision in will that prohibits independent administration of estate. The personal representative may not be granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, if the decedent's will provides that the estate must not be administered pursuant to NRS 143.300 to 143.815, inclusive.
(Added to NRS by 2011, 1437)

NRS 143.335 Independent administration of estate by special administrator. A special administrator may be granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, if the special administrator is appointed with, or has been granted, the powers of a general personal representative.
(Added to NRS by 2011, 1437)

NRS 143.340 Personal representative required to petition for full or limited authority to administer estate.

1. To obtain authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, the personal representative must petition the court for that authority in a petition for appointment of the personal representative or in a separate petition filed in the estate proceedings.

2. The personal representative may request either of the following:

- (a) Full authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive; or
- (b) Limited authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1437)

NRS 143.345 Notice of hearing on petition; persons required to receive notice; contents.

1. If the authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, is requested in a petition for appointment of the personal representative, notice of the hearing on the petition must be given for the period and in the manner applicable to the petition for appointment.

2. Where proceedings for the administration of the estate are pending at the time a petition is filed pursuant to NRS 143.340, notice of the hearing on the petition must be given for the period and in the manner provided in NRS 155.010 to all the following persons:

- (a) Each person specified in NRS 155.010;
- (b) Each known heir whose interest in the estate would be affected by the petition;
- (c) Each known devisee whose interest in the estate would be affected by the petition; and
- (d) Each person named as personal representative in the will of the decedent.

3. The notice of hearing of the petition for authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, whether included in the petition for appointment or in a separate petition, must include a statement in substantially the following form:

The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. Independent administration authority will be granted unless good cause is shown why it should not be.

(Added to NRS by 2011, 1437)

NRS 143.350 Court required to grant requested authority; exceptions.

1. Except as otherwise provided in subsection 2, unless an interested person objects in writing at or before the hearing to the granting of authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, and the court determines that the interested person has shown good cause why the authority to administer the estate under those provisions should not be granted, the court shall grant the requested authority.

2. If the interested person has shown good cause why only limited authority should be granted, the court shall grant limited authority.

(Added to NRS by 2011, 1438)

NRS 143.355 Amount of bond of personal representative.

1. If the personal representative is otherwise required to file a bond and has full authority, the court shall fix the amount of the bond at not more than the estimated value of the personal property, the estimated value of the decedent's interest in the real property authorized to be sold pursuant to NRS 143.300 to 143.815, inclusive, and the probable annual gross income of the estate or, if the bond is to be given by personal sureties, at not less than twice that amount.

2. If the personal representative is otherwise required to file a bond and has limited authority, the court shall fix the amount of the bond at not more than the estimated value of the personal property and the probable annual gross income of the estate or, if the bond is to be given by personal sureties, at not less than twice that amount.

(Added to NRS by 2011, 1438)

NRS 143.360 Petition for modification or revocation of authority of personal representative; notice; court order.

1. Any interested person may file a petition requesting that the court make either of the following orders:

(a) An order revoking the authority of the personal representative to continue administration of the estate pursuant to NRS 143.300 to 143.815, inclusive; or

(b) An order revoking the full authority of the personal representative to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, and granting the personal representative limited authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

2. The petition must set forth the basis for the requested order.

3. The petitioner shall give notice for the period and in the manner provided in NRS 155.010.

4. If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate pursuant to NRS 143.300 to 143.815, inclusive. Upon the making of the order, new letters must be issued without the authority to act pursuant to NRS 143.300 to 143.815, inclusive.

5. If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters must be issued indicating whether the personal representative is authorized to act pursuant to NRS 143.300 to 143.815, inclusive, and, if so authorized, whether the independent administration authority includes or excludes the power to do any of the following:

(a) Sell real property;

(b) Exchange real property;

(c) Grant an option to purchase real property; or

(d) Borrow money with the loan secured by an encumbrance upon real property.

(Added to NRS by 2011, 1438)

NRS 143.365 Authority to administer estate without court supervision; request for court supervision.

1. Subject to the limitations and conditions of NRS 143.300 to 143.815, inclusive, a personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, may administer the estate as provided pursuant to NRS 143.300 to 143.815, inclusive, without court supervision, but in all other respects, the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

2. Notwithstanding the provisions of subsection 1, the personal representative may obtain court supervision of any action to be taken by the personal representative during administration of the estate.

(Added to NRS by 2011, 1439)

NRS 143.370 Court approval or supervision required for certain actions; exceptions.

1. Notwithstanding any provision of NRS 143.300 to 143.815, inclusive, to the contrary, whether the personal representative has been granted limited authority or full authority, a personal representative who has obtained authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, is required to obtain court approval for any of the following actions:

(a) Allowance of the personal representative's compensation;

(b) Allowance of compensation of the attorney for the personal representative;

(c) Settlement of accounts;

(d) Preliminary and final distributions and discharge;

(e) Sale of property of the estate to the personal representative or to the attorney for the personal representative;

(f) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative;

(g) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative;

(h) Allowance, payment or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate;

(i) Compromise or settlement of a claim, action or proceeding by the estate against the personal representative or against the attorney for the personal representative;

(j) Extension, renewal or modification of the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate; and

(k) Any transaction described in this section that would indirectly benefit the personal representative, a relative of the personal representative, the attorney for the personal representative or the attorney for a relative of the personal representative.

2. Notwithstanding any provision of NRS 143.300 to 143.815, inclusive, to the contrary, a personal representative who has obtained limited authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, is required to obtain court supervision for any of the following actions:

- (a) Sale of real property;
- (b) Exchange of real property;
- (c) Grant of an option to purchase real property; and
- (d) Borrowing money with the loan secured by an encumbrance upon real property.

3. Paragraphs (e) to (k), inclusive, of subsection 1 do not apply to a transaction between the personal representative in his or her capacity as a personal representative and the personal representative as a person if all the following requirements are satisfied:

- (a) The personal representative is the sole beneficiary of the estate or all the known heirs or devisees have consented to the transaction;
- (b) The period for filing creditor claims has expired;
- (c) No request for special notice pursuant to NRS 155.030 is on file or all persons who filed a request for special notice have consented to the transaction; and
- (d) The claim of each creditor who filed a claim has been paid, settled or withdrawn, or the creditor has consented to the transaction.

4. As used in this section, "relative" has the meaning ascribed to it in NRS 163.020.

(Added to NRS by 2011, 1439)

NRS 143.375 Powers of personal representative granted independent administration authority.

1. Subject to the conditions and limitations of NRS 143.300 to 143.815, inclusive, and to the duties and liabilities of the personal representative, a personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, has the powers described in:

- (a) NRS 143.400 to 143.465, inclusive, with regard to powers that are exercisable only after giving a notice of proposed action;
- (b) NRS 143.500 to 143.540, inclusive, with regard to powers the exercise of which requires giving a notice of proposed action under certain circumstances; and
- (c) NRS 143.600 to 143.655, inclusive, with regard to powers that are exercisable without giving a notice of proposed action.

2. The will may restrict the powers that the personal representative may exercise pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1440)

NRS 143.380 Sale of property of estate; court confirmation of sales not required.

1. Subject to the limitations and requirements of NRS 143.300 to 143.815, inclusive, when the personal representative exercises the authority to sell property of the estate pursuant to NRS 143.300 to 143.815, inclusive, the personal representative may sell the property at public auction or private sale, and with or without notice, for cash or on credit, for such price and upon such terms and conditions as the personal representative may determine.

2. The requirements applicable to court confirmation of sales of real property referenced in subsection 1 include, without limitation:

- (a) Publication of the notice of sale;
- (b) Court approval of agents' and brokers' commissions;
- (c) The sale being not less than 90 percent of appraised value of the real property;
- (d) An examination by the court into the necessity for the sale of the real property, including, without limitation, any advantage to the estate and benefit to interested persons; and
- (e) The efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

3. The requirements applicable to court confirmation of sales of real property and sales of personal property do not apply to a sale pursuant to this section.

(Added to NRS by 2011, 1441)

Powers Exercisable Only After Giving Notice of Proposed Action

NRS 143.400 Requirements for exercise of powers by personal representative. The personal representative may exercise the powers described in NRS 143.400 to 143.465, inclusive, only if the requirements of NRS 143.700 to 143.760, inclusive, are satisfied.

(Added to NRS by 2011, 1441)

NRS 143.405 Sale or exchange of real property. The personal representative who has full authority has the power to sell or exchange real property of the estate.

(Added to NRS by 2011, 1441)

NRS 143.410 Sale or incorporation of business or joint venture. The personal representative who has limited authority or full authority has the power to sell or incorporate any of the following:

- 1. An unincorporated business or joint venture in which the decedent was engaged at the time of the decedent's death; and

2. An unincorporated business or joint venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(Added to NRS by 2011, 1441)

NRS 143.415 Abandonment of tangible personal property. The personal representative who has limited authority or full authority has the power to abandon tangible personal property where the cost of collecting, maintaining and safeguarding the property would exceed its fair market value.

(Added to NRS by 2011, 1441)

NRS 143.420 Power to borrow and to encumber property of estate.

1. Subject to the limitations provided in subsection 2 and NRS 143.180, the personal representative who has limited authority or full authority has the following powers:

(a) The power to borrow; and

(b) The power to place, replace, renew or extend any encumbrance upon any property of the estate.

2. Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real property.

(Added to NRS by 2011, 1441)

NRS 143.425 Grant of option to purchase real property of estate. The personal representative who has full authority has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

(Added to NRS by 2011, 1441)

NRS 143.430 Transfer of property to person exercising option to purchase provided in will. If the will gives a person the option to purchase real or personal property and the person has complied with the terms and conditions stated in the will, the personal representative who has limited authority or full authority has the power to convey or transfer the property to the person.

(Added to NRS by 2011, 1442)

NRS 143.435 Conveyance or transfer of real or personal property under certain circumstances. The personal representative who has limited authority or full authority has the power to convey or transfer real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

(Added to NRS by 2011, 1442)

NRS 143.440 Determination of claims to property. The personal representative who has limited authority or full authority has the power to allow, compromise or settle any of the following:

1. A third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property; or

2. The decedent's claim to real or personal property, title to or possession of which is held by another.

(Added to NRS by 2011, 1442)

NRS 143.445 Disclaimers. The personal representative who has limited authority or full authority has the power to make a disclaimer.

(Added to NRS by 2011, 1442)

NRS 143.450 Preliminary distributions authorized under certain circumstances. If the time for filing creditor claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person, the personal representative who has limited authority or full authority has the power to make preliminary distributions of the following:

1. Income received during administration to the persons entitled thereto pursuant to the decedent's will or by intestate succession.

2. Household furniture and furnishings, motor vehicles, clothing, jewelry and other tangible articles of a personal nature to the persons entitled to the property under the decedent's will, not to exceed an aggregate fair market value to all persons of \$50,000 computed cumulatively through the date of distribution. Fair market value must be determined on the basis of the inventory and appraisal.

3. Cash to general pecuniary devisees entitled to it under the decedent's will, not to exceed \$10,000 to any one person.

(Added to NRS by 2011, 1442)

NRS 143.455 Actions concerning claims by, for the benefit of, or against the estate. The personal representative who has limited authority or full authority has the power to do all the following:

1. Allow, pay, reject or contest any claim by or against the estate.

2. Compromise or settle a claim, action or proceeding by or for the benefit of, or against, the decedent, the personal representative or the estate.

3. Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

4. Allow a claim to be filed after the expiration of the time for filing the claim.

(Added to NRS by 2011, 1442)

NRS 143.460 Commencement and defense of certain actions and proceedings. The personal representative who has limited authority or full authority has the power to do all the following:

1. Commence and maintain actions and proceedings for the benefit of the estate.
 2. Defend actions and proceedings against the decedent, the personal representative or the estate.
- (Added to NRS by 2011, 1442)

NRS 143.465 Modification of terms of obligation to or in favor of decedent. The personal representative who has limited authority or full authority has the power to extend, renew or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

(Added to NRS by 2011, 1442)

Powers the Exercise of Which Require Giving Notice of Proposed Action Under Certain Circumstances

NRS 143.500 Exercise of powers by personal representative; exceptions. Except as otherwise provided in NRS 143.500 to 143.540, inclusive, the personal representative who has limited authority or full authority may exercise the powers described in NRS 143.500 to 143.540, inclusive, without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

(Added to NRS by 2011, 1443)

NRS 143.505 Management and control of estate property.

1. The personal representative who has limited authority or full authority has the power to manage and control property of the estate, including making allocations and determinations pursuant to NRS 164.780 to 164.925, inclusive. Except as otherwise provided in subsection 2, such a personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

2. The personal representative shall comply with the requirements of NRS 143.700 to 143.760, inclusive, and shall give notice of a proposed action in any case where a provision of NRS 143.400 to 143.450, inclusive, governing the exercise of a specific power so requires.

(Added to NRS by 2011, 1443)

NRS 143.510 Power to enter contracts without notice; exception.

1. The personal representative who has limited authority or full authority has the power to enter into a contract to carry out the exercise of a specific power granted pursuant to NRS 143.300 to 143.815, inclusive, including, without limitation, the powers granted by NRS 143.505 and 143.605. Except as otherwise provided in subsection 2, the personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

2. The personal representative shall comply with the requirements of NRS 143.700 to 143.760, inclusive, and shall give notice of a proposed action where the contract is one that by its provisions is not to be fully performed within 2 years after the date the parties entered into the contract, except that the personal representative is not required to comply with those requirements if the personal representative has the unrestricted right under the contract to terminate the contract within 2 years after the date the parties entered into the contract.

3. Nothing in this section excuses compliance with the requirements of NRS 143.700 to 143.760, inclusive, when the contract is made to carry out the exercise of a specific power, and the provision that grants that power requires compliance with NRS 143.700 to 143.760, inclusive, for the exercise of the power.

(Added to NRS by 2011, 1443)

NRS 143.515 Deposit and investment of money of estate.

1. The personal representative who has limited authority or full authority has the power to do all the following:
 - (a) Deposit money belonging to the estate in an insured account in a financial institution in this State;
 - (b) Invest money of the estate in any one or more of the following:
 - (1) Direct obligations of the United States, or of the State of Nevada, maturing not later than 1 year after the date of making the investment;
 - (2) Savings accounts in a bank, credit union or savings and loan association in this State, to the extent that the deposit is insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755;
 - (3) Interest-bearing obligations of, or fully guaranteed by, the United States;
 - (4) Interest bearing obligations of the United States Postal Service or the Federal National Mortgage Association;
 - (5) Interest-bearing obligations of this State or of a county, city or school district of this State; or
 - (6) Money-market mutual funds that are invested only in obligations listed in subparagraphs (1) to (5), inclusive;

or

- (c) Invest money of the estate in any manner provided by the will.
2. The personal representative may exercise the powers described in subsection 1 without giving notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive.

(Added to NRS by 2011, 1443)

NRS 143.520 Continuation of partnership or other business.

1. Subject to the partnership agreement and the applicable provisions of chapter 87 of NRS, the personal representative who has limited authority or full authority has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

2. The personal representative who has limited authority or full authority has the power to continue operation of any of the following:

(a) An unincorporated business or joint venture in which the decedent was engaged at the time of the decedent's death.

(b) An unincorporated business or joint venture which was wholly or partly owned by the decedent at the time of the decedent's death.

3. Except as otherwise provided in subsection 4, the personal representative may exercise the powers described in subsections 1 and 2 without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

4. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, if the personal representative continues as a general partner under subsection 1, or continues the operation of any unincorporated business or joint venture under subsection 2, for a period of more than 6 months after the date on which letters are first issued to a personal representative.

(Added to NRS by 2011, 1444)

NRS 143.525 Payment of family allowance.

1. The personal representative who has limited authority or full authority has the power to pay a reasonable family allowance. Except as otherwise provided in subsection 2, the personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

2. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, for all the following:

(a) Making the first payment of a family allowance.

(b) Making the first payment of a family allowance for a period commencing more than 12 months after the death of the decedent.

(c) Making any increase in the amount of the payment of a family allowance.

(Added to NRS by 2011, 1444)

NRS 143.530 Lease of property of estate.

1. The personal representative who has limited authority or full authority has the power to enter as lessor into a lease of property of the estate for:

(a) Any purpose, including, without limitation, exploration for and production or removal of minerals, oil, gas or other hydrocarbon substances or geothermal energy, including a community oil lease or a pooling or unitization agreement;

(b) A period within or beyond the period of administration; and

(c) Rental or royalty, or both, and upon such other terms and conditions as the personal representative may determine.

2. Except as otherwise provided in subsections 3 and 4, the personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

3. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, where the personal representative enters into a lease of real property for a term in excess of 1 year. If the lease gives the lessee the right to extend the term of the lease, the lease must be considered as if the right to extend has been exercised.

4. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, where the personal representative enters into a lease of personal property and the lease is one that by its provisions is not to be fully performed within 2 years after the date the parties entered into the lease, except that the personal representative is not required to give notice of a proposed action if the personal representative has the unrestricted right under the lease to terminate the lease within 2 years after the date the parties entered into the lease.

(Added to NRS by 2011, 1444)

NRS 143.535 Sale or exchange of personal property.

1. The personal representative who has limited authority or full authority has the power to sell personal property of the estate or to exchange personal property of the estate for other property upon such terms and conditions as the personal representative may determine. Except as otherwise provided in subsection 2, the personal representative shall give notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive, in exercising this power.

2. The personal representative may exercise the power granted by subsection 1 without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive, in case of the sale or exchange of any of the following:

(a) A security sold on an established stock or bond exchange;

(b) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers Automated Quotations System, NASDAQ, sold through a broker-dealer registered under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., during the regular course of business of the broker-dealer;

(c) Subscription rights for the purchase of additional securities which are owned by the estate by reason of the estate's ownership in securities if those rights are sold for cash; or

(d) Personal property which is perishable if the property is sold for cash.

(Added to NRS by 2011, 1445)

NRS 143.540 Grant of exclusive right to sell property.

1. The personal representative who has limited authority or full authority has the following powers:

(a) The power to grant an exclusive right to sell property for a period not to exceed 90 days.

(b) The power to grant to the same broker one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

2. Except as otherwise provided in subsection 3, the personal representative may exercise the powers described in subsection 1 without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

3. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, where the personal representative grants to the same broker an extension of an exclusive right to sell property and the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days.

(Added to NRS by 2011, 1445)

Powers Exercisable Without Giving Notice of Proposed Action

NRS 143.600 Exercise of powers by personal representative. The personal representative who has limited authority or full authority may exercise the powers described in NRS 143.600 to 143.655, inclusive, without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

(Added to NRS by 2011, 1446)

NRS 143.605 Additional powers of personal representative. In addition to the powers granted to the personal representative pursuant to NRS 143.300 to 143.815, inclusive, the personal representative who has limited authority or full authority has all the powers that the personal representative could exercise without court supervision if the personal representative had not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1446)

NRS 143.610 Conveyance or transfer of property under certain circumstances. The personal representative who has limited authority or full authority has the power to convey or transfer property to carry out the exercise of a specific power granted pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1446)

NRS 143.615 Payment of taxes, assessments and expenses. The personal representative who has limited authority or full authority has the power to pay all the following:

1. Taxes and assessments.
2. Expenses incurred in the collection, care and administration of the estate.

(Added to NRS by 2011, 1446)

NRS 143.620 Purchase of annuity under certain circumstances. The personal representative who has limited authority or full authority has the power to purchase an annuity from an insurer admitted to do business in this State to satisfy a devise of an annuity or other direction in the will for periodic payments to a devisee.

(Added to NRS by 2011, 1446)

NRS 143.625 Exercise of option. The personal representative who has limited authority or full authority has the power to exercise an option right that is property of the estate.

(Added to NRS by 2011, 1446)

NRS 143.630 Purchase of securities or commodities to perform incomplete contract of sale. The personal representative who has limited authority or full authority has the power to purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent.

(Added to NRS by 2011, 1446)

NRS 143.635 Holding securities in name of nominee or in any other form for certain purposes. The personal representative who has limited authority or full authority has the power to hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery.

(Added to NRS by 2011, 1446)

NRS 143.640 Exercise of security subscription or conversion rights. The personal representative who has limited authority or full authority has the power to exercise security subscription or conversion rights.

(Added to NRS by 2011, 1446)

NRS 143.645 Repairs and improvements to property of estate. The personal representative who has limited authority or full authority has the power to make repairs and improvements to real and personal property of the estate.

(Added to NRS by 2011, 1446)

NRS 143.650 Acceptance of deed or deed of trust in lieu of foreclosure or trustee's sale. The personal representative who has limited authority or full authority has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

(Added to NRS by 2011, 1447)

NRS 143.655 Partial satisfaction of mortgage or partial reconveyance under deed of trust. The personal representative who has limited authority or full authority has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a deed of trust held by the estate.

(Added to NRS by 2011, 1447)

Procedures Relating to Notice of Proposed Action

NRS 143.700 Circumstances pursuant to which notice of proposed action is required or authorized.

1. A personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, shall give notice of a proposed action as provided in NRS 143.700 to 143.760, inclusive, before taking the proposed action without court supervision if the provisions of NRS 143.365 to 143.655, inclusive, giving the personal representative the power to take the action so require. Nothing in this subsection authorizes a personal representative to take an action pursuant to NRS 143.300 to 143.815, inclusive, if the personal representative does not have the power to take the action pursuant to those provisions.

2. A personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, may give notice of a proposed action as provided in NRS 143.700 to 143.760, inclusive, even if the provisions of NRS 143.365 to 143.655, inclusive, giving the personal representative the power to take the action authorize the personal representative to take the action without giving notice of the proposed action. Nothing in this subsection requires the personal representative to give notice of a proposed action where not required under subsection 1 or authorizes a personal representative to take any action that the personal representative is not otherwise authorized to take.

(Added to NRS by 2011, 1447)

NRS 143.705 Persons to whom notice of proposed action is required to be given. Except as otherwise provided in NRS 143.710 and 143.715, notice of a proposed action must be given to all the following:

1. Each known devisee whose interest in the estate would be affected by the proposed action.
2. Each known heir whose interest in the estate would be affected by the proposed action.
3. Each person who has filed a request for special notice pursuant to NRS 155.030.
4. The Attorney General, at the Office of the Attorney General in Carson City, if any portion of the estate is to escheat to the State and its interest in the estate would be affected by the proposed action.

(Added to NRS by 2011, 1447)

NRS 143.710 Consent to proposed action. Notice of a proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(Added to NRS by 2011, 1447)

NRS 143.715 Waiver of notice for particular proposed action; general waiver of notice of proposed action.

1. Notice of a proposed action need not be given to any person who, in writing, waives the right to notice of a proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver must describe the particular proposed action and may waive particular aspects of the notice, such as the delivery, mailing or time requirements of NRS 143.730 or the giving of the notice in its entirety for the particular proposed action.

2. Notice of a proposed action need not be given to any person who has made either of the following:

- (a) A general waiver of the right to notice of a proposed action.
- (b) A waiver of the right to notice of a proposed action for all transactions of a type which includes the particular proposed action.

(Added to NRS by 2011, 1447)

NRS 143.720 Revocation of consent to proposed action or waiver of notice of proposed action.

1. A waiver or consent pursuant to NRS 143.710 or 143.715 may be revoked only in writing and is effective only when the writing is received by the personal representative.

2. A copy of the revocation may be filed with the court, but the effectiveness of the revocation is not dependent upon a copy being filed with the court.

(Added to NRS by 2011, 1448)

NRS 143.725 Contents of notice of proposed action.

1. The notice of proposed action must state all the following:

- (a) The name and mailing address of the personal representative.
- (b) The person and telephone number to call to get additional information.
- (c) The action proposed to be taken, with a reasonably specific description of the action. If the proposed action involves the sale or exchange of real property or the granting of an option to purchase real property, the notice of proposed action must state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

(d) The date on or after which the proposed action is to be taken.

2. The notice of proposed action must include a form for objecting to the proposed action.

(Added to NRS by 2011, 1448)

NRS 143.730 Requirements for delivery of notice of proposed action. The notice of proposed action must be mailed or personally delivered to each person required to be given notice of the proposed action not less than 15 days before the date specified in the notice of proposed action on or after which the proposed action is to be taken. If mailed,

the notice of proposed action must be addressed to the person at the person's last known address. The notice of proposed action must be mailed or delivered in the manner provided in NRS 155.010.
(Added to NRS by 2011, 1448)

NRS 143.735 Objection to proposed action; requirements for delivery; form; notice of objection to personal representative.

1. Any person entitled to notice of a proposed action under NRS 143.705 may object to the proposed action as provided in this section.

2. The objection to the proposed action must be made by delivering or mailing a written objection to the proposed action to the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action may use the form provided in NRS 143.810 or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.

3. The personal representative is deemed to have notice of the objection to the proposed action if the notice is delivered or received at the address stated in the notice of proposed action before:

- (a) The date specified in the notice of proposed action on or after which the proposed action is to be taken; or
- (b) The date on which the proposed action is actually taken,

↪ whichever occurs later.

(Added to NRS by 2011, 1448)

NRS 143.740 Restraining order prohibiting proposed action without court supervision; notice of restraining order to personal representative.

1. Any person who is entitled to notice of a proposed action for a proposed action described in subsection 1 of NRS 143.700, or any person who is given notice of a proposed action described in subsection 2 of NRS 143.700, may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order.

2. The personal representative is deemed to have notice of the restraining order if the notice is given and served upon the personal representative in the manner provided in NRS 155.040 and 155.050, or in the manner authorized by the court, before:

- (a) The date specified in the notice of proposed action on or after which the proposed action is to be taken; or
- (b) The date on which the proposed action is actually taken,

↪ whichever occurs later.

(Added to NRS by 2011, 1449)

NRS 143.745 Court authorization or confirmation required if personal representative receives notice of objection or of restraining order.

1. If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, and the personal representative has notice of a written objection made pursuant to NRS 143.735 or a restraining order issued pursuant to NRS 143.740, the personal representative shall, if the personal representative desires to take the proposed action, petition the court to obtain approval from the court.

2. If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, but the personal representative has given notice of the proposed action and has notice of a written objection made pursuant to NRS 143.735 or a restraining order issued pursuant to NRS 143.740, the personal representative shall, if he or she desires to take the proposed action, request instructions from the court concerning the proposed action. The personal representative may take the proposed action only under such order as may be entered by the court.

3. A person who objects to a proposed action as provided in NRS 143.735 or serves a restraining order issued pursuant to NRS 143.740 in the manner provided in that section must be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

(Added to NRS by 2011, 1449)

NRS 143.750 Effect of failure to object to proposed action; court review of action by personal representative under certain circumstances.

1. Except as otherwise provided in subsection 3, only a person described in NRS 143.705 has a right to have the court review the proposed action after it has been taken or otherwise to object to the proposed action after it has been taken. Except as otherwise provided in subsections 2 and 3, a person described in NRS 143.705 waives the right to have the court review the proposed action after it has been taken, or otherwise to object to the proposed action after it has been taken, if:

(a) The person has been given notice of the proposed action, as provided in NRS 143.700 to 143.730, inclusive, and fails to object as provided in subsection 4; or

(b) The person has waived notice of or consented to the proposed action as provided in NRS 143.710 and 143.715.

2. Unless the person has waived notice of or consented to the proposed action as provided in NRS 143.710 and 143.715, the court may review the action taken upon a petition filed by a person described in NRS 143.705 who establishes that he or she did not actually receive the notice of proposed action before the time to object pursuant to subsection 4 expired.

3. The court may review the action of the personal representative upon a petition filed by an heir or devisee who establishes all the following:

(a) At the time notice of the proposed action was given, the heir or devisee lacked capacity to object to the proposed action or was a minor;

(b) No notice of proposed action was actually received by the guardian, conservator or other legal representative of the heir or devisee;

(c) The guardian, conservator or other legal representative did not waive notice of the proposed action; and

(d) The guardian, conservator or other legal representative did not consent to the proposed action.

4. For the purposes of this section, an objection to a proposed action is made only by one or both of the following methods:

(a) Delivering or mailing a written objection as provided in NRS 143.735 within the time specified in subsection 3 of that section; or

(b) Serving a restraining order obtained pursuant to NRS 143.740 in the manner prescribed and within the time specified in subsection 2 of that section.

(Added to NRS by 2011, 1449)

NRS 143.755 Failure of personal representative to comply with certain requirements; validity of actions taken without such compliance.

1. The failure of the personal representative who has limited authority or full authority to comply with subsection 1 of NRS 143.700 and with NRS 143.705, 143.725, 143.730 and 143.745, and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons who, dealing in good faith with the personal representative, changed their position in reliance upon the action, conveyance or transfer without actual notice of the failure of the personal representative to comply with those provisions.

2. A person dealing with the personal representative does not have any duty to inquire or investigate whether the personal representative has complied with the provisions listed in subsection 1.

(Added to NRS by 2011, 1450)

NRS 143.760 Court authorized to remove personal representative from office under certain circumstances.

1. In a case where notice of a proposed action is required by NRS 143.700 to 143.760, inclusive, the court, in its discretion, may remove the personal representative from office unless the personal representative:

(a) Gives notice of the proposed action as provided in NRS 143.700 to 143.760, inclusive; or

(b) Obtains a waiver of notice of the proposed action as provided in NRS 143.700 to 143.760, inclusive; or

(c) Obtains a consent to the proposed action as provided in NRS 143.700 to 143.760, inclusive.

2. The court, in its discretion, may remove the personal representative from office if the personal representative takes a proposed action in violation of NRS 143.745.

(Added to NRS by 2011, 1450)

Forms

NRS 143.800 Letters testamentary or letters of administration. Letters testamentary or letters of administration pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

LETTERS TESTAMENTARY / ADMINISTRATION

On, 20....., the court entered an order admitting the decedent's will to probate and appointing [.....] as personal representative of the decedent's estate. The order includes:

[] full authority for the personal representative to administer the estate pursuant to the Independent Administration of Estates Act.

[] limited authority to administer the estate pursuant to the Independent Administration of Estates Act. (There is no authority, without court supervision, to: (1) sell or exchange real property; (2) grant an option to purchase real property; or (3) borrow money with the loan secured by an encumbrance upon real property.)

[] a directive for the establishment of a blocked account for sums in excess of \$.....;

[] a directive for the posting of a bond in the sum of \$.....; or

[] a directive for both the establishment of a blocked account for sums in excess of \$..... and the posting of a bond in the sum of \$.....

The personal representative, after being duly qualified, may act and has the authority and duties of a personal representative.

In testimony of which, I have this date signed these letters and affixed the seal of the court.

CLERK OF THE COURT

By:

Deputy Clerk
Date:

OATH

I, [.....], whose mailing address is, solemnly affirm that I will faithfully perform according to law the duties of personal representative, and that all matters stated in any petition or paper filed with the court by me are true of my own knowledge or, if any matters are stated on information and belief, I believe them to be true.

[.....], Personal Representative

SUBSCRIBED AND AFFIRMED
before me this (day) of, 20.....
By:.....
NOTARY PUBLIC
County of, State of Nevada

(Added to NRS by 2011, 1450)

NRS 143.805 Notice of proposed action. A notice of proposed action pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

NOTICE OF PROPOSED ACTION Independent Administration of Estates Act

1. The personal representative of the estate of the deceased is
2. The personal representative has authority to administer the estate without court supervision pursuant to the Independent Administration of Estates Act:

[] with full authority pursuant to the Independent Administration of Estates Act; or
[] with limited authority pursuant to the Independent Administration of Estates Act. (There is no authority, without court supervision, to: (1) sell or exchange real property; (2) grant an option to purchase real property; or (3) borrow money with the loan secured by an encumbrance upon real property.)

3. On or after (date), the personal representative will take the following action without court supervision:

Describe in specific terms the proposed action.

If the action involves the sale or exchange of or a grant of an option to purchase real property, provide the sale price, the amount of or method of calculating any commission or compensation of the real estate broker and the value of the property in the probate inventory.

NOTICE: A sale of real property without court supervision means that the sale will NOT be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder.

4. If you OBJECT to the proposed action:
 - (a) Sign the objection form provided with this Notice of Proposed Action and deliver or mail it to the personal representative at the following address (specify name and address);
 - (b) Send your own written objection to the address set forth in paragraph (a), identifying the proposed action and state that you object to it; or
 - (c) Apply to the court for an order preventing the personal representative from taking the proposed action without court supervision.

NOTE: Your written objection or the court order must be received by the personal representative before the date indicated in item 3 or before the proposed action is taken, whichever is later. If you object, the personal representative may take the proposed action only under court supervision.

5. If you approve of the proposed action, you may sign the consent form provided with this Notice of Proposed Action and return it to the address set forth in paragraph (a) of item 4. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

6. If you need more INFORMATION, call: (name) (telephone).

Date:

Personal Representative

(Added to NRS by 2011, 1452)

NRS 143.810 Objection to proposed action. An objection to a proposed action pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

OBJECTION TO PROPOSED ACTION

I OBJECT to the action proposed in item 3 of the Notice of Proposed Action.

NOTICE: Sign and return this form – all pages – to the address set forth in paragraph (a) of item 4 of the Notice of Proposed Action. This form must be received before the date set forth in item 3 of the Notice of Proposed Action, or before the proposed action is taken, whichever is later. (You may want to use certified mail, with return receipt requested. Make a copy of this form for your records.)

Date:

.....
Type or print name

Signature of Objector

(Added to NRS by 2011, 1453)

NRS 143.815 Consent to proposed action. Consent to a proposed action pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

CONSENT TO PROPOSED ACTION

I CONSENT to the action proposed in item 3 of the Notice of Proposed Action.

NOTICE: You may indicate your consent by signing and returning this form – all pages – to the address set forth in paragraph (a) of item 4 of the Notice of Proposed Action. If you do not object in writing or obtain a court order, you will be treated as if you consent to the proposed action.

Date:

.....
Type or print name

Signature of Objector

(Added to NRS by 2011, 1453)

[Rev. 11/21/2013 9:52:42 AM--2013]

CHAPTER 165 - TRUSTEES' ACCOUNTING (UNIFORM ACT)

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<u>NRS 165.134</u>	"Remote beneficiary" defined.
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<u>NRS 165.137</u>	Duties of trustee with regard to providing account; circumstances when account deemed approved by beneficiary.
<u>NRS 165.139</u>	Request for annual account by beneficiary; liability for failure to provide required account.
<u>NRS 165.141</u>	Written demand for account by beneficiary; acceptance or rejection of demand by trustee.
<u>NRS 165.143</u>	Petition to review trustee's rejection of written demand for account; notice; hearing.
<u>NRS 165.145</u>	Providing confidential account; review of confidential account; order granting relief to beneficiary.
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GENERAL PROVISIONS

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TITLE AND DEFINITIONS

NRS 165.010 Short title. This chapter shall be cited as the Uniform Trustees' Accounting Act.
 [24:135:1941; 1931 NCL § 7718.23]

NRS 165.020 Definitions.

1. As used in this chapter:

(a) "Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control by another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly.

(b) "Beneficiary" includes a beneficiary under the trust, a person who is entitled to the trust capital at the termination of the trust and a surety on the bond of the trustee.

(c) "Nontestamentary trustee" means a trustee serving under a trust created in this state otherwise than by a will, or such a trust administered in this state, whether the trustee was appointed by the settlor or by a court or other authority.

(d) "Relative" means a spouse, ancestor, descendant, brother or sister.

(e) "Settlor" includes the creator of a testamentary as well as a nontestamentary trust.

(f) "Testamentary trustee" means a trustee serving under a trust created by a will of a testator domiciled in this state at the time of the testator's death, whose will has been admitted to probate in this state, whether the trustee was appointed by the testator or by a court or other authority.

(g) "Trustee" includes trustees, a corporate as well as a natural person, a successor or substitute trustee, and the successor in interest of a deceased sole trustee.

2. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or a state court other than the district court acting in probate matters, liquidation trusts, or trust for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions.

[1:135:1941; 1931 NCL § 7718]—(NRS A 1999, 2380)

TESTAMENTARY TRUSTS

NRS 165.030 Inventory. Within 75 days after a testamentary trustee receives possession of trust property, the trustee shall file with the court where the will was admitted to probate an inventory under oath, showing by items all the trust property which has come to the possession or knowledge of the trustee.

[2:135:1941; 1931 NCL § 7718.01]—(NRS A 1975, 1781; 1999, 2381)

NRS 165.040 Intermediate accountings: General requirements; exceptions.

1. Except as otherwise provided in subsection 3, within 60 days after the end of the calendar year in which the testamentary trustee had a duty to file an inventory, as prescribed in **NRS 165.030**, the testamentary trustee shall file with the court of the county where the will was admitted to probate an intermediate account under oath covering the year and showing:

(a) The period which the account covers;

(b) The names and addresses of the living beneficiaries known to the trustee, with a statement as to those known to be minors or incapacitated persons, a description of any possible unborn or unascertained beneficiaries, and the name of the surety or sureties on the trustee's bond with the amount of the bond;

(c) In a separate schedule, additions to trust principal during the accounting period with the dates and sources of acquisition, investments collected, sold or charged off during the accounting period, investments made during the accounting period, with the date, source and cost of each, deductions from principal during the accounting period, with the date and purpose of each, and the trust principal, invested or uninvested, on hand at the end of the accounting period, reflecting the approximate market value thereof;

(d) In a separate schedule, the trust income on hand at the beginning of the accounting period, and in what form held, trust income received during the accounting period, when and from what source, trust income paid out during the accounting period, when, to whom and for what purpose, trust income on hand at the end of the accounting period and how invested;

(e) That, without prior court authority, neither any seller to, nor buyer from, the trustee of trust property during the accounting period was at the time of the sale or purchase:

(1) In the case of a corporate trustee, an affiliate or any officer, employee, or nominee of the trust or of an affiliate; or

(2) In the case of a noncorporate trustee, a relative, partner, employer, employee or business associate,
 ➔ but none of the provisions of this paragraph apply to purchases and sales made by brokers for the trustee or to stock exchanges;

(f) A statement of unpaid claims with the reason for failure to pay them, including a statement as to whether any estate or inheritance taxes have become due with regard to the trust property, and if due, whether paid;

(g) A brief summary of the account; and

(h) Such other facts as the court may by rule or court order require.

2. Except as otherwise provided in subsection 3, within 60 days after the end of each calendar year thereafter during the life of the trust, the testamentary trustee then in office shall file with the same court an intermediate account under oath showing corresponding facts regarding the current accounting period.

3. A corporate trustee is not required to file the intermediate accounts specified in subsections 1 and 2. A corporate trustee shall include the information specified in subsection 1 in the final account for the entire time for which the trustee administered the trust.

[3:135:1941; A 1949, 586; 1955, 21]—(NRS A 1983, 1680; 1985, 245; 1999, 2381)

NRS 165.045 Intermediate accountings: Notice; hearing.

1. Every testamentary trustee who files an intermediate account in court shall, within 10 days after the filing, deliver to each known beneficiary a notice of the filing, and if there is to be no court hearing on the account, a summary of the account with an offer to deliver the full account on demand, or if there is to be a court hearing on the account, a copy of the account. The delivery may be:

(a) By handing the notice and summary or full account to the beneficiary personally, or to the beneficiary's guardian or attorney of record; or

(b) By sending them by registered, certified or first-class mail to the beneficiary, guardian or attorney of record, at the last known address of the addressee.

2. Any beneficiary or the trustees may petition the court for a hearing on any intermediate account, and the holding of such a hearing is in the discretion of the court. In the case of the third intermediate accounting, and every 3 years thereafter, the trustee shall petition the court for a hearing on and approval of all unapproved accounts, and shall give each known beneficiary written notice of the petition at least 10 days before the day of the hearing, in the manner prescribed for the delivery of the copy of the account. The date of the hearing on a petition to approve intermediate accounting must be at least 10 days after the latest account was filed. The notice by the trustee of the petition for a hearing on and approval of the account must inform the beneficiaries of the amount of fees to be requested by the trustee on the hearing, and the amount of other fees which the court will then be requested to allow.

[6:135:1941; 1931 NCL § 7718.05]—(NRS A 1969, 95; 1999, 2382)—(Substituted in revision for NRS 165.070)

NRS 165.050 Final accounting: General requirements. Within 60 days after the termination of a testamentary trust, the trustee, and in the case of the transfer of the trusteeship because of the death, resignation, removal, dissolution, merger or consolidation of a sole trustee, the successor in interest of the old trustee, shall file with the court of the county where the will was admitted to probate a final account under oath, showing for the period since the filing of the last account the facts required by NRS 165.040 regarding intermediate accountings, and in the case of termination of the trust, the distribution of the trust property which the accountant proposes to make.

[4:135:1941; 1931 NCL § 7718.03]—(NRS A 1999, 2382)

NRS 165.055 Final accounting: Notice. At least 10 days before the hearing of a petition to approve a final accounting, the testamentary trustee shall deliver to each beneficiary a copy of the account and a notice of the time and place at which the account will be presented for approval, which may not be earlier than 10 days after the account was filed. The delivery may be accomplished in the same manner as with regard to the service of papers on the intermediate accounting. The notice must inform the beneficiaries of the amount of fees to be requested by the trustee in the petition for approval of the account, and the amount of other fees which the court will then be requested to allow.

[7:135:1941; 1931 NCL § 7718.06]—(NRS A 1999, 2383)—(Substituted in revision for NRS 165.080)

NRS 165.060 Accounting of distribution of property; discharge of trustee. Within 30 days after the distribution of the trust property by the testamentary trustee, the trustee shall file in the court where the final account was filed a distributive account of the trust property which the trustee has distributed and the receipts of the distributees. The court shall, as soon as practicable, act upon the account and discharge the trustee if the distributive account is approved.

[5:135:1941; 1931 NCL § 7718.04]—(NRS A 1999, 2382)

NRS 165.090 Vouchers, cancelled checks or other documents supporting account; lost vouchers.

1. Except as provided in subsection 2, when an intermediate or final account is presented for consideration in court, the testamentary trustee is not required to file vouchers with the court to substantiate payments made in the administration of the trust, but shall retain possession of the vouchers and permit examination thereof by the court or any person interested in the estate.

2. The court on its own motion, or upon application ex parte for good cause by any interested person, may order production for examination of vouchers, cancelled checks or other documents that support an account.

3. If any vouchers are lost, or for other good reason cannot be produced on settlement of an account, the payment may be proved by the oath of one competent witness. If it is proved that vouchers for a disbursement have been lost or destroyed, that it is impossible to obtain duplicates, and that the expenses were paid in good faith and were legal charges against the testamentary trust, the trustee must be allowed those expenses.

[8:135:1941; 1931 NCL § 7718.07]—(NRS A 1967, 871; 1999, 2383)

NRS 165.100 Representation of beneficiary. A beneficiary who is a minor or otherwise legally incapacitated, and also possible unborn or unascertained beneficiaries, may be represented in a testamentary trust accounting by a court-appointed attorney or by competent living members of the class to which they do or would belong, or by a guardian ad litem, as the court deems proper. If the residence of any beneficiary is unknown, or there is doubt as to the existence of one or more persons as beneficiaries, the court shall make such provision for service of notice and representation on the accounting as it believes proper.

[9:135:1941; 1931 NCL § 7718.08]—(NRS A 1999, 2384)

NRS 165.110 Proceedings in court. On or before the date of the hearing of a petition for approval of an intermediate or final account, the testamentary trustee shall file an affidavit or certificate proving the timely delivery to the known beneficiaries of the documents required by this chapter or by court order. The procedure as to filing of objections, examination of the trustee and other witnesses, inspection of the trust property, adjournments, reference to a master or other representative of the court, amendment of the account and similar matters, is in the discretion of the court.

[10:135:1941; 1931 NCL § 7718.09]—(NRS A 1999, 2384)

NRS 165.120 Approval or disapproval by court; reopening. The approval by the court of a testamentary trustee's account after due notice and service of papers or representation as provided in this chapter, subject to the right of appeal, relieves the trustee and the sureties of the trustee from liability to all beneficiaries then known or in being, or who thereafter become known or in being, for all the trustee's acts and omissions which are fully and accurately described in the account, including the then investment of the trust funds. The court may disapprove the account and surcharge the trustee for any loss caused by a breach of trust committed by him or her. The account may be reopened by the court on petition of the trustee or a beneficiary, for amendment or revision, if it later appears that the account is incorrect, either because of fraud or mistake. Court approvals or disapprovals of intermediate or final accounts shall be deemed final judgments insofar as the right of appeal is concerned. No account may be reopened because of a mistake more than 1 year after its approval. No beneficiary may move for the reopening of any account because of fraud more than 90 days after the beneficiary discovers the existence of the fraud.

[11:135:1941; 1931 NCL § 7718.10]—(NRS A 1999, 2384)

NONTESTAMENTARY TRUSTS

NRS 165.122 Definitions. As used in NRS 165.122 to 165.149, inclusive, unless the context otherwise requires, the words and terms defined in NRS 165.124 to 165.134, inclusive, have the meanings ascribed to them in those sections. (Added to NRS by 2011, 1471)

NRS 165.124 "Accounting period" defined. "Accounting period" means the period for which the trustee is accounting, and except as otherwise provided in this section, commencing with the first day following the previous accounting period and ending on the date specified by the trustee or on the date specified by the court if the account is ordered by the court. If the account is an initial account, the account commences on the day the trustee became the trustee. (Added to NRS by 2011, 1471)

NRS 165.126 "Broad power of appointment" defined. "Broad power of appointment" means a power of appointment held by a person, commonly referred to as a power holder, that can be exercised in favor of:

1. The power holder, without any restriction or limitation; or
2. Any person other than one or more of the following:
 - (a) The power holder;
 - (b) The power holder's estate;
 - (c) The power holder's creditors; or
 - (d) The creditors of the power holder's estate.

(Added to NRS by 2011, 1471)

NRS 165.128 "Current beneficiary" defined. "Current beneficiary" means a distribution beneficiary to whom or for whose benefit the trustee is authorized or required to make distributions of income or principal at any time during the accounting period.

(Added to NRS by 2011, 1472)

NRS 165.129 "Distribution beneficiary" defined. "Distribution beneficiary" has the meaning ascribed to it in NRS 163.415.

(Added to NRS by 2011, 1472)

NRS 165.132 "Remainder beneficiary" defined. "Remainder beneficiary" means a beneficiary who will become a current beneficiary upon the death of an existing current beneficiary or upon the occurrence of some other event that may occur during the beneficiary's lifetime, regardless of whether the beneficiary's share is subject to elimination under a power of appointment other than a broad power of appointment.

(Added to NRS by 2011, 1472)

NRS 165.134 "Remote beneficiary" defined. "Remote beneficiary" means a beneficiary who may become a current beneficiary upon the death of two or more persons or upon the occurrence of some other event that cannot possibly occur during the beneficiary's lifetime.

(Added to NRS by 2011, 1472)

NRS 165.135 Accounts.

1. The trustee of a nontestamentary trust shall furnish to each beneficiary an account in accordance with the provisions of NRS 165.122 to 165.149, inclusive.

2. At a minimum, the trustee shall furnish an account to each beneficiary in accordance with the terms and conditions stated in the trust instrument. The cost of each account must be allocated to income and principal as provided in the trust instrument.

3. Except as otherwise provided in this section, an account provided by a trustee to a beneficiary who is entitled to an account pursuant to NRS 165.122 to 165.149, inclusive, must include:

- (a) A statement indicating the accounting period;
- (b) With respect to the trust principal:

(1) The trust principal held at the beginning of the accounting period, and in what form held, and the approximate market value thereof at the beginning of the accounting period;

(2) Additions to the trust principal during the accounting period, with the dates and sources of acquisition;

(3) Investments collected, sold or charged off during the accounting period;
 (4) Investments made during the accounting period, with the date, source and cost of each investment;
 (5) Any deductions from the trust principal during the accounting period, with the date and purpose of each deduction; and

(6) The trust principal, invested or uninvested, on hand at the end of the accounting period, reflecting the approximate market value thereof at that time;

(c) With respect to trust income, the trust income:

- (1) On hand at the beginning of the accounting period, and in what form held;
- (2) Received during the accounting period, when and from what source;
- (3) Paid out during the accounting period, when, to whom and for what purpose; and
- (4) On hand at the end of the accounting period and how invested;

(d) A statement of unpaid claims with the reason for failure to pay them; and

(e) A brief summary of the account.

4. In lieu of the information required to be provided by a trustee to a beneficiary pursuant to subsection 3, a trustee may provide to such a beneficiary a statement indicating the accounting period and a financial report of the trust which is prepared by a certified public accountant and which summarizes the information required by paragraphs (b) to (e), inclusive, of subsection 3. Upon request, the trustee shall make all the information used in the preparation of the financial report available to each beneficiary who was provided a copy of the financial report.

5. For the purposes of NRS 165.122 to 165.149, inclusive, the information provided by a trustee to a beneficiary pursuant to subsection 4 shall be deemed to be an account.

(Added to NRS by 1967, 360; A 1991, 821; 1999, 2384; 2011, 1477)

NRS 165.137 Duties of trustee with regard to providing account; circumstances when account deemed approved by beneficiary.

1. The following provisions apply to the extent that the trust instrument does not expressly provide otherwise:

(a) The trustee shall provide an account to each current beneficiary and to each remainder beneficiary upon request but is not required to provide an account to a remote beneficiary;

(b) A trustee is not required to provide an account more than once in any calendar year unless ordered by a court to do so upon good cause shown;

(c) Each account provided to a beneficiary must comply with the provisions of subsection 3 or 4 of NRS 165.135;

(d) In addition to other methods of providing an account to a beneficiary, a trustee may provide an account to a beneficiary by electronic mail or through a secure website on the Internet;

(e) While a trust is revocable, the trustee is not required to provide an account to any person other than a person having the right of revocation except that a trustee of such a trust shall provide an account if:

(1) A court-appointed guardian of the trust estate requests an account on behalf of the settlor; or

(2) The court, in considering a petition filed under NRS 164.015, determines that the settlor is incompetent or is susceptible to undue influence and directs the trustee to provide an account, specifying the nature and extent of the account to be provided and the person or persons who are entitled to receive the account;

(f) While an irrevocable trust in its entirety is subject to a broad power of appointment, the trustee is not required to provide an account for that trust to any person other than the power holder;

(g) The cost of an account must be charged as provided in the Uniform Principal and Income Act (1997) as set forth in chapter 164 of NRS;

(h) An account shall be deemed approved by a beneficiary who received a copy of the account if no written objection thereto is given to the trustee within 120 days after the date on which the trustee provided the account to that beneficiary;

(i) An account shall be deemed approved by a minor, unborn or unknown beneficiary if it is deemed approved as to an adult beneficiary who has a similar interest;

(j) A trustee is not required to provide to a beneficiary information that does not affect the beneficiary's interest in the trust, and an adult beneficiary may, by a written declaration that is signed by that beneficiary, waive the right to receive any information otherwise required to be provided pursuant to the provisions of subsection 3 or 4 of NRS 165.135; and

(k) For the purposes of paragraph (h), a beneficiary shall be deemed to have received a copy of an account provided by the trustee to the beneficiary by electronic mail or through a secure website on the Internet if the trustee:

(1) Sent the beneficiary an electronic mail in a manner that complies with subsection 1 of NRS 719.320 and the beneficiary received the electronic mail in a manner that complies with subsection 2 of NRS 719.320; and

(2) Attached the account to the electronic mail as an electronic record or included in the electronic mail a notice to the beneficiary indicating the availability of the account on the secure website.

2. As used in this section:

(a) "Electronic mail" has the meaning ascribed to it in NRS 41.715.

(b) "Electronic record" has the meaning ascribed to it in NRS 132.117.

(Added to NRS by 2011, 1472)

NRS 165.139 Request for annual account by beneficiary; liability for failure to provide required account. Notwithstanding any provision to the contrary in the trust instrument:

1. If the amount distributable to a current beneficiary is affected by the amount of administrative expenses or is affected by the allocation of receipts and disbursements to income or principal, the trustee shall, upon request, provide an account annually to the current beneficiary. An account provided to a current beneficiary pursuant to this subsection must comply with the provisions of subsection 3 or 4 of NRS 165.135, except to the extent that the current beneficiary agrees otherwise in writing.

2. Except as otherwise provided in this subsection, upon request, an account must be provided annually to each remainder beneficiary of an irrevocable trust. A beneficiary who has been eliminated by the exercise of a power of appointment has no right to request or receive an account pursuant to this subsection.

3. A trustee, at the expense of the trust, may provide:

- (a) An unrequested account to one or more beneficiaries at any time; and
- (b) More information to beneficiaries, including, without limitation, remote beneficiaries, than is required under the trust instrument or by law.

4. Unless the court determines that there is clear and convincing evidence that the trustee was acting in good faith, a trustee who fails to provide an account when required pursuant to NRS 165.122 to 165.149, inclusive, is personally liable to each beneficiary who requested the account in writing for all costs reasonably incurred by each such beneficiary to enforce NRS 165.122 to 165.149, inclusive, including, without limitation, reasonable attorney's fees and court costs. The trustee may not expend trust funds therefor.

(Added to NRS by 2011, 1473)

NRS 165.141 Written demand for account by beneficiary; acceptance or rejection of demand by trustee. A beneficiary may send a written demand for an account pursuant to NRS 165.122 to 165.149, inclusive, to the trustee in accordance with the following procedure:

1. The demand on the trustee must be sent to the trustee or to the trustee's attorney of record and the demand must include, without limitation:

- (a) The identity of the demanding beneficiary, including the beneficiary's mailing address or the address of the beneficiary's attorney;
- (b) The accounting period for which an account is demanded; and
- (c) The nature and extent of the account demanded and the legal basis for the demand.

2. Within 14 days after the trustee has received a demand for an account from a beneficiary, the trustee shall notify the demanding beneficiary of the trustee's acceptance or rejection of the demand. The trustee shall:

- (a) Provide an account within 60 days after receipt of the demand, unless that time is modified by consent of the beneficiary or by order of the court if the trustee accepts the beneficiary's demand for an account; or
- (b) Set forth the grounds for rejecting the beneficiary's demand for an account in the notice of rejection and inform the beneficiary that the beneficiary has 60 days in which to petition the court to review the rejection if the trustee rejects the beneficiary's demand for an account.

3. The demand by the beneficiary and the notice of acceptance or rejection of the demand by the trustee must be delivered by first-class mail, personal delivery or commercial carrier. If delivery of the demand or of the notice is in dispute, proof of delivery may be established by a return receipt or other proof of delivery provided by the person making the delivery or by affidavit of the person who arranged for the delivery setting forth the delivery address, the method of delivery arranged for and the actions taken by that person to arrange for the delivery.

4. If the trustee fails to accept or reject a beneficiary's demand for an account as required by subsection 2, the beneficiary's demand shall be deemed rejected.

(Added to NRS by 2011, 1474)

NRS 165.143 Petition to review trustee's rejection of written demand for account; notice; hearing.

1. A beneficiary whose demand for an account in compliance with NRS 165.141 is rejected or deemed rejected must file a petition seeking the court's review of the trustee's rejection within 60 days after the rejection date as described in subsection 2. A petition filed pursuant to this section may also seek additional relief pursuant to NRS 153.031.

2. If the trustee rejects the beneficiary's demand for an account, the rejection date is the date on which the trustee provides the beneficiary with a notice of rejection. If the trustee fails to accept or reject the beneficiary's demand, the rejection date is deemed to be 14 days after the beneficiary gave the trustee the demand.

3. If the court has not previously accepted jurisdiction over the trust, the beneficiary must petition the court to confirm the appointment of the trustee pursuant to NRS 164.010. Such a petition may be combined with the petition for the court's review of the trustee's rejection.

4. The clerk shall set the petition for hearing, and the petitioner shall give notice to all interested persons for the period and in the manner provided in NRS 155.010. The notice must state the filing of the petition, the object and the time and place of the hearing.

5. If one or more other beneficiaries with interests substantially similar to the petitioner request to join the petition at or before the hearing, the court shall consider the other beneficiaries to be additional petitioners without requiring those beneficiaries to file separate petitions or to give separate notices of the hearing.

6. At the hearing, as to each petitioner, the court may enter an order:

(a) Compelling the trustee to provide an account to the petitioner and specifying the nature and extent of the account to be provided;

(b) Declaring that the petitioner is not entitled to an account and setting forth the reason or reasons the petitioner is not so entitled; or

(c) Compelling the trustee to provide an account to the petitioner as described in paragraph (a) and authorizing an independent review of the account using the procedure set forth in NRS 165.145.

7. Except as otherwise provided in subsection 3 of NRS 153.031 and subsection 4 of NRS 165.139, each petitioner shall pay his or her own expenses, including, without limitation, attorney's fees, that arise in conjunction with filing a petition pursuant to this section.

(Added to NRS by 2011, 1474)

NRS 165.145 Providing confidential account; review of confidential account; order granting relief to beneficiary. If, while considering a petition filed pursuant to NRS 165.143, the court finds that the beneficiary is entitled to an account pursuant to this section and that the trust instrument authorizes or directs the trustee not to provide the account with the disclosures required by this section, the court shall, upon the beneficiary's request, compel the trustee to confidentially provide an account in accordance with the following procedure:

1. If the beneficiary has not been previously provided with a copy of the trust instrument, the court shall direct the trustee to provide the court and each reviewer selected pursuant to subsection 2 with a copy of the trust instrument, or such portions as the court deems to be pertinent to the determination of the adequacy of the trustee's account and to the enforcement of the beneficiary's rights under the trust.

2. The court shall direct the account to be provided confidentially to the court and to one or more reviewers selected by the beneficiary. The court may direct that the account be filed with the court clerk under seal or delivered to the court for in camera review. The account provided must contain the information required by this section without regard to any trust provision restricting the information to be provided to the requesting beneficiary.

3. A reviewer must be either a certified public accountant or an attorney.

4. Subject to the provisions of paragraph (b) of subsection 5, the beneficiary requesting the account must pay for the services of each reviewer. The expense of preparing the account must be paid as an expense of the trust.

5. Each reviewer must agree that:

(a) The account provided must be reviewed confidentially and must not be provided to the beneficiary except as otherwise provided in paragraph (b) or in an order of the court; and

(b) The reviewer's duty is to review the account and to prepare a written report, which must be filed with the court clerk under seal or submitted to the court for in camera review, informing the court if there is anything that would indicate that the trust, as it affects the beneficiary's interest, has not been or may not have been properly administered or accounted for in accordance with applicable law, the trust instrument and generally accepted accounting principles applicable to trusts. At the same time a copy of the reviewer's report is provided to the court, a copy of each reviewer's report must be delivered to the trustee or to the trustee's attorney of record.

6. The trustee may submit to the court and to each reviewer an objection to the report of a reviewer within 10 days after the trustee received the reviewer's report. The trustee shall submit the objections to the court and to each reviewer in the same manner as the trustee provided the account. The court may consider each reviewer's report and the objections of the trustee with or without a hearing. If the court, after considering the report of any reviewer and any objection submitted by the trustee, finds that the trust, as it affects the beneficiary's interest, has not been or may not have been properly administered or accounted for in accordance with applicable law, the trust instrument and generally accepted accounting principles applicable to trusts, in addition to any other relief granted by the court pursuant to NRS 153.031 or 165.143, the court shall enter an order granting the relief necessary to protect the beneficiary's interests or to allow the beneficiary to enforce his or her rights under the trust.

7. An order granting relief described in subsection 6 may include one or more of the following:

(a) A directive to the trustee to provide the beneficiary an account which complies with the provisions of subsection 3 or 4 of NRS 165.135, together with such additional information as the beneficiary may require to properly enforce his or her rights under the trust;

(b) A directive to the trustee to provide further annual accounts required under this section without further court order;

(c) A directive to the trustee to provide the court and each reviewer a more complete account or such additional information as the court deems necessary to determine if the trust is being properly administered in compliance with the trust instrument and applicable law;

(d) A directive to the trustee to take action to remedy or mitigate the effects of any improper administration of the trust;

(e) A declaration relieving each reviewer from any further obligation of confidentiality; and

(f) Any such additional relief as the court deems proper to ensure the trustee's compliance with the trust instrument and applicable law and to allow enforcement of the beneficiary's rights.

8. If the beneficiary is granted any relief by the court on the basis that the trust was not properly administered or accounted for, the provisions of subsection 3 of NRS 153.031 and subsection 4 of NRS 165.139 apply with regard to the reimbursement of costs incurred by the beneficiary.

(Added to NRS by 2011, 1475)

NRS 165.147 Requirement to provide copy of trust instrument to beneficiary entitled to receive account.

1. Upon request by a beneficiary who is entitled to receive an account pursuant to the terms of NRS 165.122 to 165.149, inclusive, a trustee shall provide a copy of the trust instrument to that beneficiary except as expressly provided otherwise in the trust instrument.

2. Notwithstanding the provisions of subsection 1 or any provision to the contrary in the trust instrument, the court may direct the trustee to provide a beneficiary who is entitled to receive an account pursuant to the terms of NRS 165.122 to 165.149, inclusive, a copy of the trust instrument, or such portions as the court deems to be pertinent to the determination of the adequacy of the trustee's account and to the enforcement of the beneficiary's rights under the trust.

3. Except as otherwise provided in NRS 165.145 or by order of the court for good cause shown, the trustee must not be compelled to provide a copy of the trust instrument to a person who is not a beneficiary of the trust or a person who is not entitled to an account of the trust pursuant to the provisions of NRS 165.122 to 165.149, inclusive.

(Added to NRS by 2011, 1476)

NRS 165.149 Persons with power of appointment. Except as otherwise provided in a trust instrument, a person holding a power of appointment pursuant to a nontestamentary trust does not owe a fiduciary duty to any person and is not liable to any person with respect to the exercise or nonexercise of the power of appointment.

(Added to NRS by 2011, 1477)

GENERAL PROVISIONS

NRS 165.150 Duties of clerks and courts. The clerks of the district courts shall severally keep records of all trust inventories and accounts filed with their respective courts. Those courts shall, upon learning that a trustee subject to their respective jurisdictions has failed to perform any duty placed upon the trustee by this chapter, issue a citation or order to the trustee requiring him or her to perform that duty.

[14:135:1941; 1931 NCL § 7718.13]—(NRS A 1999, 2385)

NRS 165.160 Trust instrument.

1. Except as otherwise provided by a specific statute, federal law or common law, the terms of a trust instrument may expand, restrict, eliminate or otherwise vary the rights and interests of beneficiaries in any manner that is not illegal or against public policy, including, without limitation, specifying:

- (a) The right to be informed of the beneficiary's interest for a period of time;
- (b) The grounds for removing a fiduciary;
- (c) The circumstances, if any, in which the fiduciary must diversify investments; and
- (d) A fiduciary's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from the trust instrument.

2. Nothing in this section shall be construed to:

- (a) Authorize the exculpation or indemnification of a fiduciary for the fiduciary's own willful misconduct or gross negligence; or
- (b) Preclude a court of competent jurisdiction from removing a fiduciary because of the fiduciary's willful misconduct or gross negligence.

3. The rule that statutes in derogation of the common law are to be strictly construed has no application to this section. This section must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.

[15:135:1941; 1931 NCL § 7718.14]—(NRS A 2009, 801; 2011, 1478)

NRS 165.170 Power of beneficiary. Any beneficiary, if of full age and sound mind, may, if acting upon full information, by written instrument delivered to the trustee, excuse the trustee as to such beneficiary from performing any of the duties imposed on the trustee by this chapter or exempt the trustee from liability to such beneficiary for failure to perform any of the duties imposed upon the trustee by the terms of this chapter.

[16:135:1941; 1931 NCL § 7718.15]

NRS 165.180 Accountability of trustees at other times. This chapter does not abridge the power of any court of competent jurisdiction to require testamentary or nontestamentary trustees to file an inventory, to account, to exhibit the trust property, or to give beneficiaries information or the privilege of inspection of trust records and papers, at times other than those prescribed in this chapter, or abridge the power of the court for cause shown to excuse a trustee from performing any or all of the duties imposed on the trustee by this chapter. This chapter does not preclude the trustee from accounting voluntarily even if he or she is not required to do so by this chapter or by court order.

[17:135:1941; 1931 NCL § 7718.16]—(NRS A 1999, 2385)

NRS 165.190 Enforcement. A beneficiary may petition the court having jurisdiction over the accountings, as prescribed in this chapter, for an order requiring the trustee to perform the duties imposed upon the trustee by this chapter.

[18:135:1941; 1931 NCL § 7718.17]—(NRS A 1999, 2385)

NRS 165.200 Penalties for violation of chapter. When a trustee fails to perform any of the duties imposed upon the trustee by this chapter the trustee may be removed, the trustee's compensation may be reduced or forfeited, or other civil penalty inflicted, in the discretion of the court.

[19:135:1941; 1931 NCL § 7718.18]

NRS 165.210 Form of inventory and accounts; compensation of attorney for intermediate and final accounts.

1. The courts given jurisdiction over accountings by this chapter may prescribe forms in which inventories and accounts shall be presented.

2. An attorney for a trustee shall be entitled to receive a reasonable compensation, to be allowed by the court, for services rendered to the trustee in the preparation and presentation of intermediate and final accounts.

[10.5:135:1941; added 1955, 21] + [20:135:1941; 1931 NCL § 7718.19]

NRS 165.220 Oaths. Whenever an oath or affirmation is required of a trustee under this chapter, it may be made in the case of a corporate trustee by an officer of such corporate trustee, and in the case of cotrustees acting jointly by any one of the cotrustees.

[21:135:1941; 1931 NCL § 7718.20]

NRS 165.230 Charitable trusts. This chapter shall apply to charitable trusts. Documents required to be delivered to beneficiaries of such trusts shall be delivered to the Attorney General.

[22:135:1941; 1931 NCL § 7718.21]

NRS 165.240 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.
[23:135:1941; 1931 NCL § 7718.22]



Part 5. Collecting Process

Chapter 17. Legal Reference Guide for Revenue Officers

Section 13. Insolvencies and Decedents' Estates

5.17.13 Insolvencies and Decedents' Estates

- 5.17.13.1 Insolvencies and Decedents' Estates Overview
- 5.17.13.2 Priority of Government Claims Under 31 USC § 3713(a), the Federal Priority Statute
- 5.17.13.3 Exception for Certain Interests That Would Have Priority Under the Federal Tax Lien Act; United States v. Estate of Romani
- 5.17.13.4 Other Exceptions
- 5.17.13.5 Administrative Expenses and Family Allowances
- 5.17.13.6 Filing the Proof of Claim
- 5.17.13.7 Personal Liability of the Fiduciary Under 31 USC § 3713(b)
- 5.17.13.8 Asserting Personal Liability Against a Fiduciary
- 5.17.13.9 Decedents' Estates
- 5.17.13.10 Receiverships
- 5.17.13.11 Assignments for the Benefit of Creditors
- 5.17.13.12 State-law Corporate Dissolutions

Manual Transmittal

July 09, 2012

Purpose

(1) This transmits revised IRM 5.17.13, Legal Reference Guide for Revenue Officers, Insolvencies and Decedents' Estates.

Background

This section provides guidance on collecting tax liabilities in cases of probate and insolvency proceedings.

Material Changes

- (1) IRM 5.17.13.1 - added cross reference to IRM 5.9.20, Non-Bankruptcy Insolvencies, and 5.5, Decedent Estates and Estate Taxes.
- (2) IRM 5.17.13.3 - added note discussing case in which the holding in Romani was not applied because the IRS was not relying on a claim for which a tax lien arose.
- (3) Material in 5.17.13.5 has been incorporated into 5.17.13.2.
- (4) IRM 5.17.13.6 - revised to clarify the IRS may, in its discretion, allow payment of administrative expenses unless the amounts are excessive or unreasonable. References that the IRS should concede expenses have been removed. Also added cross references to applicable provisions in IRM 5.5.2, *Probate Proceedings* and the State Law Guides on the My SB/SE Counsel website.
- (5) IRM 5.17.13.7 - added references to IRM procedures for filing proofs of claim in non-bankruptcy insolvency proceedings and probate proceedings; revised discussion of advantages and disadvantages for filing proofs of claim; added note regarding importance of timely removing state court proceedings to federal district court; and added references to newly revised IRM 5.5.4, *Proof of Claim Procedures in Decedent Cases*.
- (6) IRM 5.17.13.8(6) - clarified that as a requirement to impose personal liability, the Government must show that the fiduciary had either actual knowledge of the tax liability or knowledge of such facts as would put a reasonably prudent person on notice as to the existence of the tax debt before making the challenged distribution or payment. Added new (7) to address sending notice to successor administrator.
- (7) IRM 5.17.13.10.3 - revised to clarify that the Federal Priority Statute, 31 USC § 3713(a), applies when the assets of a decedent's estate in the custody of the executor or administrator are not enough to pay all debts of the decedent; and that the assets of the estate will include any claims the executor has against holders of property that can be used to pay the tax liability.
- (8) IRM 5.17.13.12.1 - clarifies that an assignee for the benefit of creditors is subject to the federal tax lien *even though a Notice of Federal Tax Lien has not been filed*.
- (9) IM 5.17.13.11.2(2) - changed "must" to "may" because IRC § 6871(a) provides that the IRS "may" make an assessment under this provision.
- (10) Editorial changes were made throughout this section to add or update cross-references to applicable IRM provisions, to clarify provisions by revising or removing confusing, redundant or outdated information, and to update or correct citations.

Effect on Other Documents

This supersedes IRM 5.17.13 dated October 16, 2007.

Audience

SB/SE Revenue Officers

Effective Date

(07-09-2012)

Scott D. Reisher
Director, Collection Policy
Small Business/Self-Employed

5.17.13.1 (07-09-2012)
Insolvencies and Decedents' Estates Overview

1. This section discusses how to collect tax liabilities in insolvency proceedings. IRM 5.17.13.1 through IRM 5.17.13.9 discuss general principles, and IRM 5.17.13.10 through IRM 5.17.13.13 discuss specific types of insolvency proceedings.
 - A. Examples of insolvency proceedings include:
 - *Receiverships*, IRM 5.9.20.2
 - *Assignments for the Benefit of Creditors*, IRM 5.9.20.3
 - *Corporate Dissolutions*, IRM 5.9.20.4
 - Insolvent decedents' estates, in IRM 5.5.2, *Probate Proceedings*
 - B. These distinct proceedings have a significant similarity. In each one, a fiduciary acquires property of a debtor or decedent, which becomes "property of the estate." The fiduciary then has the duty of administering and distributing the property of the estate.
 - C. The term "insolvency proceedings" does not refer to bankruptcy cases. The Bankruptcy Code (Title 11 of the United States Code (USC)) governs bankruptcy cases, which are addressed in IRM 5.17.8 through IRM 5.17.11 of this Handbook, and also in IRM 5.9, *Bankruptcy and Other Insolvencies*. Bankruptcy cases are under the jurisdiction of the federal courts.
 - D. Insolvency proceedings are usually under the jurisdiction of state courts (except for federal receiverships). Insolvent debtors and unsecured creditors usually prefer the bankruptcy procedures. Therefore, bankruptcy cases are more common than insolvency proceedings.
2. In the case of an insolvency, the IRS may be entitled to payment of federal taxes ahead of other creditors under the Federal Priority Statute, 31 USC § 3713(a). If a fiduciary pays other claimants ahead of the IRS in violation of the Federal Priority Statute, then the fiduciary might be personally liable under 31 USC § 3713(b).

Note:

The IRS may also be able to assert transferee liability against persons who receive property from insolvent estates. See IRM 5.17.14, *Fraudulent Transfers and Transferee and Other Third Party Liability*.

5.17.13.2 (07-09-2012)**Priority of Government Claims Under 31 USC § 3713(a), the Federal Priority Statute**

1. Under 31 USC § 3713(a)(1)(A), the Federal Priority Statute, the Federal Government is entitled to have its claims paid first when a person indebted to the Government is insolvent and:
 - A. a debtor without enough property to pay all debts makes a voluntary assignment of property;
 - B. property of an absent debtor is attached; or
 - C. an "act of bankruptcy is committed."
- Note:**
- "Act of bankruptcy", defined below in 5.17.13.2.3, does not refer to cases brought under Title 11 (the Bankruptcy Code). The Federal Priority Statute does not apply to cases under Title 11. In bankruptcy cases, the priorities in the bankruptcy laws apply rather than the Federal Priority Statute.
2. Section 3713(a)(1)(B) of the Federal Priority Statute covers decedents' estates. The Federal Government is entitled to have its claims paid first if the estate of the deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor. This means, among other things, that the Government is entitled to be paid before the heirs receive an inheritance.
 3. Pursuant to the Federal Priority Statute, the general rule is that in an insolvency proceeding or a decedent's estate case, the fiduciary must pay a federal claim before other claims.

5.17.13.2.1 (07-09-2012)**Insolvency**

1. "Insolvent" under 31 USC § 3713(a) refers to "balance sheet" insolvency. This occurs when the debtor's liabilities exceed the debtor's assets. *Lakeshore Apartments, Inc. v. United States*, 351 F.2d 349 (9th Cir. 1965); *United States v. Golden Acres*, 684 F.Supp. 96 (D.Del. 1988); *United States v. Blumenfeld*, 128 B.R. 918 (E.D. Pa. 1991).
2. The inability or failure to pay debts as they become due does not, by itself, constitute insolvency under 31 USC § 3713(a). *United States v. Oklahoma*, 261 U.S. 253 (1923). For example, the debtor might have far more assets than liabilities, but may not be able to liquidate the assets to pay off the debts on time.
3. The relevant time for testing insolvency is at the time of distribution of assets. Thus, although an estate might not be insolvent at the commencement of a proceeding, the federal priority will arise if the estate is insolvent when assets are later distributed. *Schwartz v. Commissioner*, 560 F.2d 311 (8th Cir. 1977); *Hatch v. Morosco Holding Co.*, 61 F.2d 944 (2d Cir. 1932).

5.17.13.2.2 (07-09-2012)**Transfer of Assets**

1. Section 3713(a)(1)(A)(i) applies where the debtor's property is transferred to a fiduciary in a legal proceeding brought to liquidate the insolvent debtor's property and pay the debtor's debts. *United States v. Oklahoma*, 261 U.S. 253 (1923); *Bramwell v. United States Fidelity and Guaranty Co.*, 269 U.S. 483 (1926). Section 3713(a)(1)(A)(i) applies to the following proceedings:
 - general assignments for the benefit of creditors (a debtor transfers all property to an assignee)
 - general receiverships (a receiver takes control of all of the debtor's assets)
 - liquidations of insolvent corporations, either judicial (fiduciary appointed by a court) or nonjudicial (officers of the corporation act as the fiduciaries)
2. Section 3713(a)(1)(A)(ii) applies when the absent debtor's property is administered for all of his creditors. See *United States v. Clover Spinning Mills Co.*, 373 F.2d 274 (4th Cir. 1966). The term "attachment" in this section "is not the familiar attachment made at the instance of and for the benefit of one creditor, ..., but to a form which was in use in some states when the federal statute was enacted in the late 18th century, by which the absconder's property was sequestered and administered for the benefit of all his creditors." William T. Plumb, *Federal Tax Liens*, 195, n. 23 (1981).

5.17.13.2.3 (07-09-2012) Act of Bankruptcy

1. Section 3713(a)(1)(A)(iii) applies when an act of bankruptcy is committed. In defining "act of bankruptcy," courts look to the definition in the Bankruptcy Act of 1898, (11 U.S.C. § 21a) (repealed 1978), even though the Bankruptcy Reform Act of 1978 (Bankruptcy Code) generally superseded the Bankruptcy Code and the concept of "acts of bankruptcy" is not used in the Bankruptcy Code. The Bankruptcy Act of 1898 stated that: Acts of bankruptcy by a person shall consist of his having:
 - concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 67 or 70 of this Act; or
 - made or suffered a preferential transfer, as defined in subdivision a of section 60 of this Act; or
 - suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or
 - made a general assignment for the benefit of his creditors; or
 - while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or
 - admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt.
2. Under the definition, an act of bankruptcy may arise even when there has been no transfer of property to a fiduciary, and multiple acts of bankruptcy may exist in one transfer. In *United States v. Golden Acres, Inc.*, 684 F.Supp. 96 (D. Del. 1988), an insolvent corporation owing a debt to the United States paid \$466,760.54 to its sole officers and directors. In doing so it committed three independent acts of bankruptcy: it made a preferential transfer of assets to its sole officers and directors; it conveyed property with the intent to hinder, delay, or defraud any creditor, which was a fraudulent conveyance; and it conveyed property without receiving fair consideration, which also was a fraudulent conveyance. The district court imposed liability on the payees/officers under section 3713(b) because they were representatives of Golden Acres and were "liable to the extent of the payment for unpaid claims of the government."
3. In a lawsuit asserting an act of bankruptcy, care must be taken to ensure that all of the elements for a particular act of bankruptcy are proven. For example, in *Jonathan's Landing, Inc. v. Townsend*, 960 F.2d 1538 (11th Cir. 1992), the district court granted the Government's motion for summary judgment, which asserted that the third act of bankruptcy applied to the debtor: the debtor suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint. The Eleventh Circuit reversed the district court, reasoning that summary judgment should not have been granted because the Government had failed to prove that the taxpayer-debtor had been insolvent prior to committing an act of bankruptcy.
4. A Section 3713 claim against the debtor-taxpayer does not preclude the Government from also asserting claims under other section of the Internal Revenue Code, such as IRC §§ 7501 and 6672. In *Jonathan's Landing*, 960 F.2d at 1546 n.40, the Eleventh Circuit was "puzzled" as to the Government's failure to assert additional claims against the debtor under IRC §§ 7501 and 6672.

5.17.13.2.4 (07-09-2012) Debt Due the United States

1. **For the purposes of the Federal Insolvency Statute, taxes are "debts" due the United States.** *United States v. Estate of Romani*, 523 U.S. 517, 525 n.8 (1998); *Massachusetts v. United States*, 333 U.S. 611, 625-625(1947).
 - A. **Taxes are "debts" even if they are unassessed. It is sufficient if the tax liability has accrued.** *Viles v. Commissioner*, 233 F.2d 376 (6th Cir. 1956); see *Estate of Frost v. Commissioner*, T.C. Memo. 1993-94.
 - B. The Federal Priority Statute applies not only to tax liabilities incurred before the proceeding, but also to tax liabilities incurred after the proceeding commences (i.e., taxes incurred by a receiver in operating a business). See IRM 5.17.13.6 (9), below.

5.17.13.3 (07-09-2012) Exception for Certain Interests That Would Have Priority Under the Federal Tax Lien Act; *United States v. Estate of Romani*

1. The Federal Priority Statute does not apply if, before the insolvency proceeding begins, another person has obtained an interest in the property that would prevail over the federal tax lien under IRC § 6323. *United States v. Estate of Romani*, 523 U.S. 517 (1998).
 - A. If the interest of a creditor prevails over the federal tax lien under IRC § 6323(a), (b), (c), or (d), then the federal claim does not have priority over the creditor's interest.
 - B. Under IRC § 6323(a), the following creditors prevail unless the IRS has filed a Notice of Federal Tax Lien: (a) purchasers, (b) holders of security interests, (c) mechanic's lienors, and (d) judgment lien creditors. Generally, creditors meeting the requirements in IRC § 6323(a), (b), (c), or (d), will have a higher priority claim than the IRS if the creditor's interest arises prior to the insolvency proceeding and prior to the filing of the Notice of Federal Tax Lien. See Note, below.
 - C. In *Estate of Romani*, the Supreme Court held that a judgment lien creditor who recorded its liens on real property before the IRS filed its Notices of Federal Tax Lien prevailed over the IRS's tax claims in an insolvent decedent's estate case.
 - D. The general rule is that if the creditor would prevail against the IRS under IRC § 6323 outside of an insolvency, it will also prevail against the IRS in the insolvency.
 - E. Under *Estate of Romani*, many priority disputes in insolvency proceedings will be resolved by determining lien priorities under IRC § 6323.

Note:

The *Romani* case applies only where the Government is relying on a claim for which a lien arose under IRC § 6321 and the competing interest is one identified in § 6323. In *Law Offices of Jonathan A. Stein v. Cadle Company*, 250 F.3d 716 (9th Cir. 2001), the Service levied the compensation of the president and CEO of an insolvent company. The company ignored the levy and continued to pay the president. The Service then sued the company to enforce the levy, and obtained a judgement under IRC § 6332(d). A third party also obtained a judgement against the company. The company then received a damages award to which the Service and the third party both claimed priority. In the ensuing interpleader proceeding, the Government claimed priority under 31 USC § 3713. The third party claimed priority by virtue of a judgement lien under IRC § 6323. The district court held for the Government under 31 USC § 3713, and the appellate court affirmed, finding that under *Romani*, the judgement lien would have priority if the United States were relying on claim for which a tax lien arose under IRC § 6321. However, in this case, the IRS did not have a federal tax lien claim against the company, so section 6323 did not apply. The Government won because section 3713 gave its claim priority over the third party's judgement lien.

2. If a competing interest does not have priority over a tax claim under IRC § 6323, the *Romani* exception would not apply.
 - A. For example, the priority of a federal tax lien against a state tax lien is not governed by IRC § 6323. Instead, the Federal Priority Statute applies and the federal tax claim has priority over a state tax claim for distribution from an insolvent estate. This is true even if outside of insolvency the state claim would prevail because it was choate before the federal lien arose. *Straus v. United States*, 196 F.3d 862 (7th Cir. 1999).

- B. Persons such as heirs and devisees who receive distributions from decedents' estates generally do not have priority interests under IRC § 6323(a). Therefore, their interests are generally subject to the federal priority.

5.17.13.4 (07-09-2012) Other Exceptions

1. In *United States v. Fabe*, 508 U.S. 491 (1993), the Supreme Court held that the federal priority yields if it interferes with the McCarran-Ferguson Act (15 USC § 1011 et seq.). The McCarran-Ferguson Act provides that no federal law can supersede any state law regulating the insurance business. In *Fabe*, the Federal Priority Statute did not trump state law that subordinated federal tax claims to insurance claims of policyholders in the liquidation of an insolvent insurance company.
2. The Service may, in limited circumstances, cede priority for purposes of funding claims for family allowances, funeral expenses, or administrative expenses, even though debts to the Government technically have priority over these claims.

Note:

The Federal Priority Statute does not apply in bankruptcy cases (i.e., bankruptcy petitions filed under Title 11).

5.17.13.5 (07-09-2012) Administrative Expenses and Family Allowances

1. Although the Federal Priority Statute, 31 USC § 3713, does not provide for any exceptions to the Government's priority, courts have held that certain classes of claim can be paid before the tax debt. These excepted classes include administrative expenses, funeral expenses, and homestead or family allowances.
2. Administrative expenses are expenses incurred for the general welfare of creditors. Administrative expenses include:
 - court costs
 - reasonable compensation for the fiduciary and fiduciary's attorney
 - expenses incurred to collect and preserve assets
3. Administrative expenses must be examined to determine if the expense is reasonable and necessary to the administration of the estate. For more information, see IRM 5.5.2.6, *Administrative Expenses*. See also IRM 5.5.2.6.1.1, *Necessary Administrative Expenses* for factors to consider when determining what expenses should be allowed as necessary administrative expenses. For example, reasonable and necessary expenses should not be permitted ahead of a tax lien if such expenses are already covered by an insurance policy, trust or other similar benefit that covers such costs. See IRM 5.5.2.7, *Insurance Policies*.
4. Generally, state statutes provide limits on the amounts allowed for payment of reasonable administrative expenses. Some state law guidelines are based on the size of the estate, other provisions allow a set percentage to be paid as an allowable expense. Some expenses can be negotiated to a certain extent by the estate administrator, others, such as court filing fees, are not negotiable. State standards should be considered, but are not controlling, when determining whether administrative expenses are reasonable. See IRM 5.5.2.6.1, *Reasonable Administrative Expenses*. Information regarding a particular state's laws may be found in the State Law Guides on the My SB/SE Counsel website under the link for law guides, <http://ocintranet.prod.irs.counsel.treas.gov/OrgStrat/Offices/sbse/Pages/LawGuides.aspx>.
5. The family allowance is not considered an administrative expense of the estate. In limited circumstances, the Service can exercise discretion to allow payment ahead of a tax lien. Consideration needs to be given to circumstances such as whether there are minor children who do not have another parent to support them. For example, if the surviving parent has sufficient income, trust distributions or life insurance proceeds to support minor or incapacitated children, this payment would not be allowed ahead of the tax lien.

Note:

A federal tax lien, arising before death, continues in the property to which it attached and therefore is prior to funeral costs, the surviving spouse's exempt property allowance (widow's allowance) and any support allowances (for the surviving spouse and minor children during administration of the estate). Consult with Area Counsel if you have any questions regarding the allowance and payment of such expenses ahead of IRS claims.

6. Fees paid to the fiduciary or the fiduciary's attorney may be deemed unreasonable if:
 - the fees are excessive in amount, or
 - they are incurred in support of unreasonable activity, e.g., positions that are frivolous or without substantial merit,
 - or they have been estimated or not incurred.

Reasonable attorney fees are those incurred for preserving or marshalling estate assets. See IRM 5.5.2.6.1.1(1), *Necessary Administrative Expenses*. In proceedings other than probate proceedings, such as receiverships or corporate dissolutions, the Government may also argue that "reasonable" fees are limited to fees that benefit the Government as the priority claimant (e.g. fees incurred to sell receivership assets or to pursue claims against third parties).

7. The expenses of a decedent's last illness are a debt of the decedent and not entitled to priority under section 3713. Rev. Rul. 80-112, 1980-1 C.B. 306.
8. Taxes incurred by the estate during its administration should be paid as an administrative expense of the estate. See IRM 5.5.2.6.1.1.1, *Claiming Taxes as an Administrative Expense*. It is less clear whether administrative taxes, taxes incurred during a receivership, are entitled to priority by virtue of the Federal Priority Statute or by virtue of being "administrative" expenses. Consult local Area Counsel if a question involving the priority of administrative taxes arises.

5.17.13.6 (07-09-2012) Filing the Proof of Claim

1. The IRS may file a proof of claim to collect any tax liability from the assets in a judicial insolvency proceeding. See IRM 5.9.20, *Non-Bankruptcy Insolvencies*, for procedures for filing claims in certain types of non-bankruptcy insolvency proceedings. See IRM 5.5.4.6, *Proof of Claim Procedures* for procedures for filing proofs of claim in decedent cases.

Note:

To share in distribution from the probate estate, you must file a timely claim against the estate, because most probate courts will not consider payment of a debt unless a timely claim is submitted.

2. The time for filing a claim will generally be specified either by state law or by notice from the court. State statutes of limitation, including those fixing a time for filing proofs of claim in a decedent's estate or other proceeding, do not apply to the United States. *United States v. Summerlin*, 310 U.S. 414 (1940); *United States v. Bushlow*, 832 F. Supp. 574 (E.D.N.Y. 1993); see also *Bresson v. Commissioner*, 213 F.3d 1173 (9th Cir. 2000), affirming 111 T.C. 172 (1998).

Note:

The IRS should file a proof of claim within the time specified by state law to avoid litigation and ensure that taxes will be considered in distribution of estate assets. See IRM 5.5.4.7, *Comply with Bar Date*.

3. Once the United States files a proof of claim in a judicial proceeding, such as a probate or receivership proceeding, the court arguably has jurisdiction to determine the merits of the tax liability. It is generally not in the IRS's interests for a state court to rule on the merits of a tax liability.

Note:

Time is of the essence when seeking to remove any dispute regarding the merits of a federal tax assessment to federal district court. Generally, a notice of removal must be filed within thirty days of receipt by the IRS of the initial pleading raising such an issue. See IRM 5.5.2.10(4)(i), *Referral to Area Counsel for Judicial Action*, and IRM 25.3.3.3, *Removal of Action from State Court*. It is essential that disputes regarding the merits of a tax assessment be litigated in federal district courts whenever possible.

4. There are several advantages to the Service timely filing a proof of claim, including the following:
 - A. It provides notice of the tax liability to the fiduciary. Notice is a prerequisite needed to establish personal liability under USC § 3713(b).
 - B. It entitles the IRS to payment from the estate.
 - C. It avoids the necessity of tracing assets to collect taxes by levy or through transferee liability.
 - D. The IRS will receive notices of hearings and other matters in the proceeding.
5. The disadvantage of filing a proof of claim is the possibility that the state court may adjudicate the merits of the claim. Where it is determined that filing a proof of claim will be disadvantageous to the Service, the following alternatives to filing a claim may be taken:
 - A. The Government can give notice to the fiduciary of the tax liability by sending Form 10492, *Notice of Federal Taxes Due*, and rely on the fiduciary's personal liability under 31 USC § 3713(b) to encourage them to pay the claim. See IRM 5.17.13.8 below.
 - B. The United States may bring a suit to reduce the tax assessments to judgement in federal district court. To the extent that the federal court enters a final order before a state court does, the state court will be bound by the federal court's order.
 - C. The IRS may be able to assert transferee liability against the recipient of assets from an insolvent estate. See IRM 5.17.14, *Fraudulent Transfers and Transferee and Other Third Party Liability*.
6. Prepetition and post-petition interest and penalties are covered by the federal priority under 31 USC § 3713(a). See Rev. Rul. 87-99, 1987-2 C.B. 291 (the IRS maintains that the statute gives priority to post-petition interest if the IRS has a lien and its claim is oversecured. Oversecured means the value of the property securing the IRS's claim exceeds the underlying tax liability).

Note:

Some courts, however, have limited interest on debts incurred before the insolvency to the interest that accrued up to the commencement date of the proceeding. *Lapadula & Villani, Inc. v. United States*, 563 F. Supp. 782, 785 n.7 (D. N.Y. 1983) citing *United States v. Sullivan*, 254 F. Supp. 254 (D. R.I. 1966) (analogizing the Federal Priority Statute to a bankruptcy proceeding).

See also IRM 5.5.4.8, *Claiming Penalty and Interest*, for information on claiming penalties and interest in decedent cases.

5.17.13.7 (07-09-2012)

Personal Liability of the Fiduciary Under 31 USC § 3713(b)

1. 31 USC § 3713(b) imposes personal liability on a fiduciary or representative of an insolvent person or estate if the fiduciary:
 - A. has knowledge of the federal tax debt, and
 - B. pays other debts before paying the priority tax claims.
2. Personal liability is limited to the value of the assets that the fiduciary distributes in violation of federal priority. Section 3713(b) states: "A representative of a person or an estate (except a trustee under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government."
3. Examples of the types of fiduciaries include executors, administrators, and personal representatives of insolvent estates; receivers; assignees; and officers of insolvent corporations. See IRC § 7701(a)(6). The common characteristic of persons liable under 31 USC § 3713(b) is that "they are given possession and control of assets of debtors and are charged with the payment of debtors' obligations consistent with the creditors' rights and priorities." *King v. United States*, 379 U.S. 329 (1964); *United States v. Whitney*, 654 F.2d 607 (9th Cir. 1981); *United States v. Crocker*, 313 F.2d 946, 949 (9th Cir. 1963) (holding the fact that a receiver is appointed by the court does not make the receiver immune from liability).
4. Fiduciaries generally are charged with:
 - A. gathering the debtor's or decedent's assets;
 - B. administering the assets, including liquidating the assets as appropriate;
 - C. paying creditors; and
 - D. distributing any remaining assets back to the debtor, heirs, or beneficiaries.

Note:

Section 3713(b), like 31 USC § 3713(a), does not apply to bankruptcy trustees in cases arising under Title 11 (the Bankruptcy Code).

5. **Personal liability under 31 USC § 3713(b) only applies if the fiduciary uses estate assets to pay a debt in violation of federal priority under 31 USC § 3713(a).**
 - A. **Personal liability only arises if the estate is insolvent.**
 - B. **There is no personal liability if debts are paid ahead of federal claims if such debts have priority over the United States under IRC § 6323.**
6. **Knowledge of the federal claim is a requirement of personal liability.** *United States v. Coppola*, 85 F.3d 1015 (2d Cir. 1996); *Want v. Commissioner*, 280 F.2d 777 (2d Cir. 1960); *Leigh v. Commissioner*, 72 T.C. 1105 (1979). The Government must show that the fiduciary had either actual knowledge of such facts as would put a reasonably prudent person on notice as to the existence of the tax debt before making the challenged distribution or payment. *United States v. Coppola*, 85 F.3d at 1020 (2d Cir. 1996); *Bank of the West v. Comm'r*, 93 T.C. 462 (1989). Thus, it is important to give notice of the tax debt to the fiduciary before any assets are distributed.
7. If a successor administrator is appointed, notice of taxes due should be sent to the new administrator to make them aware of the outstanding tax liability. If notice was sent to the prior administrator, send a copy of that notice to the successor administrator.
8. **Personal liability under 31 USC § 3713(b) is the "muscle" behind the federal priority under 31 USC § 3713(a).** Under 31 USC § 3713(b), the fiduciary must first pay known priority debts of the United States or risk personal liability.

5.17.13.8 (07-09-2012)

Asserting Personal Liability Against a Fiduciary

1. The IRS can assert personal liability against a fiduciary by either:
 - A. Filing a suit under IRC § 7402(a) against the fiduciary in a federal district court, or
 - B. Issuing a notice of fiduciary liability to the fiduciary under IRC § 6901(a)(1)(B). The notice gives the fiduciary the right to challenge the determination in the United States Tax Court.
2. Generally the statute of limitations for filing suit against a fiduciary under 31 USC § 3713(b) is the same as the statute of limitations for collecting the underlying tax assessment *United States v. Motsinger*, 123 F.2d 585 (4th Cir. 1941). Some cases suggest that it may be possible to successfully assert a longer statute of limitations for filing suit under 31 USC § 3713(b) against a fiduciary. See *U.S. v. Moriarty*, 8 F.3d 329 (6th Cir. 1993). Consult Area Counsel if the CSED is close or has expired and a fiduciary may be liable.
3. The statute of limitations for issuing a notice of fiduciary liability to the fiduciary is the later of one year after the fiduciary liability arises or the expiration of the statute of limitations for collecting the underlying tax liability IRC § 6901(c)(3).
4. The Government may be able to bring an action on the bond that fiduciaries are often required to post to serve as a fiduciary. The Government may also seek removal of the fiduciary for misconduct.
5. **A fiduciary's defenses to liability under 31 USC § 3713(b) include:**
 - A. **The fiduciary had no knowledge of the federal tax debt.**
 - B. **The estate was solvent when the distribution was made.**
 - C. **The statute of limitations on collection of the underlying tax and for asserting liability under IRC § 6901 has expired.**
 - D. **The distributions made by the fiduciary were for claims over which the United States did not have priority.**

5.17.13.9 (10-16-2007)

Decedents' Estates

1. **A decedent's estate, or probate proceeding, is governed by state law. The purpose of the proceeding is to gather and distribute the decedent's assets.**
 - A. The assets administered in the probate proceeding are part of the decedent's estate. These consist of assets that the decedent owned prior to the decedent's death.
 - B. A personal representative or administrator is appointed by the probate court to administer the assets of the estate. The personal representative's duties include a) gathering the assets of the deceased; b) paying the administrative expenses, taxes and other debts of the deceased; c) distributing the remaining assets as specified in the will or state law.
 - C. The decedent may have executed (signed) a will or died intestate (without a will). If the decedent has executed a will, the executor named in the will is appointed as personal representative. If the named executor is deceased or declines to act (and the will does not name a successor who is willing to serve as executor), or if no will has been executed, then the court will appoint an administrator as personal representative.
 - D. Some assets are not subject to probate administration including a) property held jointly with the right of survivorship; b) proceeds from life insurance policies; and c) property transferred to a trust during the decedent's life. Such assets may transfer at death directly to the survivor without going through probate. In such a case, these assets will not be within the custody of the court.
 - E. The probate proceeding may be court supervised or may be an informal proceeding not requiring court supervision. If the proceeding is court supervised, the personal representative must obtain court approval to take many actions such as distributing assets.
2. Usually the IRS will assert a tax claim against an estate by filing a proof of claim in any judicially supervised probate proceeding. This is because the decedent's probate estate is under the jurisdiction of the state court. Notice of the tax liability should be given to the personal representative to ensure that the representative will be subject to 31 USC § 3713(b) personal liability.
3. State laws typically direct that the fiduciary must distribute estate assets in the following order of priority:
 - A. costs and expenses of administration (including homestead and family allowances)
 - B. reasonable funeral expenses
 - C. debts and taxes with preference under federal law
 - D. expenses of the decedent's last illness
 - E. debts and taxes with preference under state law

F. all other claims

4. However, insofar as state priority laws conflict with the federal priority, the federal priority controls.

5.17.13.9.1 (07-09-2012)

Administrative Collection

1. A statutory lien that arises against property of a taxpayer before a taxpayer's death continues to attach to the property after the taxpayer's death. *United States v. Bess*, 357 U.S. 51 (1958).
2. Collection by levy: As a general rule, when property to which the federal tax lien attaches passes into the control or custody of the court, collection by levy is not used because it would interfere with the court's processes. *United States v. Silverman*, 621 F.2d 961 (9th Cir. 1980) (Collection is prohibited while the assets are in custody of the court.). Where the proceeding has progressed so far that levy would not interfere or where the court grants permission to levy, levy may proceed. Treas. Reg. § 301.6331-1(a)(3). Consult Counsel before taking any enforced collection action after the claim is filed or notice and demand is made if estate assets are under the control of the court. But, if there are non-probate or other assets not subject to the court's jurisdiction or under the control or custody of the court, then the IRS may levy on those assets.
3. Property will not be in the custody of the court if:
 - A. There is no judicial probate proceeding (e.g., there is an informal non-judicial proceeding, or no proceeding at all); or
 - B. The property is not part of the probate estate (i.e., non-probate/exempt assets).
4. Persons who receive distributions from a decedent's estate, such as heirs and devisees, generally do not fall within any of the priority categories of IRC § 6323. The IRS may collect from such distributed property without the filing of a Notice of Federal Tax Lien (NFTL) if the assets are *not* under the custody of the court.
5. If a statutory lien arises after the death of the decedent, it may attach to property in the decedent's estate as of the assessment date. Some property may pass outside of the probate estate; for example, life insurance and property held by joint tenancy. Because a determination of rights to property is dependent upon state law, contact Area Counsel to determine if the federal tax lien will attach to probate property.
6. The period of limitations for collection is suspended under IRC § 6503(b) while a decedent's assets are under the control or custody of a court and for 6 months thereafter. Collection from the non-probate assets and the assets of the surviving spouse on joint liabilities with the decedent will have the normal 10-year statute for collection. The probate action will extend the collection statute for the decedent's liabilities only with respect to the probate assets in control of the court and then only if the probate assets are substantial in value relative to the entire estate. *United States v. Silverman*, 621 F.2d 961, 967 (9th Cir. 1980).

5.17.13.9.2 (07-09-2012)

The Probate Court

1. State courts have jurisdiction over a decedent's estate. Usually, state statutes designate a particular court to supervise the administration of estates. These courts are often known as probate courts. A decedent's estate is generally administered in the probate court of the county in which the decedent resided at the time of death.
2. Specific procedures for the probate court vary depending on the law of each state.

Note:

Many of the State Law Guides on the My SB/SE Counsel website include a discussion of applicable state law regarding probate proceedings.
<http://ocintranet.prod.irsounsel.treas.gov/OrgStrat/Ofices/sbse/Pages/LawGuides.aspx>.

3. Generally, the first step in the judicial probate of a will is to file the will with the probate court. After a party proves a will to be genuine, the court will issue letters of administration to an executor. The executor then has the duty of gathering together and inventorying the estate assets, paying the debts of the decedent, and making distributions of the assets.
4. If there is no will, a party may file a petition with the probate court to request that the court appoint an administrator. The court will issue letters of administration and charge an administrator to perform the same tasks as the executor.
5. Both the executor and the administrator are known as personal representatives. The personal representative may be required to post a bond before appointment to act for the estate.
6. Creditors, including the IRS, can file claims against the estate. The personal representative will approve or disapprove each claim. If the fiduciary disapproves the claim, then the creditor may argue the case before the probate court. The creditor may also appeal an adverse decision to a state appellate court. After all disputes are settled, the personal representative distributes the assets. Heirs and devisees get any remaining assets after creditor's claims are satisfied.

5.17.13.9.3 (07-09-2012)

Fiduciary Liability of Personal Representatives

1. Section 3713(a) priority applies to a decedent's estate when the assets of the estate in the custody of the executor or administrator are not enough to pay all debts of the decedent.
2. Assets of the estate do not include certain property passing outside of probate, such as jointly held property. However, the estate does include any claims the executor has against holders of property that can be used to pay the tax liability. For example, under IRC § 2206 and 2207, the executor has the right to compel contributions toward the estate tax from life insurance recipients and property subject to a power of appointment.
3. If the 31 USC § 3713(a) priority applies, then the personal representative can be liable under 31 USC § 3713(b) for distributions that violate federal priority.

5.17.13.10 (07-09-2012)

Receiverships

1. A receivership usually has one of two purposes:
 - A. A receivership can be a secondary proceeding brought to protect property until a primary legal proceeding is completed. For example, a mortgagee in a mortgage foreclosure suit may ask for the appointment of a receiver to take custody of the specific property subject to the mortgage, such as a hotel or other commercial property that is producing income. The receiver must collect the rents and operate the property during the foreclosure proceeding. This might preserve the value of the property pending the foreclosure sale.
 - B. A receiver can also be appointed to liquidate all of the debtor's assets and to pay the debtor's debts. A receivership is an alternative to an assignment for the benefit of creditors and a bankruptcy proceeding.

2. A receivership can be a:

- A. general receivership in which the receiver takes control of all assets of the debtor, or
- B. a limited receivership in which specific assets are in the custody of the receiver. Ordinarily a limited receivership is for the benefit of specific creditors (e.g., a mortgage foreclosure).

3. A receivership, especially a limited receivership, does not always involve an insolvent debtor.

4. Generally, an interested party may initiate a receivership by filing a motion that seeks to have a receiver appointed by the court. An interested party might want to begin a receivership proceeding to:

- A. conserve, preserve, protect or administer property that is involved in a legal action;
- B. prevent fraud or loss of property from fraud;
- C. prevent mismanagement of property; or
- D. replace an irresponsible or insolvent assignee where claims are jeopardized in an assignment for benefit of creditors.

5. Creditors might want to initiate a receivership if a debtor is on the border between successful business operations and failure. The creditors might hope that a receiver will be able to operate profitably to make the business solvent. In such a case, the receiver will take charge of the property of the debtor and manage it for a period of time. The goal is to earn an amount sufficient to pay the creditors. If this cannot be done, the receiver may, with court permission, liquidate as much of the property as is necessary to pay the debts. The receiver can then distribute the proceeds to the creditors and return the balance, if any, to the debtor.

6. A majority of receivership actions arise in the state courts because the basis for federal district court jurisdiction is limited.

7. The United States can request the federal district court to appoint a receiver as part of a federal tax lien foreclosure action. IRC § 7403(d). The United States should seek such a receivership if it believes that it is necessary for the collection, preservation or orderly liquidation of property it wants to foreclose upon. See Suit and Litigation Guide for Revenue Officers, Training 29957-101, Catalog #55451Z, beginning on page E-95, for additional information and a sample suit narrative for a Suit for Appointment of a Receiver.

5.17.13.10.1 (10-16-2007)**Receiver**

1. State statutes generally provide the purposes and conditions necessary to appoint a receiver. The party seeking the receivership must show the court that a receivership is necessary. Generally, there is no absolute right to the appointment of a receiver. Instead, the decision rests in the sound judicial discretion of the court. The court may also appoint a receiver on its own motion.
2. The receiver is usually an independent party without an interest in the case. The receiver must impartially protect the property or interests of the parties to the suit. A party in interest may be appointed receiver because of the nature of the property or special knowledge of the business. Generally, a court will allow a party in interest to serve as a receiver only if all of the parties to the suit agree.
3. The receiver is a fiduciary who can be personally liable under 31 USC § 3713(b) for violating the Federal Priority Statute in 31 USC § 3713(a). However, government claims might not have top priority in many receiverships because:
 - A. there is no insolvency;
 - B. there was no "act of bankruptcy" (e.g., the receivership is a limited receivership); or
 - C. other creditors have priority pursuant to IRC § 6323.

5.17.13.10.2 (07-09-2012)**Assessment and Collection in Receiverships**

1. Pursuant to IRC § 6036, a receiver in a receivership proceeding (and similar fiduciaries, including assignees for the benefit of creditors) who is in control of all or substantially all of the assets of a debtor must give notice of the appointment to the Area Director within 10 days of the receiver's appointment. Treas. Reg. § 301.6036-1.
2. Under IRC § 6871(a), assessments for income, estate and gift taxes may be made immediately after the appointment of a receiver in any receivership proceeding before any federal or state court. Treas. Reg. § 301.6871(a)-1. In these instances the IRS does not issue a notice of deficiency, and the taxpayer is deprived of access to Tax Court. Treas. Reg. § 301.6871(b)-1(a).
 - A. The IRS may advise the receiver if it makes an immediate assessment pursuant to IRC § 6871(a). Treas. Reg. § 301.6871(b)-1(c).
 - B. Even if the IRS has issued a notice of deficiency, the taxpayer is prohibited from filing a Tax Court petition after the appointment of the receiver. IRC § 6871(c)(1); *Levine v. Commissioner*, T.C. Memo. 1987-564 (1987). However, the Tax Court will have jurisdiction if the debtor files the petition before the receivership begins.
 - C. Section 6871(a) applies to any judicially supervised liquidation proceeding in which a fiduciary is appointed with the powers of a receiver. *Williams v. Commissioner*, 44 T.C. 673 (1965) (IRC § 6871 applied to assignment for the benefit of creditors under supervision of court).
3. The IRS may file a proof of claim in the receivership proceeding to collect from the assets in the custody of the court. The IRS may not engage in administrative collection from assets in the custody of the court. Accordingly, the period of limitations for collection is suspended under IRC § 6503(b) if all or substantially all of the taxpayer's assets are in the control or custody of the court.

Note:

Formal intervention rather than merely filing a claim will give the United States standing as a party to the proceeding to challenge court orders. Usually the United States intervenes only in federal court receiverships.

4. The receiver takes property subject to prior tax liens. The 6321 lien is not valid against the creditors listed in IRC § 6323(a), unless an NFTL was filed before the creditor took an interest in the property. Receivers are not on the IRC § 6323(a) list, so the tax lien encumbers the property in the receiver's hands. One or more of the § 6323(a) creditors may have an interest in the property when the receiver takes it, however, and that interest would have priority over the 6321 lien if the interest predates the filing of the NFTL.
5. Unlike bankruptcy cases, receivership proceedings do not provide a discharge. The IRS may collect any tax claim that remains unpaid once the proceeding ends. IRC § 6873.

5.17.13.11 (10-16-2007)**Assignments for the Benefit of Creditors**

1. An assignment for the benefit of creditors is a state law proceeding in which the debtor voluntarily transfers his property to another party (the assignee) in trust. The assignee then uses or sells the property to pay the debtor's debts.
2. The assignment can be a general assignment of all or substantially all of the debtor's property or a partial assignment of only some of the debtor's property.
3. Most assignments are under the jurisdiction of a state court. If the court supervises the assignment, then the proceeding may essentially be a receivership. In this case, the same rules applicable to receiverships may apply. For example, the IRS may immediately assess under IRC § 6871. Also, the IRS may not levy. Accordingly, the statute suspends the collection period of limitations while the property of a general assignment is under the control or custody of the court. IRC § 6503(b).
4. Under most state laws, a valid assignment for creditors vests the legal title of the debtor's property in the assignee. The property is beyond the control of the assignor or the reach of any of the assignor's creditors, other than their rights under the assignment to share in the distribution of the assigned property. Normally, the assignee takes title to the assigned property as a trustee, and in general the assignee's duties, powers, and liabilities are those of a fiduciary.
5. The assignee takes the assigned property subject to all liens and encumbrances.
6. Some states have enacted statutes prohibiting an assignor from preferring one or more creditors over other creditors in making an assignment for the benefit of creditors. Under these statutes, the assignment must be for the equal benefit of all the assignor's creditors.
7. Like a receivership, the assignment differs from a bankruptcy case in that the debtor does not receive a discharge of debts.

5.17.13.11.1 (07-09-2012)**Assessment and Collection**

1. Like a receiver, an assignee for the benefit of creditors does not fall within one of the protected categories of IRC § 6323. Therefore, the assignee is subject to the federal tax lien even though a Notice of Federal Tax Lien has not been filed. If the tax liability is assessed before the assignment, a valid tax lien exists against all the assignor's property. The effect of the assignee taking the property is that the Government retains its interest in the property to the extent of its lien and the Government is entitled to enforce its lien against the property.
 - A. The priority of competing creditors claiming an interest in the assets will be determined under IRC § 6323.
 - B. The IRS cannot take administrative collection action against the assigned assets if the assignment is judicially supervised and the assets are within the control or custody of the court. Instead, the IRS may file a claim in the proceeding to assert a right to the assets. See IRM 5.17.13.7, above, for considerations before filing a proof of claim.
2. If the tax liability is assessed after the assignment, the taxpayer no longer has an interest in the property at the time of assessment, so the tax lien does not attach to the assigned property.
3. The United States can assert a priority claim under 31 USC § 3713(a) for voluntary assignments for the benefit of creditors. *United States v. Cole*, 733 F.2d 651 (9th Cir. 1984). The assignee is a fiduciary who can be personally liable under 31 USC § 3713(b) for using property of the insolvent estate to pay lower priority creditors ahead of known federal tax liabilities. If other creditors have priority over the United States under IRC § 6323 (e.g., mortgages and other consensual security interests), however, the federal priority statute will not provide superior priority.

5.17.13.12 (10-16-2007)**State-law Corporate Dissolutions**

1. A corporation is considered a "person." A corporation exists separately from the identity of its stockholders and officers.
 - A. This means that the corporation itself can own property, can sue and be sued, and can incur tax liability.
 - B. It also means that this separate existence may come to an end. When the corporation's existence does end, the corporate affairs are wound up (the corporation must pay its debts and distribute its remaining assets). This process is a "corporate dissolution."
2. A corporation's existence is artificial, created by state law. State statutes provide for:
 - A. the creation of the corporation;
 - B. the period of its existence; and
 - C. termination of its life.
3. Stockholders of a corporation may decide to terminate the corporate existence. They may voluntarily dissolve the corporation and forfeit the corporate charter.
4. The state may also initiate a proceeding to forfeit the corporate charter. Usually a state will do this as a method of enforcing some state law requirement. The most common example of this is the state requirement that corporations pay a state franchise tax. If the required payment is not made, the state may bring an action to forfeit the charter, thereby terminating the corporate existence.

5.17.13.12.1 (10-16-2007)**Dissolution Proceedings**

1. If difficulties arise in the liquidation of assets, payment of claims, or distribution of assets, or if state law requires, dissolution may be conducted in a court proceeding.
 - A. Usually the court appoints a receiver, liquidator, or other fiduciary. The fiduciary must attend to the dissolution under orders of the court and the court will hear and determine all controversies that arise during the course of the dissolution.
 - B. The IRS should file a claim in such a proceeding to collect from the assets of the corporation.
 - C. The IRS cannot levy on any property within the custody of the court.
 - D. A bankruptcy corporate liquidation differs from a non-bankruptcy corporate judicial liquidation in that the bankruptcy proceeding is governed by federal bankruptcy law and is supervised by a federal court, while the non-bankruptcy judicial proceeding is governed by state corporate law and is supervised by a state court.
2. If the parties are able to liquidate the corporation without the help of a court and if all parties and creditors are satisfied that justice is being done, there is no reason for court action. The parties may conduct the liquidation entirely out of court if state law permits.

- A. A nonjudicial liquidation is likely if there is either enough money to pay all corporate creditors or if the value and disposition of the assets and the priority among claimants is not disputed.
- B. A nonjudicial dissolution is usually conducted by the officers of the corporation. Such officers become trustees for creditors and act in a fiduciary capacity.
- C. If at any time during a nonjudicial dissolution the Government determines that the interests of the United States are not protected, then the Government may bring suit to subject corporate properties to payment of tax under IRC § 7403. The Government can seek to appoint a receiver under IRC § 7403(d). Such action converts the nonjudicial dissolution into a judicial dissolution.
- D. The Government may also consider administrative collection action in nonjudicial dissolutions.

5.17.13.12.2 (10-16-2007) Duties of Fiduciaries

- 1. The fiduciary who is charged with liquidating the corporation will first collect all corporate assets, inventory the assets, value, liquidate them and make distributions to creditors and stockholders.
- 2. The fiduciary must ordinarily give notice of the dissolution to all who might hold claims against the corporation. This will usually be a public notice such as newspaper publication in addition to specific notice to each known creditor as required by state law. The notice will give the place where claims are to be filed and the date by which they should be filed.
- 3. If money or property remains in the hands of the liquidator after satisfaction of claims against the corporation, the balance will be distributed to the stockholders. All valid claims against the corporation must be paid before anything is distributed to stockholders, but after payment of claims all equity remaining in the corporation belongs to the stockholders.

5.17.13.12.3 (10-16-2007) Priority of Federal Taxes

- 1. Priority of the United States versus other creditors of the corporation will often be determined by IRC § 6323.
- 2. However, with respect to persons without priority under IRC § 6323, such as state entities and stockholders, the United States can claim priority pursuant to 31 USC § 3713 (a).
- 3. Where the United States has priority under 31 USC § 3713(a), it can assert personal liability under 31 USC § 3713(b) against fiduciaries who pay claims with lower priority than the federal claim, so long as the fiduciary had knowledge of the tax liability.

5.17.13.12.4 (07-09-2012) Collection Options

- 1. If a tax claim against the corporation is not paid, and corporate assets are distributed to stockholders, collection may be effected from such stockholders to the extent of the property received by each. There are three possible grounds for collection from stockholders:
 - A. If federal tax liens attached to the corporate property before the distribution, the transfer would not divest the tax liens and, therefore, the property received may be foreclosed in the hands of the stockholders by a suit under IRC § 7403(a).
 - B. Transferee liability may be asserted against the stockholders under IRC § 6901. See IRM 5.17.14.2.3.5, *Transferee Liability of a Shareholder or Distributee of a Corporation*.
 - C. Where appropriate, a suit could be filed to set aside the transfer as a fraudulent transfer. See IRM 5.17.14.2.3.2, *Transferee Liability Based on Fraudulent Transfers*.
- 2. In the event of a corporate merger or consolidation, the successor corporation often takes all the assets and assumes all the liabilities of the old corporation. Collection from the successor corporation can be effected by the same means as discussed with respect to stockholders.

Note:

Corporate mergers or consolidations can take many forms. Before attempting to collect from a successor corporation, contact the successor corporation to obtain documents describing the transaction and consult with Chief Counsel.

- 3. Where the tax in question is a withheld employment tax or collected excise tax, the Trust Fund Recovery Penalty under IRC § 6672 provides an effective means to collect the unpaid liability from corporate officers who were responsible for payment of the tax.
- 4. An offer in compromise may be considered when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer in compromise may achieve the goal of collecting what is potentially collectible at the earliest possible time and at the least cost to the government. Refer to IRM 5.8. - Offer in Compromise.

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CHAPTER 143 - POWERS AND DUTIES OF PERSONAL REPRESENTATIVES

ADMINISTRATION OF ESTATES GENERALLY

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<u>NRS 143.187</u>	Power to hold stock in name of nominee; personal liability of personal representative.
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INDEPENDENT ADMINISTRATION OF ESTATES

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ADMINISTRATION OF ESTATES GENERALLY

NRS 143.010 Multiple personal representatives: Effect of absence or disability; sufficiency of acts of majority. If there are two personal representatives, the acts of one alone are valid if the other is absent from the state, or for any cause is laboring under any legal disability, and if there are more than two, the acts of a majority are sufficient.
[Part 44:107:1941; 1931 NCL § 9882.44]—(NRS A 1999, 2289)

NRS 143.020 Right to possession of decedent's property. Except as otherwise provided in NRS 143.030 and 146.010, a personal representative has a right to the possession of all the real, as well as personal, property of the decedent and may receive the rents and profits of the property until the estate is settled, or until delivered over by order of the court to the heirs or devisees, and shall make a reasonable effort to keep in good tenantable repair all houses, buildings and appurtenances thereon which are under the control of the personal representative.
[106:107:1941; 1931 NCL § 9882.106]—(NRS A 1999, 2290; 2009, 1665)

NRS 143.030 Duty to take possession of estate and collect debts; exception for certain assets held by guardian.
1. A personal representative shall take into possession all the estate of the decedent, real and personal, except that exempted as provided in this title, and shall collect all receivables due the decedent or the estate.
2. For the purpose of bringing actions to quiet title or for partition of the estate, the possession of the personal representative shall be deemed the possession of the heirs or devisees. The possession of heirs or devisees is subject, however, to the possession of the personal representative for all other purposes.
3. A personal representative shall not take into possession any assets held by a guardian of the decedent pursuant to chapter 159 of NRS until the guardianship is terminated according to the provisions of NRS 159.1905 or 159.191 and the guardian is ordered to distribute the assets to the personal representative.
[191:107:1941; 1931 NCL § 9882.191]—(NRS A 1999, 2290; 2009, 1665)

NRS 143.035 Duty to use reasonable diligence; report required if estate not closed within certain times; hearing and determinations by court.

1. A personal representative shall use reasonable diligence in performing the duties of the personal representative and in pursuing the administration of the estate.
 2. A personal representative in charge of an estate that has not been closed shall:
 - (a) Within 6 months after the personal representative's appointment, where no federal estate tax return is required to be filed for the estate; or
 - (b) Within 15 months after the personal representative's appointment, where a federal estate tax return is required to be filed for the estate,
 - file with the court a report explaining why the estate has not been closed.
 3. Upon receiving the report, the clerk shall set a time and place for a hearing of the report. The personal representative shall send a copy of the report and shall give notice of the hearing, for the period and in the manner provided in NRS 155.010, to:
 - (a) Each person whose interest is affected as an heir or devisee; and
 - (b) The Department of Health and Human Services, if the Department has filed a claim against the estate.
 4. At the hearing, the court shall determine whether or not the personal representative has used reasonable diligence in the administration of the estate, and if the personal representative has not, the court may:
 - (a) Subject to the provisions of NRS 143.037:
 - (1) Prescribe the time within which the estate must be closed; or
 - (2) Allow the personal representative additional time for closing and order a subsequent report; or
 - (b) Revoke the letters of the personal representative, appoint a successor and prescribe a reasonable time within which the successor shall close the estate.
- (Added to NRS by 1975, 1765; A 1997, 336; 1999, 2290; 2003, 880)

NRS 143.037 Duty to close estate within 18 months after appointment; exceptions.

1. Except as otherwise provided in this section, a personal representative shall close an estate within 18 months after appointment.
 2. If a claim against the estate is in litigation or in summary determination pursuant to subsection 5 of NRS 145.060 or subsection 2 of NRS 147.130 or the amount of federal estate tax has not been determined, the court, upon petition of a devisee, creditor or heir, shall order that:
 - (a) A certain amount of money, or certain other assets, be retained by the personal representative to:
 - (1) Satisfy the claim or tax; and
 - (2) Pay any fees or costs related to the claim or tax, including fees for appraisals, attorney's fees and court costs; and
 - (b) The remainder of the estate be distributed.
 3. If a contest of the will or a proceeding to determine heirship is pending, the court which appointed the personal representative:
 - (a) Shall order that a certain amount of money, or certain other assets, be retained and the remainder of the estate distributed; or
 - (b) May, for good cause shown, order that the entire distributable estate be retained pending disposition of the contest or proceeding.
- (Added to NRS by 1997, 335; A 1999, 2291; 2001, 2344)

NRS 143.040 Rights of surviving partner.

1. If a partnership existed between the decedent, at the time of death, and any other person, the surviving partner may continue in possession of the effects of the partnership and settle its business, but the interest of the decedent must be included in the inventory and appraised as an asset of the estate.
2. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account to the personal representative and pay over such balance as may be, from time to time, payable to the estate of the decedent.
3. Upon the petition of the personal representative, the court may, whenever it may appear necessary, order the surviving partner to render an accounting, and in case of neglect or refusal, may, after notice, compel it by any lawful process, and the personal representative may maintain against the surviving partner any action which the decedent could have maintained.
4. Upon any sale of a partnership interest, the surviving partner may be a bidder.
[Part 195:107:1941; 1931 NCL § 9882.195]—(NRS A 1999, 2291)

NRS 143.050 Continuing business of decedent. Except as otherwise provided in NRS 143.520, after notice given as provided in NRS 155.010 or in such other manner as the court directs, the court may authorize the personal representative to continue the operation of the decedent's business to such an extent and subject to such restrictions as may seem to the court to be for the best interest of the estate and any interested persons.

[Part 195:107:1941; 1931 NCL § 9882.195]—(NRS A 1975, 1766; 1999, 2292; 2011, 1454)

NRS 143.060 Extent of power to sue and be sued. Actions for the recovery of any property, real or personal, or for the possession thereof, or to quiet title thereto, or to determine any adverse claim thereon, and all actions founded upon contracts, may be maintained by and against a personal representative in all cases in which the actions might have been maintained by or against the decedent.

[192:107:1941; 1931 NCL § 9882.192]—(NRS A 1999, 2292)

NRS 143.065 Statute of limitations for cause of action of decedent. A statute of limitations running on a cause of action belonging to a decedent, that was not barred as of the date of death, does not bar the cause of action sooner than 1 year after the death. A cause of action that, but for this section, would be barred less than 1 year after the death of the decedent is barred after 1 year unless the running of the statute is tolled under other law.

(Added to NRS by 1999, 2289; A 2003, 2510)

NRS 143.070 Actions by personal representative for conversion or trespass.

1. A personal representative may commence or maintain an action against any person who has wasted, destroyed, taken, carried away or converted the goods of the decedent.
2. A personal representative may also commence or maintain an action for trespass committed on the real property of the decedent while living.

[193:107:1941; 1931 NCL § 9882.193]—(NRS A 1999, 2292)

NRS 143.080 Actions against personal representative for conversion or trespass. Any person or the personal representative has a right of action against the personal representative of a decedent who, in the lifetime of the decedent wasted, destroyed, took, carried away or converted the goods or chattels of that person, or committed any trespass on the real property of that person.

[194:107:1941; 1931 NCL § 9882.194]—(NRS A 1999, 2292)

NRS 143.090 Action on bond of former personal representative. A successor personal representative may, for the use and benefit of all interested persons, maintain an action on the bond of a former personal representative of the same estate.

[196:107:1941; 1931 NCL § 9882.196]—(NRS A 1999, 2292)

NRS 143.100 Action for conversion before letters granted. If any person, before the granting of letters, converts, takes or alienates any of the money, goods, chattels or effects of a decedent, that person is chargeable and liable to an action by the personal representative for triple the value of the property so converted, taken or alienated, to be recovered for the benefit of the estate.

[107:107:1941; 1931 NCL § 9882.107]—(NRS A 1999, 2292; 2007, 895)

NRS 143.110 Procedure when conversion alleged: Citation; examination; allowance of necessary expenses.

1. If a personal representative or other interested person alleges in a petition to the court that any person has, or is suspected to have, concealed, converted, conveyed away or otherwise disposed of any money, goods, chattels or effects of the decedent, or that the person has possession or knowledge of any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title or interest of the decedent in or to any real or personal property, or any claim or demand, or any last will of the decedent, the court may cause that person to be cited to appear before the court to answer, upon oath, upon the matter of the petition.
2. If the person is not in the county where letters have been granted, the person may be cited and examined either before the court of the county where the person may be found, or before the court issuing the citation. If the person appears, and is found innocent, his or her necessary expenses must be allowed out of the estate.

[108:107:1941; 1931 NCL § 9882.108]—(NRS A 1999, 2293)

NRS 143.120 Procedure when conversion alleged: Commitment for refusal to appear for examination; order requiring delivery of property to personal representative.

1. If the person so cited refuses to appear and submit to examination or to testify concerning the matter of the complaint, the court may commit the person to the county jail, there to remain confined until the person obeys the order of the court or is discharged according to law.

2. If, upon examination, it appears that the person has concealed, converted, smuggled, conveyed away, or in any manner disposed of any money, goods or chattels of the decedent, or that the person has possession or control of any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the decedent to any real or personal property, claim or demand, or any last will of the decedent, the court may enter an order requiring the person to deliver any such property or effects to the personal representative at such time as the court may fix. If the person fails to comply with the order, the court may commit the person to the county jail until the order is complied with or the person is discharged according to law.

3. The order of the court for the delivery of the property is prima facie evidence of the right of the personal representative to the property in any action that may be brought for its recovery, and any judgment recovered must be for treble damages equal to three times the value of the property.

4. In addition to the examination of the party, witnesses may be produced and examined on either side.

[109:107:1941; 1931 NCL § 9882.109]—(NRS A 1999, 2293; 2003, 2511)

NRS 143.130 Accounting by person holding assets of estate for personal representative; penalty for failure or refusal to comply with order. The court, upon the petition of a personal representative, may require any person entrusted by the personal representative with any part of the estate of the decedent to appear before the court and render on oath a full accounting of any money, goods, chattels, bonds, accounts, or other papers or effects belonging to the estate which have come into the possession of the person in trust for the personal representative. If the person so cited fails or refuses to appear and render the accounting, the court may proceed against the person as provided in NRS 143.120.

[110:107:1941; 1931 NCL § 9882.110]—(NRS A 1999, 2294)

NRS 143.140 Discharging debtor of estate, compromising claims and renewing obligations: Procedure.

1. Except as otherwise provided in NRS 143.440, 143.455, 143.465, 143.650 or 143.655, if a debtor of the decedent is unable to pay all debts, the personal representative, with the approval of the court, may give the person a discharge upon such terms as may appear to the court to be for the best interest of the estate.

2. A compromise may also be authorized by the court when it appears to be just and for the best interest of the estate.

3. The court may also authorize the personal representative, on such terms and conditions as may be approved by it, to extend or renew, or in any manner modify the terms of, any obligation owing to or running in favor of the decedent or the estate of the decedent.

4. To obtain approval or authorization the personal representative shall file a petition showing the advantage of the settlement, compromise, extension, renewal or modification. The clerk shall set the petition for hearing by the court, and the petitioner shall give notice for the period and in the manner required by NRS 155.010.

[198:107:1941; 1931 NCL § 9882.198]—(NRS A 1999, 2294; 2011, 1454)

NRS 143.150 Action to recover fraudulently conveyed property for benefit of creditors.

1. If the decedent conveyed any real property or any rights or interests therein, with intent to defraud creditors or to avoid any obligation, debt or duty owed another, or so conveyed the property that by law the deeds of conveyance are void as against creditors, or made a gift of property in contemplation of death, and there is a deficiency of assets in the hands of the personal representative to pay all the expenses and debts of the estate, the personal representative, on petition of any creditor, shall commence and prosecute to final judgment any proper action for the recovery of the property for the benefit of the creditors.

2. The personal representative may also, for the benefit of the creditors, maintain an action for and recover all goods, chattels, rights or credits, or their value, which may have been so fraudulently conveyed by the decedent, whatever may have been the manner of fraudulent conveyance.

[199:107:1941; 1931 NCL § 9882.199]—(NRS A 1999, 2294)

NRS 143.160 Costs; disposal of property recovered; proceeds.

1. A personal representative is not bound to maintain an action for the estate, pursuant to NRS 143.150, for the benefit of the creditors, unless a creditor of the decedent:

(a) Files a petition; and

(b) Pays the costs and expense of the litigation or gives such security as the court directs.

2. All real property so recovered must be sold for the payment of debts in the same manner as prescribed in this title for sales of real property by personal representatives.

3. The proceeds of all goods, chattels, rights or credits so received, after reimbursement of costs and expenses of litigation advanced by the creditor, must be applied in payment of debts in the same manner as other personal property in the hands of a personal representative.

[200:107:1941; 1931 NCL § 9882.200] + [201:107:1941; 1931 NCL § 9882.201]—(NRS A 1999, 2295)

NRS 143.165 Temporary order to restrain personal representative from performing administration, disbursement or distribution of estate: Issuance; hearing.

1. On petition of an interested person, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercising any powers or discharging any duties of the office, or enter any other order to secure proper performance of the duties of the office, if it appears to the

court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner or of some other interested person. A person with whom the personal representative may transact business may be made a party to the temporary order.

2. The matter must be set for hearing within 10 days after entry of the temporary order unless the parties otherwise agree. Notice as the court directs must be given by the petitioner to the personal representative and the attorney of record of the personal representative, if any, and to any other party named as a party in the temporary order.

(Added to NRS by 1997, 1485; A 1999, 2295)

NRS 143.170 Purchase of property of estate by personal representative. Unless approved in advance by a court after application, notice and a hearing on the matter, a personal representative shall not directly or indirectly purchase any property of the estate represented by the personal representative.

[190:107:1941; 1931 NCL § 9882.190]—(NRS A 1999, 2295; 2001, 2345)

NRS 143.175 Power to make certain investments.

1. Except as otherwise provided in NRS 143.515, a personal representative may, with court approval:

(a) Invest the property of the estate, make loans and accept security therefor, in the manner and to the extent authorized by the court; and

(b) Exercise options of the estate to purchase or exchange securities or other property.

2. A personal representative may, without prior approval of the court, invest the property of the estate in:

(a) Savings accounts in a bank, credit union or savings and loan association in this State, to the extent that the deposit is insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755;

(b) Interest-bearing obligations of, or fully guaranteed by, the United States;

(c) Interest-bearing obligations of the United States Postal Service or the Federal National Mortgage Association;

(d) Interest-bearing obligations of this State or of a county, city or school district of this State;

(e) Money-market mutual funds that are invested only in obligations listed in paragraphs (a) to (d), inclusive; or

(f) Any other investment authorized by the will of the decedent.

(Added to NRS by 1975, 1766; A 1999, 1458, 2295; 2001, 91; 2011, 1454)

NRS 143.180 Power to make loans, advances of credit and other investments insured by Federal Housing Administrator; validation of loans, advances of credit and purchases of obligations made before October 1, 1999.

1. Subject to such regulations as may be prescribed by the Federal Housing Administrator, a personal representative may:

(a) Make such loans and advances of credit, and purchases of obligations representing the loans and advances of credit, as are eligible for insurance by the Federal Housing Administrator, and obtain such insurance.

(b) Make such loans secured by mortgage on real property as are eligible for insurance by the Federal Housing Administrator, and obtain such insurance.

(c) Purchase, invest in, and dispose of notes or bonds secured by mortgage insured by the Federal Housing Administrator, securities of national mortgage associations, and debentures issued by the Federal Housing Administrator.

2. No law of this State prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, applies to loans, advances of credit or purchases made pursuant to subsection 1.

3. All above-described loans, advances of credit, and purchases of obligations made and insured pursuant to the terms of the National Housing Act before October 1, 1999, are hereby validated and confirmed.

[Part 1:58:1935; A 1937, 147; 1939, 43; 1931 NCL § 3652.01] + [Part 2:58:1935; 1931 NCL § 3652.02] + [3:58:1935; 1931 NCL § 3652.03]—(NRS A 1999, 2296)

NRS 143.185 Power to invest in farm loan bonds and other obligations issued by federal land banks and banks for cooperatives. A personal representative may purchase, invest in, and dispose of:

1. Farm loan bonds, consolidated farm loan bonds, debentures, consolidated debentures and other obligations issued by federal land banks and federal intermediate credit banks under the authority of the Federal Farm Loan Act, formerly 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021 to 1129, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq., as amended; and

2. Bonds, debentures, consolidated debentures and other obligations issued by banks for cooperatives under the authority of the Farm Credit Act of 1933, formerly 12 U.S.C. §§ 1131 to 1138e, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq., as amended.

(Added to NRS by 1959, 33; A 1973, 1088; 1991, 461; 1999, 2297)

NRS 143.187 Power to hold stock in name of nominee; personal liability of personal representative.

1. A personal representative holding certificates of stock in that capacity may hold the stock in the name of a nominee without mention in the stock certificate or registration books, if:

(a) The records of the personal representative and all reports and accountings the personal representative renders clearly show the holding and the facts regarding it; and

(b) The nominee deposits with the personal representative a signed statement of the true interest of the personal representative.

2. A personal representative is personally liable for any loss to the estate resulting from any act of the nominee in connection with stock so held.

(Added to NRS by 1961, 471; A 1999, 2297)

NRS 143.188 Power to direct termination of certain electronic or digital accounts or assets.

1. Except as otherwise provided in subsection 2, subject to such restrictions as may be prescribed in the will of a decedent or by an order of a court of competent jurisdiction, a personal representative has the power to direct the termination of any account of the decedent, including, without limitation:

- (a) An account on any:
 - (1) Social networking Internet website;
 - (2) Web log service Internet website;
 - (3) Microblog service Internet website;
 - (4) Short message service Internet website; or
 - (5) Electronic mail service Internet website; or
- (b) Any similar electronic or digital asset of the decedent.

2. The provisions of subsection 1 do not authorize a personal representative to direct the termination of any financial account of the decedent, including, without limitation, a bank account or investment account.

3. The act by a personal representative to direct the termination of any account or asset of a decedent pursuant to subsection 1 does not invalidate or abrogate any conditions, terms of service or contractual obligations the holder of such an account or asset has with the provider or administrator of the account, asset or Internet website.

(Added to NRS by 2013, 1524)

NRS 143.190 Cumulative method of service of process on personal representative; written statement containing permanent address of personal representative to be filed with clerk.

1. Before letters are delivered to a personal representative, the personal representative shall file with the county clerk of the county in which the administration of the estate is pending a written statement containing the name and permanent address of the personal representative. The permanent address may, from time to time, be changed by filing with the county clerk a written statement giving the changed address. The permanent address shall be deemed to be that contained in the last statement so filed by the personal representative.

2. The taking of his or her oath of office by a personal representative constitutes an appointment of the county clerk of the county in which the administration of the estate is pending to be the true and lawful attorney, upon whom all legal process in any action or proceeding against the personal representative may be served, with the same legal force and effect as if served upon the personal representative personally within the State of Nevada.

3. Service of process may be made by mailing by registered or certified mail a copy of the process, and if the process is a summons, there must be attached thereto a copy of the complaint certified by the clerk or the plaintiff's attorney, directly to the personal representative at the address contained in the statement filed with the clerk. This service is sufficient personal service upon the personal representative if proof of the service is filed with the clerk.

4. The court in which the action is pending may order such continuances as may be necessary to afford the personal representative reasonable opportunity to defend the action.

5. The foregoing method of service is cumulative, and does not prevent the personal service of process upon the personal representative within the State of Nevada.

[324:107:1941; 1931 NCL § 9882.324]—(NRS A 1969, 95; 1983, 262; 1999, 2297)

NRS 143.200 Actions not to abate on death, disqualification, resignation or removal of personal representative; substitution of successor. No action to which a personal representative is a party abates by reason of the death, disqualification, resignation or removal of the personal representative, but the person who is appointed, qualifies and is acting as the successor must, upon motion, be substituted as a party to the action.

[325:107:1941; 1931 NCL § 9882.325]—(NRS A 1999, 2298)

NRS 143.210 Necessary parties to actions. In actions brought by or against personal representatives, it is not necessary to join those as parties who have not qualified.

[197:107:1941; 1931 NCL § 9882.197]—(NRS A 1999, 2298)

INDEPENDENT ADMINISTRATION OF ESTATES

General Provisions

NRS 143.300 Short title. NRS 143.300 to 143.815, inclusive, may be cited as the Independent Administration of Estates Act.

(Added to NRS by 2011, 1437)

NRS 143.305 Definitions. As used in NRS 143.300 to 143.815, inclusive, unless the context otherwise requires, the words and terms defined in NRS 143.310, 143.315 and 143.320 have the meanings ascribed to them in those sections.

(Added to NRS by 2011, 1437)

NRS 143.310 "Court supervision" defined. "Court supervision" means the judicial order, authorization, approval, confirmation or instructions that would be required if authority to administer the estate had not been granted pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1437)

NRS 143.315 "Full authority" defined. "Full authority" means the authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, that includes all the powers granted pursuant to NRS 143.300 to 143.815, inclusive.
(Added to NRS by 2011, 1437)

NRS 143.320 "Limited authority" defined. "Limited authority" means authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, that includes all the powers granted pursuant to NRS 143.300 to 143.815, inclusive, except the power to do any of the following:

1. Sell real property.
2. Exchange real property.
3. Grant an option to purchase real property.
4. Borrow money with the loan secured by an encumbrance upon real property.

(Added to NRS by 2011, 1437)

NRS 143.325 Applicability. The provisions of NRS 143.300 to 143.815, inclusive, apply in any case where authority to administer the estate is granted pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1437)

NRS 143.330 Effect of provision in will that prohibits independent administration of estate. The personal representative may not be granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, if the decedent's will provides that the estate must not be administered pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1437)

NRS 143.335 Independent administration of estate by special administrator. A special administrator may be granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, if the special administrator is appointed with, or has been granted, the powers of a general personal representative.

(Added to NRS by 2011, 1437)

NRS 143.340 Personal representative required to petition for full or limited authority to administer estate.

1. To obtain authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, the personal representative must petition the court for that authority in a petition for appointment of the personal representative or in a separate petition filed in the estate proceedings.

2. The personal representative may request either of the following:

- (a) Full authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive; or
- (b) Limited authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1437)

NRS 143.345 Notice of hearing on petition; persons required to receive notice; contents.

1. If the authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, is requested in a petition for appointment of the personal representative, notice of the hearing on the petition must be given for the period and in the manner applicable to the petition for appointment.

2. Where proceedings for the administration of the estate are pending at the time a petition is filed pursuant to NRS 143.340, notice of the hearing on the petition must be given for the period and in the manner provided in NRS 155.010 to all the following persons:

- (a) Each person specified in NRS 155.010;
- (b) Each known heir whose interest in the estate would be affected by the petition;
- (c) Each known devisee whose interest in the estate would be affected by the petition; and
- (d) Each person named as personal representative in the will of the decedent.

3. The notice of hearing of the petition for authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, whether included in the petition for appointment or in a separate petition, must include a statement in substantially the following form:

The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. Independent administration authority will be granted unless good cause is shown why it should not be.

(Added to NRS by 2011, 1437)

NRS 143.350 Court required to grant requested authority; exceptions.

1. Except as otherwise provided in subsection 2, unless an interested person objects in writing at or before the hearing to the granting of authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, and the court determines that the interested person has shown good cause why the authority to administer the estate under those provisions should not be granted, the court shall grant the requested authority.

2. If the interested person has shown good cause why only limited authority should be granted, the court shall grant limited authority.

(Added to NRS by 2011, 1438)

NRS 143.355 Amount of bond of personal representative.

1. If the personal representative is otherwise required to file a bond and has full authority, the court shall fix the amount of the bond at not more than the estimated value of the personal property, the estimated value of the decedent's interest in the real property authorized to be sold pursuant to NRS 143.300 to 143.815, inclusive, and the probable annual gross income of the estate or, if the bond is to be given by personal sureties, at not less than twice that amount.

2. If the personal representative is otherwise required to file a bond and has limited authority, the court shall fix the amount of the bond at not more than the estimated value of the personal property and the probable annual gross income of the estate or, if the bond is to be given by personal sureties, at not less than twice that amount.

(Added to NRS by 2011, 1438)

NRS 143.360 Petition for modification or revocation of authority of personal representative; notice; court order.

1. Any interested person may file a petition requesting that the court make either of the following orders:

(a) An order revoking the authority of the personal representative to continue administration of the estate pursuant to NRS 143.300 to 143.815, inclusive; or

(b) An order revoking the full authority of the personal representative to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, and granting the personal representative limited authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

2. The petition must set forth the basis for the requested order.

3. The petitioner shall give notice for the period and in the manner provided in NRS 155.010.

4. If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate pursuant to NRS 143.300 to 143.815, inclusive. Upon the making of the order, new letters must be issued without the authority to act pursuant to NRS 143.300 to 143.815, inclusive.

5. If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters must be issued indicating whether the personal representative is authorized to act pursuant to NRS 143.300 to 143.815, inclusive, and, if so authorized, whether the independent administration authority includes or excludes the power to do any of the following:

(a) Sell real property;

(b) Exchange real property;

(c) Grant an option to purchase real property; or

(d) Borrow money with the loan secured by an encumbrance upon real property.

(Added to NRS by 2011, 1438)

NRS 143.365 Authority to administer estate without court supervision; request for court supervision.

1. Subject to the limitations and conditions of NRS 143.300 to 143.815, inclusive, a personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, may administer the estate as provided pursuant to NRS 143.300 to 143.815, inclusive, without court supervision, but in all other respects, the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

2. Notwithstanding the provisions of subsection 1, the personal representative may obtain court supervision of any action to be taken by the personal representative during administration of the estate.

(Added to NRS by 2011, 1439)

NRS 143.370 Court approval or supervision required for certain actions; exceptions.

1. Notwithstanding any provision of NRS 143.300 to 143.815, inclusive, to the contrary, whether the personal representative has been granted limited authority or full authority, a personal representative who has obtained authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, is required to obtain court approval for any of the following actions:

(a) Allowance of the personal representative's compensation;

(b) Allowance of compensation of the attorney for the personal representative;

(c) Settlement of accounts;

(d) Preliminary and final distributions and discharge;

(e) Sale of property of the estate to the personal representative or to the attorney for the personal representative;

(f) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative;

(g) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative;

(h) Allowance, payment or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate;

(i) Compromise or settlement of a claim, action or proceeding by the estate against the personal representative or against the attorney for the personal representative;

(j) Extension, renewal or modification of the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate; and

(k) Any transaction described in this section that would indirectly benefit the personal representative, a relative of the personal representative, the attorney for the personal representative or the attorney for a relative of the personal representative.

2. Notwithstanding any provision of NRS 143.300 to 143.815, inclusive, to the contrary, a personal representative who has obtained limited authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, is required to obtain court supervision for any of the following actions:

- (a) Sale of real property;
- (b) Exchange of real property;
- (c) Grant of an option to purchase real property; and
- (d) Borrowing money with the loan secured by an encumbrance upon real property.

3. Paragraphs (e) to (k), inclusive, of subsection 1 do not apply to a transaction between the personal representative in his or her capacity as a personal representative and the personal representative as a person if all the following requirements are satisfied:

- (a) The personal representative is the sole beneficiary of the estate or all the known heirs or devisees have consented to the transaction;
- (b) The period for filing creditor claims has expired;
- (c) No request for special notice pursuant to NRS 155.030 is on file or all persons who filed a request for special notice have consented to the transaction; and
- (d) The claim of each creditor who filed a claim has been paid, settled or withdrawn, or the creditor has consented to the transaction.

4. As used in this section, "relative" has the meaning ascribed to it in NRS 163.020.
(Added to NRS by 2011, 1439)

NRS 143.375 Powers of personal representative granted independent administration authority.

1. Subject to the conditions and limitations of NRS 143.300 to 143.815, inclusive, and to the duties and liabilities of the personal representative, a personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, has the powers described in:

- (a) NRS 143.400 to 143.465, inclusive, with regard to powers that are exercisable only after giving a notice of proposed action;
- (b) NRS 143.500 to 143.540, inclusive, with regard to powers the exercise of which requires giving a notice of proposed action under certain circumstances; and
- (c) NRS 143.600 to 143.655, inclusive, with regard to powers that are exercisable without giving a notice of proposed action.

2. The will may restrict the powers that the personal representative may exercise pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1440)

NRS 143.380 Sale of property of estate; court confirmation of sales not required.

1. Subject to the limitations and requirements of NRS 143.300 to 143.815, inclusive, when the personal representative exercises the authority to sell property of the estate pursuant to NRS 143.300 to 143.815, inclusive, the personal representative may sell the property at public auction or private sale, and with or without notice, for cash or on credit, for such price and upon such terms and conditions as the personal representative may determine.

2. The requirements applicable to court confirmation of sales of real property referenced in subsection 1 include, without limitation:

- (a) Publication of the notice of sale;
- (b) Court approval of agents' and brokers' commissions;
- (c) The sale being not less than 90 percent of appraised value of the real property;
- (d) An examination by the court into the necessity for the sale of the real property, including, without limitation, any advantage to the estate and benefit to interested persons; and
- (e) The efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

3. The requirements applicable to court confirmation of sales of real property and sales of personal property do not apply to a sale pursuant to this section.

(Added to NRS by 2011, 1441)

Powers Exercisable Only After Giving Notice of Proposed Action

NRS 143.400 Requirements for exercise of powers by personal representative. The personal representative may exercise the powers described in NRS 143.400 to 143.465, inclusive, only if the requirements of NRS 143.700 to 143.760, inclusive, are satisfied.

(Added to NRS by 2011, 1441)

NRS 143.405 Sale or exchange of real property. The personal representative who has full authority has the power to sell or exchange real property of the estate.

(Added to NRS by 2011, 1441)

NRS 143.410 Sale or incorporation of business or joint venture. The personal representative who has limited authority or full authority has the power to sell or incorporate any of the following:

- 1. An unincorporated business or joint venture in which the decedent was engaged at the time of the decedent's death; and

2. An unincorporated business or joint venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(Added to NRS by 2011, 1441)

NRS 143.415 Abandonment of tangible personal property. The personal representative who has limited authority or full authority has the power to abandon tangible personal property where the cost of collecting, maintaining and safeguarding the property would exceed its fair market value.

(Added to NRS by 2011, 1441)

NRS 143.420 Power to borrow and to encumber property of estate.

1. Subject to the limitations provided in subsection 2 and NRS 143.180, the personal representative who has limited authority or full authority has the following powers:

(a) The power to borrow; and

(b) The power to place, replace, renew or extend any encumbrance upon any property of the estate.

2. Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real property.

(Added to NRS by 2011, 1441)

NRS 143.425 Grant of option to purchase real property of estate. The personal representative who has full authority has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

(Added to NRS by 2011, 1441)

NRS 143.430 Transfer of property to person exercising option to purchase provided in will. If the will gives a person the option to purchase real or personal property and the person has complied with the terms and conditions stated in the will, the personal representative who has limited authority or full authority has the power to convey or transfer the property to the person.

(Added to NRS by 2011, 1442)

NRS 143.435 Conveyance or transfer of real or personal property under certain circumstances. The personal representative who has limited authority or full authority has the power to convey or transfer real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

(Added to NRS by 2011, 1442)

NRS 143.440 Determination of claims to property. The personal representative who has limited authority or full authority has the power to allow, compromise or settle any of the following:

1. A third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property; or

2. The decedent's claim to real or personal property, title to or possession of which is held by another.

(Added to NRS by 2011, 1442)

NRS 143.445 Disclaimers. The personal representative who has limited authority or full authority has the power to make a disclaimer.

(Added to NRS by 2011, 1442)

NRS 143.450 Preliminary distributions authorized under certain circumstances. If the time for filing creditor claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person, the personal representative who has limited authority or full authority has the power to make preliminary distributions of the following:

1. Income received during administration to the persons entitled thereto pursuant to the decedent's will or by intestate succession.

2. Household furniture and furnishings, motor vehicles, clothing, jewelry and other tangible articles of a personal nature to the persons entitled to the property under the decedent's will, not to exceed an aggregate fair market value to all persons of \$50,000 computed cumulatively through the date of distribution. Fair market value must be determined on the basis of the inventory and appraisal.

3. Cash to general pecuniary devisees entitled to it under the decedent's will, not to exceed \$10,000 to any one person.

(Added to NRS by 2011, 1442)

NRS 143.455 Actions concerning claims by, for the benefit of, or against the estate. The personal representative who has limited authority or full authority has the power to do all the following:

1. Allow, pay, reject or contest any claim by or against the estate.

2. Compromise or settle a claim, action or proceeding by or for the benefit of, or against, the decedent, the personal representative or the estate.

3. Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

4. Allow a claim to be filed after the expiration of the time for filing the claim.

(Added to NRS by 2011, 1442)

NRS 143.460 Commencement and defense of certain actions and proceedings. The personal representative who has limited authority or full authority has the power to do all the following:

1. Commence and maintain actions and proceedings for the benefit of the estate.
2. Defend actions and proceedings against the decedent, the personal representative or the estate.

(Added to NRS by 2011, 1442)

NRS 143.465 Modification of terms of obligation to or in favor of decedent. The personal representative who has limited authority or full authority has the power to extend, renew or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

(Added to NRS by 2011, 1442)

Powers the Exercise of Which Require Giving Notice of Proposed Action Under Certain Circumstances

NRS 143.500 Exercise of powers by personal representative; exceptions. Except as otherwise provided in NRS 143.500 to 143.540, inclusive, the personal representative who has limited authority or full authority may exercise the powers described in NRS 143.500 to 143.540, inclusive, without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

(Added to NRS by 2011, 1443)

NRS 143.505 Management and control of estate property.

1. The personal representative who has limited authority or full authority has the power to manage and control property of the estate, including making allocations and determinations pursuant to NRS 164.780 to 164.925, inclusive. Except as otherwise provided in subsection 2, such a personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

2. The personal representative shall comply with the requirements of NRS 143.700 to 143.760, inclusive, and shall give notice of a proposed action in any case where a provision of NRS 143.400 to 143.450, inclusive, governing the exercise of a specific power so requires.

(Added to NRS by 2011, 1443)

NRS 143.510 Power to enter contracts without notice; exception.

1. The personal representative who has limited authority or full authority has the power to enter into a contract to carry out the exercise of a specific power granted pursuant to NRS 143.300 to 143.815, inclusive, including, without limitation, the powers granted by NRS 143.505 and 143.605. Except as otherwise provided in subsection 2, the personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

2. The personal representative shall comply with the requirements of NRS 143.700 to 143.760, inclusive, and shall give notice of a proposed action where the contract is one that by its provisions is not to be fully performed within 2 years after the date the parties entered into the contract, except that the personal representative is not required to comply with those requirements if the personal representative has the unrestricted right under the contract to terminate the contract within 2 years after the date the parties entered into the contract.

3. Nothing in this section excuses compliance with the requirements of NRS 143.700 to 143.760, inclusive, when the contract is made to carry out the exercise of a specific power, and the provision that grants that power requires compliance with NRS 143.700 to 143.760, inclusive, for the exercise of the power.

(Added to NRS by 2011, 1443)

NRS 143.515 Deposit and investment of money of estate.

1. The personal representative who has limited authority or full authority has the power to do all the following:

(a) Deposit money belonging to the estate in an insured account in a financial institution in this State;

(b) Invest money of the estate in any one or more of the following:

(1) Direct obligations of the United States, or of the State of Nevada, maturing not later than 1 year after the date of making the investment;

(2) Savings accounts in a bank, credit union or savings and loan association in this State, to the extent that the deposit is insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755;

(3) Interest-bearing obligations of, or fully guaranteed by, the United States;

(4) Interest bearing obligations of the United States Postal Service or the Federal National Mortgage Association;

(5) Interest-bearing obligations of this State or of a county, city or school district of this State; or

(6) Money-market mutual funds that are invested only in obligations listed in subparagraphs (1) to (5), inclusive;

or

(c) Invest money of the estate in any manner provided by the will.

2. The personal representative may exercise the powers described in subsection 1 without giving notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive.

(Added to NRS by 2011, 1443)

NRS 143.520 Continuation of partnership or other business.

1. Subject to the partnership agreement and the applicable provisions of chapter 87 of NRS, the personal representative who has limited authority or full authority has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

2. The personal representative who has limited authority or full authority has the power to continue operation of any of the following:

(a) An unincorporated business or joint venture in which the decedent was engaged at the time of the decedent's death.

(b) An unincorporated business or joint venture which was wholly or partly owned by the decedent at the time of the decedent's death.

3. Except as otherwise provided in subsection 4, the personal representative may exercise the powers described in subsections 1 and 2 without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

4. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, if the personal representative continues as a general partner under subsection 1, or continues the operation of any unincorporated business or joint venture under subsection 2, for a period of more than 6 months after the date on which letters are first issued to a personal representative.

(Added to NRS by 2011, 1444)

NRS 143.525 Payment of family allowance.

1. The personal representative who has limited authority or full authority has the power to pay a reasonable family allowance. Except as otherwise provided in subsection 2, the personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

2. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, for all the following:

(a) Making the first payment of a family allowance.

(b) Making the first payment of a family allowance for a period commencing more than 12 months after the death of the decedent.

(c) Making any increase in the amount of the payment of a family allowance.

(Added to NRS by 2011, 1444)

NRS 143.530 Lease of property of estate.

1. The personal representative who has limited authority or full authority has the power to enter as lessor into a lease of property of the estate for:

(a) Any purpose, including, without limitation, exploration for and production or removal of minerals, oil, gas or other hydrocarbon substances or geothermal energy, including a community oil lease or a pooling or unitization agreement;

(b) A period within or beyond the period of administration; and

(c) Rental or royalty, or both, and upon such other terms and conditions as the personal representative may determine.

2. Except as otherwise provided in subsections 3 and 4, the personal representative may exercise this power without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

3. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, where the personal representative enters into a lease of real property for a term in excess of 1 year. If the lease gives the lessee the right to extend the term of the lease, the lease must be considered as if the right to extend has been exercised.

4. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, where the personal representative enters into a lease of personal property and the lease is one that by its provisions is not to be fully performed within 2 years after the date the parties entered into the lease, except that the personal representative is not required to give notice of a proposed action if the personal representative has the unrestricted right under the lease to terminate the lease within 2 years after the date the parties entered into the lease.

(Added to NRS by 2011, 1444)

NRS 143.535 Sale or exchange of personal property.

1. The personal representative who has limited authority or full authority has the power to sell personal property of the estate or to exchange personal property of the estate for other property upon such terms and conditions as the personal representative may determine. Except as otherwise provided in subsection 2, the personal representative shall give notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive, in exercising this power.

2. The personal representative may exercise the power granted by subsection 1 without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive, in case of the sale or exchange of any of the following:

(a) A security sold on an established stock or bond exchange;

(b) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers Automated Quotations System, NASDAQ, sold through a broker-dealer registered under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., during the regular course of business of the broker-dealer;

(c) Subscription rights for the purchase of additional securities which are owned by the estate by reason of the estate's ownership in securities if those rights are sold for cash; or

(d) Personal property which is perishable if the property is sold for cash.

(Added to NRS by 2011, 1445)

NRS 143.540 Grant of exclusive right to sell property.

1. The personal representative who has limited authority or full authority has the following powers:

(a) The power to grant an exclusive right to sell property for a period not to exceed 90 days.

(b) The power to grant to the same broker one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

2. Except as otherwise provided in subsection 3, the personal representative may exercise the powers described in subsection 1 without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

3. The personal representative shall give notice of a proposed action pursuant to NRS 143.700 to 143.760, inclusive, where the personal representative grants to the same broker an extension of an exclusive right to sell property and the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days.

(Added to NRS by 2011, 1445)

Powers Exercisable Without Giving Notice of Proposed Action

NRS 143.600 Exercise of powers by personal representative. The personal representative who has limited authority or full authority may exercise the powers described in NRS 143.600 to 143.655, inclusive, without giving notice of the proposed action pursuant to NRS 143.700 to 143.760, inclusive.

(Added to NRS by 2011, 1446)

NRS 143.605 Additional powers of personal representative. In addition to the powers granted to the personal representative pursuant to NRS 143.300 to 143.815, inclusive, the personal representative who has limited authority or full authority has all the powers that the personal representative could exercise without court supervision if the personal representative had not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1446)

NRS 143.610 Conveyance or transfer of property under certain circumstances. The personal representative who has limited authority or full authority has the power to convey or transfer property to carry out the exercise of a specific power granted pursuant to NRS 143.300 to 143.815, inclusive.

(Added to NRS by 2011, 1446)

NRS 143.615 Payment of taxes, assessments and expenses. The personal representative who has limited authority or full authority has the power to pay all the following:

1. Taxes and assessments.
2. Expenses incurred in the collection, care and administration of the estate.

(Added to NRS by 2011, 1446)

NRS 143.620 Purchase of annuity under certain circumstances. The personal representative who has limited authority or full authority has the power to purchase an annuity from an insurer admitted to do business in this State to satisfy a devise of an annuity or other direction in the will for periodic payments to a devisee.

(Added to NRS by 2011, 1446)

NRS 143.625 Exercise of option. The personal representative who has limited authority or full authority has the power to exercise an option right that is property of the estate.

(Added to NRS by 2011, 1446)

NRS 143.630 Purchase of securities or commodities to perform incomplete contract of sale. The personal representative who has limited authority or full authority has the power to purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent.

(Added to NRS by 2011, 1446)

NRS 143.635 Holding securities in name of nominee or in any other form for certain purposes. The personal representative who has limited authority or full authority has the power to hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery.

(Added to NRS by 2011, 1446)

NRS 143.640 Exercise of security subscription or conversion rights. The personal representative who has limited authority or full authority has the power to exercise security subscription or conversion rights.

(Added to NRS by 2011, 1446)

NRS 143.645 Repairs and improvements to property of estate. The personal representative who has limited authority or full authority has the power to make repairs and improvements to real and personal property of the estate.

(Added to NRS by 2011, 1446)

NRS 143.650 Acceptance of deed or deed of trust in lieu of foreclosure or trustee's sale. The personal representative who has limited authority or full authority has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

(Added to NRS by 2011, 1447)

NRS 143.655 Partial satisfaction of mortgage or partial reconveyance under deed of trust. The personal representative who has limited authority or full authority has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a deed of trust held by the estate.

(Added to NRS by 2011, 1447)

Procedures Relating to Notice of Proposed Action

NRS 143.700 Circumstances pursuant to which notice of proposed action is required or authorized.

1. A personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, shall give notice of a proposed action as provided in NRS 143.700 to 143.760, inclusive, before taking the proposed action without court supervision if the provisions of NRS 143.365 to 143.655, inclusive, giving the personal representative the power to take the action so require. Nothing in this subsection authorizes a personal representative to take an action pursuant to NRS 143.300 to 143.815, inclusive, if the personal representative does not have the power to take the action pursuant to those provisions.

2. A personal representative who has been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, may give notice of a proposed action as provided in NRS 143.700 to 143.760, inclusive, even if the provisions of NRS 143.365 to 143.655, inclusive, giving the personal representative the power to take the action authorize the personal representative to take the action without giving notice of the proposed action. Nothing in this subsection requires the personal representative to give notice of a proposed action where not required under subsection 1 or authorizes a personal representative to take any action that the personal representative is not otherwise authorized to take.

(Added to NRS by 2011, 1447)

NRS 143.705 Persons to whom notice of proposed action is required to be given. Except as otherwise provided in NRS 143.710 and 143.715, notice of a proposed action must be given to all the following:

1. Each known devisee whose interest in the estate would be affected by the proposed action.
2. Each known heir whose interest in the estate would be affected by the proposed action.
3. Each person who has filed a request for special notice pursuant to NRS 155.030.
4. The Attorney General, at the Office of the Attorney General in Carson City, if any portion of the estate is to escheat to the State and its interest in the estate would be affected by the proposed action.

(Added to NRS by 2011, 1447)

NRS 143.710 Consent to proposed action. Notice of a proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(Added to NRS by 2011, 1447)

NRS 143.715 Waiver of notice for particular proposed action; general waiver of notice of proposed action.

1. Notice of a proposed action need not be given to any person who, in writing, waives the right to notice of a proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver must describe the particular proposed action and may waive particular aspects of the notice, such as the delivery, mailing or time requirements of NRS 143.730 or the giving of the notice in its entirety for the particular proposed action.

2. Notice of a proposed action need not be given to any person who has made either of the following:
 - (a) A general waiver of the right to notice of a proposed action.
 - (b) A waiver of the right to notice of a proposed action for all transactions of a type which includes the particular proposed action.

(Added to NRS by 2011, 1447)

NRS 143.720 Revocation of consent to proposed action or waiver of notice of proposed action.

1. A waiver or consent pursuant to NRS 143.710 or 143.715 may be revoked only in writing and is effective only when the writing is received by the personal representative.

2. A copy of the revocation may be filed with the court, but the effectiveness of the revocation is not dependent upon a copy being filed with the court.

(Added to NRS by 2011, 1448)

NRS 143.725 Contents of notice of proposed action.

1. The notice of proposed action must state all the following:
 - (a) The name and mailing address of the personal representative.
 - (b) The person and telephone number to call to get additional information.
 - (c) The action proposed to be taken, with a reasonably specific description of the action. If the proposed action involves the sale or exchange of real property or the granting of an option to purchase real property, the notice of proposed action must state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.
 - (d) The date on or after which the proposed action is to be taken.

2. The notice of proposed action must include a form for objecting to the proposed action.

(Added to NRS by 2011, 1448)

NRS 143.730 Requirements for delivery of notice of proposed action. The notice of proposed action must be mailed or personally delivered to each person required to be given notice of the proposed action not less than 15 days before the date specified in the notice of proposed action on or after which the proposed action is to be taken. If mailed,

the notice of proposed action must be addressed to the person at the person's last known address. The notice of proposed action must be mailed or delivered in the manner provided in NRS 155.010.
(Added to NRS by 2011, 1448)

NRS 143.735 Objection to proposed action; requirements for delivery; form; notice of objection to personal representative.

1. Any person entitled to notice of a proposed action under NRS 143.705 may object to the proposed action as provided in this section.
2. The objection to the proposed action must be made by delivering or mailing a written objection to the proposed action to the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action may use the form provided in NRS 143.810 or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.
3. The personal representative is deemed to have notice of the objection to the proposed action if the notice is delivered or received at the address stated in the notice of proposed action before:
 - (a) The date specified in the notice of proposed action on or after which the proposed action is to be taken; or
 - (b) The date on which the proposed action is actually taken,
 ↪ whichever occurs later.
(Added to NRS by 2011, 1448)

NRS 143.740 Restraining order prohibiting proposed action without court supervision; notice of restraining order to personal representative.

1. Any person who is entitled to notice of a proposed action for a proposed action described in subsection 1 of NRS 143.700, or any person who is given notice of a proposed action described in subsection 2 of NRS 143.700, may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order.
2. The personal representative is deemed to have notice of the restraining order if the notice is given and served upon the personal representative in the manner provided in NRS 155.040 and 155.050, or in the manner authorized by the court, before:
 - (a) The date specified in the notice of proposed action on or after which the proposed action is to be taken; or
 - (b) The date on which the proposed action is actually taken,
 ↪ whichever occurs later.
(Added to NRS by 2011, 1449)

NRS 143.745 Court authorization or confirmation required if personal representative receives notice of objection or of restraining order.

1. If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, and the personal representative has notice of a written objection made pursuant to NRS 143.735 or a restraining order issued pursuant to NRS 143.740, the personal representative shall, if the personal representative desires to take the proposed action, petition the court to obtain approval from the court.
2. If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate pursuant to NRS 143.300 to 143.815, inclusive, but the personal representative has given notice of the proposed action and has notice of a written objection made pursuant to NRS 143.735 or a restraining order issued pursuant to NRS 143.740, the personal representative shall, if he or she desires to take the proposed action, request instructions from the court concerning the proposed action. The personal representative may take the proposed action only under such order as may be entered by the court.
3. A person who objects to a proposed action as provided in NRS 143.735 or serves a restraining order issued pursuant to NRS 143.740 in the manner provided in that section must be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.
(Added to NRS by 2011, 1449)

NRS 143.750 Effect of failure to object to proposed action; court review of action by personal representative under certain circumstances.

1. Except as otherwise provided in subsection 3, only a person described in NRS 143.705 has a right to have the court review the proposed action after it has been taken or otherwise to object to the proposed action after it has been taken. Except as otherwise provided in subsections 2 and 3, a person described in NRS 143.705 waives the right to have the court review the proposed action after it has been taken, or otherwise to object to the proposed action after it has been taken, if:
 - (a) The person has been given notice of the proposed action, as provided in NRS 143.700 to 143.730, inclusive, and fails to object as provided in subsection 4; or
 - (b) The person has waived notice of or consented to the proposed action as provided in NRS 143.710 and 143.715.
2. Unless the person has waived notice of or consented to the proposed action as provided in NRS 143.710 and 143.715, the court may review the action taken upon a petition filed by a person described in NRS 143.705 who establishes that he or she did not actually receive the notice of proposed action before the time to object pursuant to subsection 4 expired.
3. The court may review the action of the personal representative upon a petition filed by an heir or devisee who establishes all the following:

- (a) At the time notice of the proposed action was given, the heir or devisee lacked capacity to object to the proposed action or was a minor;
- (b) No notice of proposed action was actually received by the guardian, conservator or other legal representative of the heir or devisee;
- (c) The guardian, conservator or other legal representative did not waive notice of the proposed action; and
- (d) The guardian, conservator or other legal representative did not consent to the proposed action.

4. For the purposes of this section, an objection to a proposed action is made only by one or both of the following methods:

- (a) Delivering or mailing a written objection as provided in NRS 143.735 within the time specified in subsection 3 of that section; or
- (b) Serving a restraining order obtained pursuant to NRS 143.740 in the manner prescribed and within the time specified in subsection 2 of that section.

(Added to NRS by 2011, 1449)

NRS 143.755 Failure of personal representative to comply with certain requirements; validity of actions taken without such compliance.

1. The failure of the personal representative who has limited authority or full authority to comply with subsection 1 of NRS 143.700 and with NRS 143.705, 143.725, 143.730 and 143.745, and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons who, dealing in good faith with the personal representative, changed their position in reliance upon the action, conveyance or transfer without actual notice of the failure of the personal representative to comply with those provisions.

2. A person dealing with the personal representative does not have any duty to inquire or investigate whether the personal representative has complied with the provisions listed in subsection 1.

(Added to NRS by 2011, 1450)

NRS 143.760 Court authorized to remove personal representative from office under certain circumstances.

1. In a case where notice of a proposed action is required by NRS 143.700 to 143.760, inclusive, the court, in its discretion, may remove the personal representative from office unless the personal representative:

- (a) Gives notice of the proposed action as provided in NRS 143.700 to 143.760, inclusive;
- (b) Obtains a waiver of notice of the proposed action as provided in NRS 143.700 to 143.760, inclusive; or
- (c) Obtains a consent to the proposed action as provided in NRS 143.700 to 143.760, inclusive.

2. The court, in its discretion, may remove the personal representative from office if the personal representative takes a proposed action in violation of NRS 143.745.

(Added to NRS by 2011, 1450)

Forms

NRS 143.800 Letters testamentary or letters of administration. Letters testamentary or letters of administration pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

LETTERS TESTAMENTARY / ADMINISTRATION

On, 20....., the court entered an order admitting the decedent's will to probate and appointing [.....] as personal representative of the decedent's estate. The order includes:

☐ full authority for the personal representative to administer the estate pursuant to the Independent Administration of Estates Act.

☐ limited authority to administer the estate pursuant to the Independent Administration of Estates Act. (There is no authority, without court supervision, to: (1) sell or exchange real property; (2) grant an option to purchase real property; or (3) borrow money with the loan secured by an encumbrance upon real property.)

☐ a directive for the establishment of a blocked account for sums in excess of \$.....;

☐ a directive for the posting of a bond in the sum of \$.....; or

☐ a directive for both the establishment of a blocked account for sums in excess of \$..... and the posting of a bond in the sum of \$.....

The personal representative, after being duly qualified, may act and has the authority and duties of a personal representative.

In testimony of which, I have this date signed these letters and affixed the seal of the court.

CLERK OF THE COURT

By:

Deputy Clerk
Date:

OATH

I, [.....], whose mailing address is, solemnly affirm that I will faithfully perform according to law the duties of personal representative, and that all matters stated in any petition or paper filed with the court by me are true of my own knowledge or, if any matters are stated on information and belief, I believe them to be true.

[.....], Personal Representative

SUBSCRIBED AND AFFIRMED
before me this (day) of, 20.....
By:.....
NOTARY PUBLIC
County of, State of Nevada

(Added to NRS by 2011, 1450)

NRS 143.805 Notice of proposed action. A notice of proposed action pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

NOTICE OF PROPOSED ACTION
Independent Administration of Estates Act

1. The personal representative of the estate of the deceased is
2. The personal representative has authority to administer the estate without court supervision pursuant to the Independent Administration of Estates Act:

[] with full authority pursuant to the Independent Administration of Estates Act; or
[] with limited authority pursuant to the Independent Administration of Estates Act. (There is no authority, without court supervision, to: (1) sell or exchange real property; (2) grant an option to purchase real property; or (3) borrow money with the loan secured by an encumbrance upon real property.)

3. On or after (date), the personal representative will take the following action without court supervision:

Describe in specific terms the proposed action.

If the action involves the sale or exchange of or a grant of an option to purchase real property, provide the sale price, the amount of or method of calculating any commission or compensation of the real estate broker and the value of the property in the probate inventory.

NOTICE: A sale of real property without court supervision means that the sale will NOT be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder.

4. If you OBJECT to the proposed action:
(a) Sign the objection form provided with this Notice of Proposed Action and deliver or mail it to the personal representative at the following address (specify name and address);
(b) Send your own written objection to the address set forth in paragraph (a), identifying the proposed action and state that you object to it; or
(c) Apply to the court for an order preventing the personal representative from taking the proposed action without court supervision.

NOTE: Your written objection or the court order must be received by the personal representative before the date indicated in item 3 or before the proposed action is taken, whichever is later. If you object, the personal representative may take the proposed action only under court supervision.

5. If you approve of the proposed action, you may sign the consent form provided with this Notice of Proposed Action and return it to the address set forth in paragraph (a) of item 4. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

6. If you need more INFORMATION, call: (name) (telephone).

Date:

Personal Representative

(Added to NRS by 2011, 1452)

NRS 143.810 Objection to proposed action. An objection to a proposed action pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

OBJECTION TO PROPOSED ACTION

I OBJECT to the action proposed in item 3 of the Notice of Proposed Action.

NOTICE: Sign and return this form – all pages – to the address set forth in paragraph (a) of item 4 of the Notice of Proposed Action. This form must be received before the date set forth in item 3 of the Notice of Proposed Action, or before the proposed action is taken, whichever is later. (You may want to use certified mail, with return receipt requested. Make a copy of this form for your records.)

Date:

.....
Type or print name

Signature of Objector

(Added to NRS by 2011, 1453)

NRS 143.815 Consent to proposed action. Consent to a proposed action pursuant to the Independent Administration of Estates Act as set forth in NRS 143.300 to 143.815, inclusive, may be in the following form:

CONSENT TO PROPOSED ACTION

I CONSENT to the action proposed in item 3 of the Notice of Proposed Action.

NOTICE: You may indicate your consent by signing and returning this form – all pages – to the address set forth in paragraph (a) of item 4 of the Notice of Proposed Action. If you do not object in writing or obtain a court order, you will be treated as if you consent to the proposed action.

Date:

.....
Type or print name

Signature of Objector

(Added to NRS by 2011, 1453)

140 Completing CCC-901's

A Who Must Complete CCC-901's

Each legal entity that submits a contract for a program or an application for payment **must** provide the member's information required on CCC-901.

Exception: CCC-901 is **not** required if **all** the first level members are persons.

Note: New CCC-901's are **not** required to be filed in subsequent years unless there are changes in the operation.

B Filing Responsibility

The legal entity that is earning payment is responsible for obtaining and providing the required information to COC.

C Deadline for Submitting CCC-901's

The legal entity earning payment shall provide the completed CCC-901 to COC when CCC-902E is filed.

D Filing and Distribution

File the original CCC-901 in the legal entity's payment limitation folder and give a copy to the payment entity.

What is the?

140 Completing CCC-901's (Continued)

E Completing CCC-901's for 2014 and Subsequent Years

Complete CCC-901 according to this table.

Item	Instruction
1 and 2	Enter name of the county and State where the farming operation is located. If in more than 1 county, enter the name of the county that has been designated as the administrative county.
3	Enter current program year, or the year for which this information is applicable.
Part A	Enter name and complete TIN of the legal entity earning the payment.
1	Enter the names of the members making up the legal entity listed in Part A. This could be a person or legal entity.
2	Enter TIN's of the members.
3	Enter address of each member of the legal entity.
4	Enter percent share of the legal entity that each member owns.
5	Select: <ul style="list-style-type: none"> • "Yes", if member has signature authority for this entity • "No", if member does not have signature authority for this entity.
Part B	If any member listed in Part A, item 1 is a legal entity; that is, part of another partnership, corporation, etc., enter name and complete TIN of the embedded legal entity. If more than 1 member is a legal entity, use a separate, supplemental sheet to provide the requested information for each embedded legal entity.
1	Enter names of the members making up the legal entity listed in Part B. This could be a person or legal entity.
2	Enter TIN's of the members.
3	Enter address of each member of the entity.
4	Enter percent share of the legal entity that each member owns.
5	Select: <ul style="list-style-type: none"> • "Yes", if member has signature authority for this entity • "No", if member does not have signature authority for this entity.

140 Completing CCC-901's (Continued)

E Completing CCC-901's for 2014 and Subsequent Years (Continued)

Item	Instruction
Part C	If any member listed in Part B, item 1 is a legal entity; that is, part of another partnership, corporation, etc., enter name and complete TIN of the embedded legal entity. If more than 1 member is a legal entity, use a separate, supplemental sheet to provide the requested information for each embedded legal entity.
1	Enter names of the members making up the legal entity listed in Part C. This could be a person or legal entity.
2	Enter TIN's of the members.
3	Enter address of each member.
4	Enter percent share of the legal entity that each member owns.
5	Select: <ul style="list-style-type: none"> • "Yes", if member has signature authority for this entity • "No", if member does not have signature authority for this entity.
Part D	If any member listed in Part C, item 1 is a legal entity; that is, part of another partnership, corporation, etc., enter name and complete TIN of the embedded legal entity. If more than 1 member is a legal entity, use a separate, supplemental sheet to provide the requested information for each embedded legal entity.
1	Enter names of the members making up the legal entity listed in Part D. This could be a person or legal entity.
2	Enter TIN's of the members.
3	Enter address of each member.
4	Enter percent share of the legal entity that each member owns.
5	Select: <ul style="list-style-type: none"> • "Yes", if member has signature authority for this entity • "No", if member does not have signature authority for this entity.

140 Completing CCC-901's (Continued)

E Completing CCC-901's for 2014 and Subsequent Years (Continued)

Item	Instruction																
Part E	If none of the members listed in Parts A through D is a minor, select "N/A" (not applicable) and go to Part F.																
1 through 5	<p>If any member listed in Parts A through D is a minor, provide the following information about that member:</p> <ul style="list-style-type: none"> • minor's name • minor's date of birth • name of the minor's parent or guardian • address of the parent or guardian • TIN of the parent or guardian. <p>Note: If complete TIN is already on file, only the last 4 digits are required.</p>																
6	<table border="1"> <thead> <tr> <th>IF any minor listed in Part E...</th><th>THEN select...</th></tr> </thead> <tbody> <tr> <td>(a) is a producer on a farm and the parent or guardian has no interest</td><td>"Yes".</td></tr> <tr> <td>is a producer on a farm and the parent or guardian has an interest in the farming operation</td><td>"No".</td></tr> <tr> <td>(b) maintains a separate household from the parent or guardian and personally carries out all farming activities with respect to the minor's own farming operation, including maintaining separate accounting</td><td>"Yes".</td></tr> <tr> <td>does not maintain a separate household from the parent or guardian and does not personally carry out all farming activities with respect to the minor's own farming operation, including maintaining separate accounting</td><td>"No".</td></tr> <tr> <td>(c) who is represented by a court-appointed guardian or conservator, lives in a household other than the parents' households, and has a vested ownership in the farm</td><td>"Yes".</td></tr> <tr> <td>who is represented by a court-appointed guardian or conservator, does not live in a separate household other than the parents' households, and does not have a vested ownership in the farm</td><td>"No".</td></tr> <tr> <td>(d) If "Yes" is selected for all items 6(a) through 6(c), write the name of the minor in the space provided.</td><td></td></tr> </tbody> </table>	IF any minor listed in Part E...	THEN select...	(a) is a producer on a farm and the parent or guardian has no interest	"Yes".	is a producer on a farm and the parent or guardian has an interest in the farming operation	"No".	(b) maintains a separate household from the parent or guardian and personally carries out all farming activities with respect to the minor's own farming operation, including maintaining separate accounting	"Yes".	does not maintain a separate household from the parent or guardian and does not personally carry out all farming activities with respect to the minor's own farming operation, including maintaining separate accounting	"No".	(c) who is represented by a court-appointed guardian or conservator, lives in a household other than the parents' households, and has a vested ownership in the farm	"Yes".	who is represented by a court-appointed guardian or conservator, does not live in a separate household other than the parents' households, and does not have a vested ownership in the farm	"No".	(d) If "Yes" is selected for all items 6(a) through 6(c), write the name of the minor in the space provided.	
IF any minor listed in Part E...	THEN select...																
(a) is a producer on a farm and the parent or guardian has no interest	"Yes".																
is a producer on a farm and the parent or guardian has an interest in the farming operation	"No".																
(b) maintains a separate household from the parent or guardian and personally carries out all farming activities with respect to the minor's own farming operation, including maintaining separate accounting	"Yes".																
does not maintain a separate household from the parent or guardian and does not personally carry out all farming activities with respect to the minor's own farming operation, including maintaining separate accounting	"No".																
(c) who is represented by a court-appointed guardian or conservator, lives in a household other than the parents' households, and has a vested ownership in the farm	"Yes".																
who is represented by a court-appointed guardian or conservator, does not live in a separate household other than the parents' households, and does not have a vested ownership in the farm	"No".																
(d) If "Yes" is selected for all items 6(a) through 6(c), write the name of the minor in the space provided.																	

140 Completing CCC-901's (Continued)

E Completing CCC-901's for 2014 and Subsequent Years (Continued)

Item	Instruction
Part F	
1	An individual member, or an authorized representative of the entity in Part A, shall sign the certification.
2	If an authorized representative for the entity in Part A signs CCC-901, use this item to show the individual's representative capacity. For example, "Agent" or "Attorney-in-fact."
3	Enter the date CCC-901 was signed.

140 Completing CCC-901's (Continued)

F Example of CCC-901

The following is an example of a completed CCC-901.

This form is available electronically.

CCC-901
(03-28-14)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

MEMBER'S INFORMATION
Agricultural Act of 2014

1. County
Johnson County

2. State
TX

3. Program Year
2014

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 1400, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), and the Agricultural Act of 2014 (Pub. L. 113-79). The information will be used to identify members of a legal entity. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and non-governmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility for program benefits.

This information collection is exempted from the Paperwork Reduction Act as specified in the Agricultural Act of 2014 (Pub. L. 113-79, Title I, Subtitle F, Administration). The provisions of criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.**

PART A - For each individual or entity who is a member of this entity, list the member's name, social security/employer identification number, address and percentage share of ownership. If a member has both types of identification numbers, list both.

Name of Legal Entity Flatland Farms LLC Complete Tax ID Number XX-XXXXXXX

1. Member's Name	2. SSN or Tax ID Number (Last 4 digits if already on file)	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? (Yes or No)
William A. Farmer	XXXX	9630 Antelope Rd. Centreville, OK XXXXX-XXXX	50 %	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Jane C. Farmer	XXXX	9630 Antelope Rd. Centreville, OK XXXXX-XXXX	25 %	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
William B. Farmer Trust	XXXX	9630 Antelope Rd. Centreville, OK XXXXX-XXXX	25 %	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO

PART B - Embedded Entities: For any member listed in Part A, who is an entity, list such embedded entity's name and list the requested information for each member of such entity. If a member has both types of identification numbers, list both. If more than one member, listed in Part A is an entity, provide the requested information for each entity on supplemental sheets.

Name of Embedded Legal Entity William B. Farmer Trust Complete Tax ID Number XX-XXXXXXX

1. Member's Name	2. SSN or Tax ID Number (Last 4 digits if already on file)	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? (Yes or No)
John D. Farmer	XXXX	9630 Antelope Rd. Centreville, OK XXXXX-XXXX	50 %	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Teresa E. Farmer	XXXX	9630 Antelope Rd. Centreville, OK XXXXX-XXXX	50 %	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO

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Section 6 Trusts

258 Revocable and Irrevocable Trusts

A Types of Trusts

For payment limitation purposes, there are the following 2 types of trusts.

Trust Type	Characteristics
Revocable	<ul style="list-style-type: none"> Can be modified or terminated by the grantor, or the assets revert to the grantor after a specific period of time. Does not meet the criteria for an irrevocable trust.
Irrevocable	<ul style="list-style-type: none"> May not be modified or terminated by the grantor. The grantor does not have any future, contingent, or remainder interest in the corpus of the trust. For trusts established after January 1, 1987, does not provide for transferring the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established, except in cases where the transfer is contingent upon the remainder beneficiary achieving at least the age of majority or upon the death of the grantor or income beneficiary. <p>Note: All trusts not meeting these requirements shall be considered revocable trusts.</p>

B Trust Scrutiny

All trusts that receive payments shall be carefully scrutinized to ensure that the trusts are legitimate legal entities and have not been created solely for the purpose of evading payment limitation provisions.

County Offices shall:

- require producers to provide a copy of the trust agreement unless the trust is a revocable trust
- determine whether provisions are included in the trust that would require the trust to be considered a revocable trust for payment limitation purposes.

259 Trust Eligibility Determinations**A Revocable Trust and Grantor**

A revocable trust is the same as the grantor.

B Trusts With Minor Children Beneficiaries

Program payments will be attributed **only** to the grantor of the revocable trust.

For revocable trusts with 1 or more minor children as beneficiaries, payments earned by the minor children's interest will **not** be attributed to the parent's or court-appointed person's interest, if they are **not** grantors of the trust.

C Programs Not Requiring Actively Engaged in Farming Determinations

If a program requires eligibility determinations, but **not** actively engaged in farming determinations, the following are **required** to be eligible for payments or benefits:

- claimed share of the profits or losses of the farming operation **must** be commensurate with the contributions to the farming operation
- contributions **must** be at risk.

D IRA's and Employee Profit-Sharing Plans

An IRA or employee profit-sharing plan may be considered a valid program participant, as a trust **only**, if the Regional Attorney determines the account:

- meets the definition of "legal entity"
- has full function of a trust
- is owner of the land on which program benefits are requested.

The minimum information submitted for an IRA or profit-sharing plan **must** include documentation that:

- discloses the full trust agreement, naming the trust and trustee who will function for the trust about all FSA programs
- proves the land as an asset of the trust and properly deeded to the trust as evidenced by a deed or other document that FSA can review.

Note: Approval from the Regional Attorney is required **before** any eligibility determinations are made or issued. The request must include a brief summary of the information provided for the IRA or profit-sharing plan and the reviewing authority's opinion of whether or not the IRA or profit-sharing plan meets the requirements to be considered a valid program participant.

140 Completing CCC-901's (Continued)

F Example of CCC-901 (Continued)

CCC-901 (03-28-14) Name of Entity (as Identified in Part A): Flatland Farms LLC Page 2 of 2				
PART C - Embedded Entities: For any member listed in Part B, who is an entity, list such embedded entity's name and list the requested information for each member of such entity. If a member has both types of identification numbers, list both. If more than one member, listed in Part B is an entity, provide the requested information for each entity on supplemental sheets.				
Name of Embedded Legal Entity				Complete Tax ID Number
1. Member's Name	2. SSN or Tax ID Number. (Last 4 digits if already on file)	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? (Yes or No)
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
PART D - Embedded Entities: For any member listed in Part C, who is an entity, list such embedded entity's name and list the information for each member of such entity. If a member has both types of identification numbers, list both. If more than one member, listed in Part C is an entity, provide the requested information for each entity on supplemental sheets.				
Name of Embedded Legal Entity				Complete Tax ID Number
1. Member's Name	2. SSN or Tax ID Number. (Last 4 digits if already on file)	3. Address	4. Percent Share	5. Does this member have signature authority for the legal entity? (Yes or No)
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
			%	<input type="checkbox"/> YES <input type="checkbox"/> NO
Part E. Minor Members or Shareholders – For any Member or Shareholder who is a minor, provide the following: <input type="checkbox"/> N/A				
1. Minor's Name	2. Date of Birth	3. Parent's or Guardian's Name	4. Parent's or Guardian's Address	5. Parent or Guardian's SSN or Tax ID Number (Last 4 digits if already on file)
Teresa E. Farmer	06-15-1998	Jane C. Farmer	9630 Antelope Rd. Centreville, OK XXXXX-XXXX	XXXX
6. Separate Status of Minors (a) Is any minor a producer on a farm in which the parent or guardian has no interest? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (b) Does any minor maintain a separate household from the parent or guardian and personally carry out farming Activities with respect to the minor's farming operation, including maintaining separate accounting? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (c) Does any minor who is represented by a court-appointed guardian or conservator responsible for the minor 1) live in a household other than the parents' household(s), and 2) have a vested ownership in the farm? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (d) If any minor with an interest in this farming operation can answer "YES" to items 6(a)-6(c), list that minor's name:				
PART F - CERTIFICATION - By Signing: - I certify that I have signature authority for the entity identified in Part A and all information entered on this document is true and correct - I understand that furnishing incorrect information will result in forfeiture of payments and benefits. - I will timely provide written notification to the Farm Service Agency committees for the county and State listed on this form of any changes in the information provided.				
1. Representative's Signature (By)		2. Title/Relationship of Individual Signing in the Representative		3. Date (MM-DD-YYYY)
/s/ William A. Farmer		President, Flatland Farms LLC		05-30-2014

260 Trust Actively Engaged in Farming Determinations

A Rule

[7 CFR 1400.205] An irrevocable or revocable trust shall be considered to be actively engaged in farming if all of the requirements in this table are met.

Item	Requirement
1	The trust separately makes a significant contribution of capital, equipment, land, or a combination thereof.
2	Income beneficiaries that make contributions of active personal labor or active personal management, have a combined interest of at least 50 percent, and collectively make a significant contribution to the farming operation.
3	The trust's share of the profits or losses from the farming operation is commensurate with the contribution to the farming operation.
4	The trust's contributions are at risk.
5	The trust has provided TIN of the trust, unless the trust is a revocable trust and either of the following applies: <ul style="list-style-type: none"> the grantor is the sole income beneficiary TIN for the trust is TIN for the co-granter and co-income beneficiary and the other grantor and income beneficiary is their spouse who is not requesting benefits under his or her TIN.
6	<u>The trust has provided a copy of the trust agreement to COC,</u> unless the trust is a revocable trust.

B TIN's

(A single TIN, such as a Social Security number, may **not** be used to pay both a person and a trust in the same year.

Note: See 1-CM, paragraph 121 and Exhibit 10 for EIN requirements for trusts.

C Trustee Actions

The personal actions of a trustee, either labor or management, **cannot** be considered as contributions of the trust in meeting the requirement of actively engaged in farming.

Only the income beneficiaries of a trust can provide the required, at-risk contributions of active personal labor, active personal management, or combination thereof, for the trust to be considered actively engaged in farming.

A Irrevocable Trust Example 1

Situation: EF Trust meets the requirements to be considered an irrevocable trust for payment limitation purposes. The trust, with Persons E and F each having a 50 percent interest, contributes a significant amount of capital to the farming operation. Each beneficiary contributes a significant amount of active personal management. All labor is hired. The land and equipment are leased. The trust's share of the profits or losses from the farming operation is commensurate with the trust's contributions to the operation and the contributions are at risk.

Determination: EF Trust is considered to be actively engaged in farming because the trust provides capital and the beneficiaries contribute a significant amount of active personal management.

B Irrevocable Trust Example 2

Situation: The terms of a late spouse's will made certain specific bequests of cash and nonfarm property to persons other than his or her widow. The balance of the estate, including farmland, is distributed to a testamentary trust. The widow has the sole right to the income of the trust during his or her lifetime. At the time of his or her death, the trust is to be terminated and the property distributed to his or her heirs.

Determination: Because the widow has the sole right to income of the trust during his or her lifetime, the widow is considered the sole beneficiary. The trust is considered actively engaged in farming because of the landowner provision.

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261 Trust Case Examples (Continued)

C Revocable Trust Example 1

Situation: ST Trust is a revocable trust.

- Person U is the grantor and income beneficiary.
- ST Trust contributes a significant amount of both capital and equipment to the farming operation.
- Beneficiary contributes a significant amount of active personal management to the operation.
- All land is leased and all labor is hired.
- The trust's share of the profits or losses from the farming operation is commensurate with its contribution to the operation and the contributions are at risk.

Determination: ST Trust is considered to be actively engaged in farming. For payment limitation purposes, all payments issued to ST Trust will be attributed to Person U as grantor of the trust.

262 Completing CCC-902E's for Trusts

A Completing CCC-902E's

For detailed instructions on completing CCC-902E's, see subparagraph 175 A.

[Rev. 1/16/2013 11:12:22 AM--2012R2]

CHAPTER 164 - ADMINISTRATION OF TRUSTS

GENERAL PROVISIONS

<u>NRS 164.005</u>	Applicability of provisions of chapters 132, 153 and 155 of NRS regulating matters of estates.
<u>NRS 164.010</u>	Trustee; Petition for confirmation of appointment; jurisdiction of court; petition for removal of trust from jurisdiction of court.
<u>NRS 164.015</u>	Petition concerning internal affairs of nontestamentary trust; jurisdiction of court; procedure for contests of certain trusts; final order; appeal.
<u>NRS 164.021</u>	Notice by trustee to beneficiary concerning change of revocable trust to irrevocable trust; contents of notice; limitation of action to contest validity of trust.
<u>NRS 164.025</u>	Notice of death of settlor; filing of claim against trust estate; effect of failure to file claim; notice to Department of Health and Human Services; notice of rejected claim; effect of failure to bring suit after notice of rejected claim.
<u>NRS 164.030</u>	Petition for instructions: Notice; hearing; final order; appeal.
<u>NRS 164.033</u>	Petition concerning conveyance, transfer or delivery of property of trust; notice of hearing; order; appeal.
<u>NRS 164.037</u>	Petitions: Notice and hearing.
<u>NRS 164.038</u>	Circumstances under which certain persons are authorized to be represented by persons with similar interests in proceedings concerning administration of trust; binding results; representation by parent or guardian of beneficiary.
<u>NRS 164.040</u>	Power or jurisdiction of court not abridged; court may take action necessary or proper to dispose of matter presented by petition.

POWER OVER PROPERTY

<u>NRS 164.067</u>	Power to sell, convey or encumber.
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COMMON TRUST FUNDS (UNIFORM ACT)

<u>NRS 164.070</u>	Short title.
<u>NRS 164.080</u>	Establishment; investments; management.
<u>NRS 164.090</u>	Accountings.
<u>NRS 164.100</u>	Uniformity of interpretation.

TRANSFER OF SUPERVISION OF TRUSTS

<u>NRS 164.130</u>	Transfer by court to district court in this State or court outside Nevada.
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CERTIFICATIONS OF TRUST IN LIEU OF TRUST INSTRUMENTS

<u>NRS 164.400</u>	Presentation; effect; form.
<u>NRS 164.410</u>	Contents.
<u>NRS 164.420</u>	Dispositive provisions not required; person presented with certification may request excerpts from trust instrument designating trustee.
<u>NRS 164.430</u>	Reliance upon facts contained in certification; enforceability.
<u>NRS 164.440</u>	Failure to demand certification not improper act; liability.

PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS (UNIFORM ACT)

<u>NRS 164.640</u>	Short title.
<u>NRS 164.643</u>	Definitions.
<u>NRS 164.645</u>	"Charitable purpose" defined.
<u>NRS 164.647</u>	"Endowment fund" defined.
<u>NRS 164.650</u>	"Gift instrument" defined.
<u>NRS 164.653</u>	"Institution" defined.
<u>NRS 164.655</u>	"Institutional fund" defined.
<u>NRS 164.657</u>	"Person" defined.
<u>NRS 164.660</u>	"Program-related asset" defined.
<u>NRS 164.663</u>	"Record" defined.
<u>NRS 164.665</u>	Standard of conduct in managing and investing institutional fund.

<u>NRS 164.667</u>	Appropriation for expenditure or accumulation of endowment fund; rules of construction.
<u>NRS 164.670</u>	Delegation of management and investment functions.
<u>NRS 164.673</u>	Release or modification of restrictions on management, investment or purpose.
<u>NRS 164.675</u>	Reviewing compliance.
<u>NRS 164.677</u>	Relation to Electronic Signatures in Global and National Commerce Act.
<u>NRS 164.680</u>	Uniformity of application and construction.

MANAGEMENT AND INVESTMENT OF PROPERTY

GENERAL PROVISIONS

<u>NRS 164.700</u>	Definitions.
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PRUDENT INVESTOR (UNIFORM ACT)

<u>NRS 164.705</u>	Short title.
<u>NRS 164.710</u>	Administration of trust or estate by fiduciary in accordance with its terms or in accordance with provisions of NRS.
<u>NRS 164.715</u>	Acting in interest of beneficiaries.
<u>NRS 164.720</u>	Trust having two or more beneficiaries; impartial administration of trust or estate.
<u>NRS 164.725</u>	Notice of proposed action: Authorized; to whom notice must be sent; content; objection to proposed action; liability of trustee; court order to take action over objection; burden of proof; notice when action not taken.
<u>NRS 164.730</u>	No duty to make adjustment between principal and income; trustee immunity from liability.
<u>NRS 164.735</u>	Applicability.
<u>NRS 164.740</u>	Duty to comply with prudent investor rule; trustee acting in reliance on trust terms immune from liability.
<u>NRS 164.745</u>	Satisfaction of prudent investor standard; evaluation of decisions; consideration of circumstances; verification of facts; types of investments; special skills or expertise of trustee.
<u>NRS 164.750</u>	Diversification of investments.
<u>NRS 164.755</u>	Duty to bring trust portfolio into compliance with terms and circumstances of trust and provisions of NRS within reasonable time.
<u>NRS 164.760</u>	Incurring costs.
<u>NRS 164.765</u>	Determination of compliance with prudent investor rule.
<u>NRS 164.770</u>	Delegation of functions by trustee; standard of care owed by agent; trustee immunity from liability; jurisdiction over agent.
<u>NRS 164.775</u>	Terms and language of trust which authorize certain investments or strategies.

PRINCIPAL AND INCOME (UNIFORM ACT)

<u>NRS 164.780</u>	Short title.
<u>NRS 164.785</u>	Definitions.
<u>NRS 164.790</u>	Allocation of receipt or disbursement to principal when terms of trust and provisions of NRS do not provide rule.
<u>NRS 164.795</u>	Adjustment between principal and income; consideration of factors; adjustment prohibited under certain circumstances; release of power to adjust; effect of terms of trust that limit power to adjust.
<u>NRS 164.796</u>	Circumstances under which trustee authorized to convert trust into unitrust; effect of such conversion on certain terms of trust; liability of trustee or disinterested person.
<u>NRS 164.797</u>	Administration of unitrust: Duties of trustee; valuation of assets of trust.
<u>NRS 164.798</u>	Administration of unitrust: Powers of trustee; manner of distributions.
<u>NRS 164.799</u>	Trustee or beneficiary authorized to petition court to take certain actions concerning unitrust.
<u>NRS 164.800</u>	Applicable rules after death of decedent or end of income interest in trust.
<u>NRS 164.805</u>	Distribution of net income to beneficiaries; rules for determining share of net income.
<u>NRS 164.810</u>	Date on which income interest begins; date on which asset becomes subject to trust or successive income interest; date on which income interest ends.
<u>NRS 164.815</u>	Allocation of certain income receipts and disbursements; due dates for certain payments and distributions.
<u>NRS 164.820</u>	Payment of undistributed income upon end of mandatory income interest; prorating final payment upon end of obligation to pay fixed annuity or fixed fraction of value of trust's assets.
<u>NRS 164.825</u>	Allocation of money received from entity to income; allocation of receipts from entity to principal; determination of money as return of capital; reliance upon financial statements and other information about character of distribution or source of funds from which distribution is made.
<u>NRS 164.830</u>	Allocation of amount received as distribution of income to income; allocation of distribution of principal to principal; purchase of interest in trust that is investment entity.
<u>NRS 164.835</u>	Accounting separately for business or other activity.
<u>NRS 164.840</u>	Allocation of assets, money, property and other receipts to principal.
<u>NRS 164.845</u>	Allocation of receipts from rental property to income; treatment of refundable deposit.
<u>NRS 164.850</u>	Allocation of interest on obligation to pay money to trustee to income; allocation of amount received from disposition of certain obligations to principal; applicability of provisions.
<u>NRS 164.855</u>	Allocation of proceeds of life insurance policy and certain contracts to principal; allocation of dividends on insurance policy to income or principal.
<u>NRS 164.860</u>	Allocation of entire amount to principal if allocation between principal and income under certain circumstances is insubstantial.
<u>NRS 164.865</u>	Allocation of certain payments received because of services rendered or property transferred to payor in exchange for future payments to income or principal, or both; certain exceptions for trusts that qualify for marital deduction under federal law.

<u>NRS 164.870</u>	Allocation of receipts from liquidating assets to income and principal.
<u>NRS 164.875</u>	Allocation of receipts from interest in minerals to income or to income and principal; allocation of receipts from interest in water to income or to income and principal; applicability.
<u>NRS 164.880</u>	Allocation of net receipts from sale of timber and related products to income or principal, or both; applicability.
<u>NRS 164.885</u>	Request of spouse if marital deduction is allowed and amounts transferred from principal to income and distributed are insufficient to obtain marital deduction; proceeds from sale or disposition of assets generally principal.
<u>NRS 164.890</u>	Allocation of receipts from and disbursements made in connection with transactions in derivatives to principal; allocation of amount received for granting certain options to principal.
<u>NRS 164.895</u>	Allocation from proceeds of collateral financial assets to income and principal; allocation of payments in exchange for interest in asset-backed security to principal or to principal and income.
<u>NRS 164.900</u>	Disbursements required to be made from income; reduction of amount charged against income.
<u>NRS 164.905</u>	Disbursements required to be made from principal.
<u>NRS 164.910</u>	Transfer of net cash receipts from principal asset subject to depreciation to principal.
<u>NRS 164.915</u>	Transfer of amount from income to principal to make certain principal disbursements.
<u>NRS 164.920</u>	Payment of taxes required to be paid by trustee.
<u>NRS 164.925</u>	Adjustments between principal and income to offset shifting economic interests or tax benefits between income beneficiaries and remainder beneficiaries; reimbursement of principal if estate taxes are increased and income taxes are decreased under certain circumstances.

MISCELLANEOUS PROVISIONS

<u>NRS 164.950</u>	Distribution by trustee of community property in nontestamentary trust established by married settlors.
<u>NRS 164.960</u>	Applicability of <u>NRS 111.781</u> to transfers of property made pursuant to trust.

GENERAL PROVISIONS

NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of NRS regulating matters of estates. When not otherwise inconsistent with the provisions of chapters 162 to 167, inclusive, of NRS, all of the provisions of chapters 132, 153 and 155 of NRS regulating the matters of estates:

1. Apply to proceedings relating to trusts, as appropriate; or
 2. May be applied to supplement the provisions of chapters 162 to 167, inclusive, of NRS.
- (Added to NRS by 2001, 2351)

NRS 164.010 Trustee: Petition for confirmation of appointment; jurisdiction of court; petition for removal of trust from jurisdiction of court.

1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which the trustee resides or conducts business, or in which the trust has been domiciled, shall consider the application to confirm the appointment of the trustee and specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the trust as a proceeding in rem.

2. If the court grants the petition, it may consider at the same time any petition for instructions filed with the petition for confirmation.

3. At any time, the trustee may petition the court for removal of the trust from continuing jurisdiction of the court.

4. As used in this section, "written instrument" includes, without limitation, an electronic trust as defined in NRS 163.0015.

[1:22:1953]—(NRS A 1961, 400; 1999, 2377; 2001, 2352)

NRS 164.015 Petition concerning internal affairs of nontestamentary trust; jurisdiction of court; procedure for contests of certain trusts; final order; appeal.

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in NRS 153.031.

2. A petition under this section may be filed in conjunction with a petition under NRS 164.010 or at any time after the court has assumed jurisdiction under that section.

3. If an interested person contests the validity of a revocable nontestamentary trust, the interested person is the plaintiff and the trustee is the defendant. The written grounds for contesting the validity of the trust constitutes a pleading and must conform with any rules applicable to pleadings in a civil action.

4. In a proceeding pursuant to subsection 3, the competency of the settlor to make the trust, the freedom of the settlor from duress, menace, fraud or undue influence at the time of execution of the will, the execution and attestation of the

trust instrument, or any other question affecting the validity of the trust is a question of fact and must be tried by the court, subject to the provisions of subsection 5.

5. A court may consolidate the cases if there is a contest of a revocable nontestamentary trust and a contest relating to a will executed on the same date. If a jury is demanded pursuant to NRS 137.020 for the contest of the will, the court may instruct the jury to render an advisory opinion with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.

6. Upon the hearing, the court shall enter such order as it deems appropriate. The order is final and conclusive as to all matters determined and is binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the Supreme Court may be taken from the order within 30 days after notice of its entry by filing notice of appeal with the clerk of the district court. The appellant shall mail a copy of the notice to each person who has appeared of record. If the proceeding was brought pursuant to subsection 3, 4 or 5, the court must also award costs pursuant to chapter 18 of NRS.

7. A proceeding under this section does not result in continuing supervisory proceedings. The administration of the trust must proceed expeditiously in a manner consistent with the terms of the trust, without judicial intervention or the order, approval or other action of any court, unless the jurisdiction of the court is invoked by an interested person or exercised as provided by other law.

(Added to NRS by 1999, 2375; A 2009, 798)

NRS 164.021 Notice by trustee to beneficiary concerning change of revocable trust to irrevocable trust; contents of notice; limitation of action to contest validity of trust.

1. When a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of the settlor or to any other interested person.

2. The notice provided by the trustee must contain:

- (a) The identity of the settlor of the trust and the date of execution of the trust instrument;
- (b) The name, mailing address and telephone number of any trustee of the trust;
- (c) Any provision of the trust instrument which pertains to the beneficiary or notice that the heir or interested person is not a beneficiary under the trust;
- (d) Any information required to be included in the notice expressly provided by the trust instrument; and
- (e) A statement set forth in a separate paragraph, in 12-point boldface type or an equivalent type which states: "You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you."

3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.

4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

(Added to NRS by 2009, 794; A 2011, 1469)

NRS 164.025 Notice of death of settlor; filing of claim against trust estate; effect of failure to file claim; notice to Department of Health and Human Services; notice of rejected claim; effect of failure to bring suit after notice of rejected claim.

1. The trustee of a nontestamentary trust may after the death of the settlor of the trust cause to be published a notice in the manner specified in paragraph (b) of subsection 1 of NRS 155.020 and mail a copy of the notice to known or readily ascertainable creditors.

2. The notice must be in substantially the following form:

NOTICE TO CREDITORS

Notice is hereby given that the undersigned is the duly appointed and qualified trustee of the trust., the settlor of that trust died on A creditor having a claim against the trust estate must file a claim with the undersigned at the address given below within 90 days after the first publication of this notice.

Dated.....

.....
Trustee

.....
Address

3. A person having a claim, due or to become due, against a settlor or the trust must file the claim with the trustee within 90 days after the mailing, for those required to be mailed, or 90 days after publication of the first notice to creditors. Any claim against the trust estate not filed within that time is forever barred. After the expiration of the time, the trustee may distribute the assets of the trust to its beneficiaries without personal liability to any creditor who has failed to file a claim with the trustee.

4. If the trustee knows or has reason to believe that the settlor received public assistance during the lifetime of the settlor, the trustee shall, whether or not the trustee gives notice to other creditors, give notice within 30 days after the death to the Department of Health and Human Services in the manner provided in NRS 155.010. If notice to the Department is required by this subsection but is not given, the trust estate and any assets transferred to a beneficiary remain subject to the right of the Department to recover public assistance received.

5. If a claim is rejected by the trustee, in whole or in part, the trustee must, within 10 days after the rejection, notify the claimant of the rejection by written notice forwarded by registered or certified mail to the mailing address of the claimant. The claimant must bring suit in the proper court against the trustee within 60 days after the notice is given, whether the claim is due or not, or the claim is barred forever and the trustee may distribute the assets of the trust to its beneficiaries without personal liability to any creditor whose claim is barred forever.

(Added to NRS by 1985, 967; A 1995, 2578; 1999, 2377; 2001, 2352; 2003, 886)

NRS 164.030 Petition for instructions: Notice; hearing; final order; appeal.

1. Any trustee whose appointment has been confirmed, as provided in NRS 164.010, at any time thereafter may petition the court for instructions in the administration of the trust or for a construction of the trust instrument, or upon or after the filing of a final account, for the settlement and allowance thereof.

2. Upon the filing of the petition the court shall make an order fixing a time and place for hearing thereof, unless hearing has been waived in writing by the beneficiaries of the trust.

3. Unless otherwise ordered by the court, notice of the hearing must be given as follows:

(a) The clerk shall set the petition for hearing;

(b) The petitioner must give notice stating the filing of the petition and the object and time of the hearing to all persons entitled to notice as provided in NRS 155.010; and

(c) The trustee filing such petition shall cause a copy of the order to be delivered to the beneficiaries of the trust as follows:

(1) By handing the notice or copy to the beneficiary personally or to the beneficiary's guardian, or attorney of record; or

(2) By sending it by registered or certified mail with return receipt requested to such beneficiary, or the beneficiary's guardian or attorney of record, at the last known address of the addressee.

4. Upon the hearing the court shall make such order as it deems appropriate, which order is final and conclusive as to all matters thereby determined and binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the Supreme Court may be taken from the order within 30 days from the entry thereof by filing notice of appeal with the clerk of the district court, who shall mail a copy of the notice to each adverse party who has appeared of record.

[3:22:1953]—(NRS A 1967, 354; 1969, 95, 484; 1971, 1998; 1997, 1495)

NRS 164.033 Petition concerning conveyance, transfer or delivery of property of trust; notice of hearing; order; appeal.

1. The trustee or an interested person may petition the court to enter an order:

(a) If the trustee is in possession of, or holds title to, property and the property or an interest in it is claimed by another.

(b) If the trustee has a claim to property and another holds title to or is in possession of the property.

(c) If property of the trust is subject to a claim of a creditor of the settlor of the trust.

2. The court shall not grant a petition under this section if it determines that the matter should be determined by civil action.

3. The petition must state facts showing that it is authorized under this section, the grounds of the petition, and the name and address of each person entitled to notice of the petition.

4. Upon the filing of the petition, the clerk shall set it for hearing and the petitioner shall give notice of the hearing, at least 30 days before the time set, to:

(a) All interested persons, including the Attorney General if the petition relates to a charitable trust, in the manner provided in NRS 155.010.

(b) Each person claiming an interest in, or having title to or possession of the property, and any other person whose right, title or interest in or to the property would be affected by the granting of the petition, in the manner provided in NRS 155.040.

(c) Any other person, and in the manner, directed by the court.

5. Except as otherwise provided in subsection 2, if the court is satisfied that a conveyance, transfer, delivery or other disposition should be made, the court shall enter an order directing the trustee or other person having title to or possession of the property to convey, transfer or deliver it to the person entitled thereto or granting other appropriate relief.

6. Any person aggrieved by an order entered pursuant to this section may appeal to the Supreme Court within 30 days after the notice of the entry of the order by filing a notice of appeal with the clerk of the district court. The appellant shall mail a copy of the notice to each person who has appeared of record.

(Added to NRS by 1999, 2376)

NRS 164.037 Petitions: Notice and hearing. Except as otherwise provided in NRS 164.033, the clerk shall set a petition authorized by this chapter for hearing, and the petitioner shall give notice to all interested persons for the period and in the manner provided in NRS 155.010. The notice must state the filing of the petition, the object and the time of the hearing. For the purposes of this section, "interested person" means a settlor, trustee, beneficiary or any other person to whom the court directs that notice be given.

(Added to NRS by 1999, 2375)

NRS 164.038 Circumstances under which certain persons are authorized to be represented by persons with similar interests in proceedings concerning administration of trust; binding results; representation by parent or guardian of beneficiary.

1. Unless otherwise represented by counsel, a minor, incapacitated person, unborn person or person whose identity or location is unknown and not reasonably ascertainable may be represented by another person who has a substantially similar interest with respect to the question or dispute.

2. A person may only be represented by another person pursuant to subsection 1 if there is no material conflict of interest between the person and the representative with respect to the question or dispute for which the person is being represented. If a person is represented pursuant to subsection 1, the results of that representation in the question or dispute will be binding on the person.

3. A presumptive remainder beneficiary may represent and bind a beneficiary with a contingent remainder for the same purpose, in the same circumstance and to the same extent as an ascertainable beneficiary may bind a minor, incapacitated person, unborn person or person who cannot be ascertained.

4. If a trust has a minor or incapacitated beneficiary who may not be represented by another person pursuant to this section, the custodial parent or guardian of the estate of the minor or incapacitated beneficiary may represent the minor or incapacitated beneficiary in any judicial proceeding or nonjudicial matter pertaining to the trust. A minor or incapacitated beneficiary may only be represented by a parent or guardian if there is no material conflict of interest between the minor or incapacitated beneficiary and the parent or guardian with respect to the question or dispute. If a minor or incapacitated beneficiary is represented pursuant to this subsection, the results of that representation will be binding on the minor or incapacitated beneficiary. The representation of a minor or incapacitated beneficiary pursuant to this subsection is binding on an unborn person or a person who cannot be ascertained if:

(a) The unborn person or a person who cannot be ascertained has an interest substantially similar to the minor or incapacitated person; and

(b) There is no material conflict of interest between the unborn person or a person who cannot be ascertained and the minor or incapacitated person with respect to the question or dispute.

5. As used in this section, "presumptive remainder beneficiary" means:

(a) A beneficiary who would receive income or principal of the trust if the trust were to terminate as of that date, regardless of the exercise of a power of appointment; or

(b) A beneficiary who, if the trust does not provide for termination, would receive or be eligible to receive distributions of income or principal of the trust if all beneficiaries of the trust who were receiving or eligible to receive distributions were deceased.

(Added to NRS by 2009, 794)

NRS 164.040 Power or jurisdiction of court not abridged; court may take action necessary or proper to dispose of matter presented by petition.

1. NRS 164.010 and 164.015 do not limit or abridge the power or jurisdiction of the district court over trusts and trustees.

2. The court may enter any order or take any other action necessary or proper to dispose of the matters presented by a petition, including the appointment of a temporary trustee to administer the trust in whole or in part.

[4:22:1953]—(NRS A 1999, 2378; 2001, 164)

POWER OVER PROPERTY

NRS 164.067 Power to sell, convey or encumber.

1. When title to real or personal property is taken in the name of a trustee, the trustee has the power to sell, convey or encumber that property unless the deed or conveyance to the trustee specifically limits the power of the trustee to do so.

2. This section applies to property acquired by a trustee on or after July 1, 1979.

(Added to NRS by 1979, 408)

COMMON TRUST FUNDS (UNIFORM ACT)

NRS 164.070 Short title. NRS 164.070 to 164.100, inclusive, may be cited as the Uniform Common Trust Fund Act.

[1:21:1955]—(NRS A 1999, 2379)

NRS 164.080 Establishment; investments; management.

1. Any bank or trust company qualified to act as fiduciary in this State, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this State, may:

(a) Establish common trust funds to furnish investments to itself and its affiliated bank or trust company as fiduciary or to itself, its affiliated bank or trust company and others, as cofiduciaries; and

(b) As fiduciary or cofiduciary, invest money which it lawfully holds for investment in interests in those common trust funds, if the investment is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to the investment.

2. Any bank or trust company, qualified to act as fiduciary in the state in which it was chartered, which is not a member of the Federal Reserve System shall, in the operation of the common trust fund, comply with the regulations adopted by the supervisor of banking in the state in which it was chartered and with the regulations adopted by the commissioner of financial institutions in this State.

3. The Commissioner of Financial Institutions of the Department of Business and Industry may adopt regulations to carry out the provisions of NRS 164.070 to 164.100, inclusive.

4. As used in this section, "affiliated" means two or more banks or trust companies:

- (a) In which at least 25 percent of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or
 - (b) In which the election of a majority of the directors is controlled in any manner by a holding company.
- [2:21:1955]—(NRS A 1985, 972; 1987, 1875; 1993, 1510; 1999, 2379)

NRS 164.090 Accountings. Unless ordered by a court of competent jurisdiction, the bank or trust company operating common trust funds is not required to render a court accounting with regard to those funds, but it may, by petition to the court, secure approval of such an accounting on such conditions as the court may establish.

[3:21:1955]—(NRS A 1999, 2379)

NRS 164.100 Uniformity of interpretation. NRS 164.070 to 164.100, inclusive, must be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

[4:21:1955]—(NRS A 1999, 2380)

TRANSFER OF SUPERVISION OF TRUSTS

NRS 164.130 Transfer by court to district court in this State or court outside Nevada. Upon petition by any trustee or beneficiary, a court having jurisdiction of a trust may transfer supervision of the trust to any district court within the State, or to any court outside Nevada which accepts jurisdiction over the trust, when the convenience of beneficiaries, trustees, attorneys or other interested persons makes a transfer desirable.

(Added to NRS by 1967, 205; A 1977, 570; 1999, 2380; 2007, 894)

CERTIFICATIONS OF TRUST IN LIEU OF TRUST INSTRUMENTS

NRS 164.400 Presentation; effect; form.

1. Except in connection with an application for benefits pursuant to chapter 422 or 422A of NRS, a trustee may present a certification of trust to any person, in lieu of a copy of any trust instrument, to establish the existence or terms of the trust. The trustee may present the certification voluntarily or at the request of the person with whom the trustee is dealing.

2. Such a certification must be in the form of an affidavit signed and acknowledged by all of the currently acting trustees of the trust.

(Added to NRS by 1995, 211; A 2005, 22nd Special Session, 49)

NRS 164.410 Contents.

1. A certification of trust may confirm the following facts or contain the following information:

- (a) The existence of the trust and date of execution of any trust instrument;
- (b) The identity of the settlor and each currently acting trustee;
- (c) The powers of the trustee and any restrictions imposed upon the trustee in dealing with assets of the trust;
- (d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;
- (e) If there is more than one trustee, whether all of the currently acting trustees must or less than all may act to exercise identified powers of the trustee;
- (f) The identifying number of the trust and whether it is a social security number or an employer identification number; and
- (g) The form in which title to assets of the trust is to be taken.

2. The certification must contain a statement that the trust has not been revoked or amended to make any representations contained in the certification incorrect, and that the signatures are those of all the currently acting trustees.

(Added to NRS by 1995, 211)

NRS 164.420 Dispositive provisions not required; person presented with certification may request excerpts from trust instrument designating trustee. A certification of trust need not contain the dispositive provisions of the trust, but the person to whom the certification is presented may require copies of excerpts from any trust instrument which designate the trustee or confer upon him or her the power to act in the pending transaction.

(Added to NRS by 1995, 212)

NRS 164.430 Reliance upon facts contained in certification; enforceability.

1. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not know that the facts contained in the certification are incorrect may assume without inquiry the existence of the facts contained in the certification. Knowledge may not be inferred solely from the fact that a copy of all or part of a trust instrument is held by the person relying upon the certification.

2. A transaction, and any lien created thereby, entered into by a trustee and a person acting in reliance upon a certification of trust is fully enforceable against the assets of the trust unless the person knows that the trustee is acting outside the scope of the trust.

(Added to NRS by 1995, 212)

NRS 164.440 Failure to demand certification not improper act; liability. A person's failure to demand a certification of trust may not be considered to be an improper act by the person and no inference as to whether the person has acted in good faith may be drawn from the failure to demand a certification of trust. This section creates no

implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of NRS 164.400 to 164.430, inclusive, are not satisfied.

(Added to NRS by 1995, 212)

PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS (UNIFORM ACT)

NRS 164.640 Short title. The provisions of NRS 164.640 to 164.680, inclusive, may be cited as the Uniform Prudent Management of Institutional Funds Act.

(Added to NRS by 2007, 112)

NRS 164.643 Definitions. As used in NRS 164.640 to 164.680, inclusive, unless the context otherwise requires, the words and terms defined in NRS 164.645 to 164.663, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2007, 112)

NRS 164.645 "Charitable purpose" defined. "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose or any other purpose the achievement of which is beneficial to the community.

(Added to NRS by 2007, 112)

NRS 164.647 "Endowment fund" defined. "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(Added to NRS by 2007, 112)

NRS 164.650 "Gift instrument" defined. "Gift instrument" means a record or records, including, without limitation, an institutional solicitation, under which property is granted to, transferred to or held by an institution as an institutional fund.

(Added to NRS by 2007, 112)

NRS 164.653 "Institution" defined. "Institution" means:

1. A person, other than an individual, organized and operated exclusively for charitable purposes;
2. A government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and
3. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(Added to NRS by 2007, 112)

NRS 164.655 "Institutional fund" defined. "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

1. Program-related assets;
2. A fund held for an institution by a trustee that is not an institution; or
3. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(Added to NRS by 2007, 112)

NRS 164.657 "Person" defined. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(Added to NRS by 2007, 113)

NRS 164.660 "Program-related asset" defined. "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(Added to NRS by 2007, 113)

NRS 164.663 "Record" defined. "Record" means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(Added to NRS by 2007, 113)

NRS 164.665 Standard of conduct in managing and investing institutional fund.

1. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.
2. In addition to complying with the duty of loyalty imposed by law other than NRS 164.640 to 164.680, inclusive, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In managing and investing an institutional fund, an institution:
 - (a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution; and
 - (b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
4. An institution may pool two or more institutional funds for purposes of management and investment.

5. Except as otherwise provided by a gift instrument, the following rules apply:
 - (a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 - (1) General economic conditions;
 - (2) The possible effect of inflation or deflation;
 - (3) The expected tax consequences, if any, of investment decisions or strategies;
 - (4) The role that each investment or course of action plays within the overall investment portfolio of the fund;
 - (5) The expected total return from income and the appreciation of investments;
 - (6) Other resources of the institution;
 - (7) The needs of the institution and the fund to make distributions and to preserve capital; and
 - (8) An asset's special relationship or special value, if any, to the charitable purposes of the institution.
 - (b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.
 - (c) Except as otherwise provided by law other than NRS 164.640 to 164.680, inclusive, an institution may invest in any kind of property or type of investment consistent with this section.
 - (d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.
 - (e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution or necessary to meet other circumstances of the institution and the requirements of NRS 164.640 to 164.680, inclusive.
 - (f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(Added to NRS by 2007, 113)

NRS 164.667 Appropriation for expenditure or accumulation of endowment fund; rules of construction.

1. Subject to the intent of a donor expressed in the gift instrument and to subsection 4, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:
 - (a) The duration and preservation of the endowment fund;
 - (b) The purposes of the institution and the endowment fund;
 - (c) General economic conditions;
 - (d) The possible effect of inflation or deflation;
 - (e) The expected total return from income and the appreciation of investments;
 - (f) Other resources of the institution; and
 - (g) The investment policy of the institution.
2. To limit the authority to appropriate for expenditure or accumulate under subsection 1, a gift instrument must specifically state the limitation.
3. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or words of similar import:
 - (a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
 - (b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection 1.
4. The appropriation for expenditure in any year of an amount greater than 7 percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for less than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:
 - (a) Apply to an appropriation for expenditure permitted under law other than NRS 164.640 to 164.680, inclusive, or by the gift instrument; or
 - (b) Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7 percent of the fair market value of the endowment fund.

(Added to NRS by 2007, 114)

NRS 164.670 Delegation of management and investment functions.

1. Subject to any specific limitation set forth in a gift instrument or in law other than NRS 164.640 to 164.680, inclusive, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:
 - (a) Selecting an agent;
 - (b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

3. An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated.

4. By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.

5. An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this State other than NRS 164.640 to 164.680, inclusive.

(Added to NRS by 2007, 115)

NRS 164.673 Release or modification of restrictions on management, investment or purpose.

1. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

2. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

3. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

4. If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(a) The institutional fund subject to the restriction has a total value of less than \$25,000;

(b) More than 20 years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(Added to NRS by 2007, 115)

NRS 164.675 Reviewing compliance. Compliance with NRS 164.640 to 164.680, inclusive, is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

(Added to NRS by 2007, 116)

NRS 164.677 Relation to Electronic Signatures in Global and National Commerce Act. The provisions of NRS 164.640 to 164.680, inclusive, modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but do not modify, limit or supersede Section 101 of that Act, 15 U.S.C. § 7001 (a), or authorize electronic delivery of any of the notices described in Section 103 of that Act, 15 U.S.C. § 7003(b).

(Added to NRS by 2007, 116)

NRS 164.680 Uniformity of application and construction. In applying and construing the Uniform Prudent Management of Institutional Funds Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Added to NRS by 2007, 116)

MANAGEMENT AND INVESTMENT OF PROPERTY

General Provisions

NRS 164.700 Definitions. As used in NRS 164.700 to 164.925, inclusive:

1. "Fiduciary" means a trustee or, to the extent that NRS 164.780 to 164.925, inclusive, apply to an estate, a personal representative.

2. "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

3. "Unitrust" means a trust in which a certain percentage of annually assessed fair market value of trust property is paid to a trust beneficiary.

(Added to NRS by 2003, 1965; A 2009, 799)

Prudent Investor (Uniform Act)

NRS 164.705 Short title. NRS 164.700 to 164.775, inclusive, may be cited as the Uniform Prudent Investor Act.

(Added to NRS by 2003, 1967)

NRS 164.710 Administration of trust or estate by fiduciary in accordance with its terms or in accordance with provisions of NRS. In performing his or her duties under NRS 164.700 to 164.925, inclusive, a fiduciary:

1. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in NRS 164.700 to 164.925, inclusive;
2. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by NRS 164.700 to 164.925, inclusive; and
3. Shall administer a trust or estate in accordance with NRS 164.700 to 164.925, inclusive, if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(Added to NRS by 2003, 1965)

NRS 164.715 Acting in interest of beneficiaries. A trustee shall invest and manage the trust property solely in the interest of the beneficiaries.

(Added to NRS by 2003, 1966)

NRS 164.720 Trust having two or more beneficiaries; impartial administration of trust or estate.

1. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries.
2. In exercising the power to adjust under NRS 164.795 or 164.796 or a discretionary power of administration regarding a matter within the scope of NRS 164.780 to 164.925, inclusive, whether granted by the terms of a trust, a will or NRS 164.780 to 164.925, inclusive, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with NRS 164.780 to 164.925, inclusive, is presumed to be fair and reasonable to all the beneficiaries.

(Added to NRS by 2003, 1966; A 2009, 799)

NRS 164.725 Notice of proposed action: Authorized; to whom notice must be sent; content; objection to proposed action; liability of trustee; court order to take action over objection; burden of proof; notice when action not taken.

1. As used in this section, "action" includes a course of action and a decision on whether or not to take action.
2. A trustee may provide a notice of proposed action regarding any matter governed by NRS 163.556 or 164.700 to 164.925, inclusive.
3. If a trustee provides a notice of proposed action, the trustee shall mail the notice of proposed action to every adult beneficiary who, at the time the notice is provided, receives, or is entitled to receive, income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated. A notice of proposed action need not be provided to a person who consents in writing to the proposed action. A consent to a proposed action may be executed before or after the proposed action is taken.
4. The notice of proposed action must state:
 - (a) That the notice is provided pursuant to this section;
 - (b) The name and mailing address of the trustee;
 - (c) The name and telephone number of a person with whom to communicate for additional information regarding the proposed action;
 - (d) A description of the proposed action and an explanation of the reason for taking the action;
 - (e) The time within which objection to the proposed action may be made, which must be not less than 30 days after the notice of proposed action is mailed; and
 - (f) The date on or after which the proposed action is to be taken or is to be effective.
5. A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address and within the time stated in the notice.
6. If no beneficiary entitled to receive notice of a proposed action objects to the proposed action and the other requirements of this section are met, the trustee is not liable to any present or future beneficiary with respect to that proposed action.
7. If the trustee received a written objection to the proposed action within the period specified in the notice, the trustee or a beneficiary may petition the court for an order to take the action as proposed, take the action with modification or deny the proposed action. A beneficiary who failed to object to the proposed action is not estopped from opposing the proposed action. The burden is on a beneficiary to prove that the proposed action should not be taken or should be modified. If the trustee takes the proposed action as approved by the court, the trustee is not liable to any beneficiary with respect to that action.
8. If the trustee decides not to take a proposed action for which notice has been provided, the trustee shall notify the beneficiaries of his or her decision not to take the proposed action and the reasons for the decision. The trustee is not liable to any present or future beneficiary with respect to the decision not to take the proposed action. A beneficiary may petition the court for an order to take the action as proposed. The burden is on the beneficiary to prove that the proposed action should be taken.
9. If the proposed action for which notice has been provided is an adjustment to principal and income pursuant to NRS 164.795 or 164.796, the sole remedy a court may order, pursuant to subsections 7 and 8, is to make the adjustment, to make the adjustment with a modification or to order the adjustment not to be made.

(Added to NRS by 2003, 1966; A 2009, 800)

NRS 164.730 No duty to make adjustment between principal and income; trustee immunity from liability.

1. The provisions of NRS 164.700 to 164.925, inclusive, do not impose or create a duty of a trustee to make an adjustment between principal and income pursuant to the provisions of NRS 164.795 or 164.796.

2. A trustee shall not be liable for:

- (a) Not considering whether to make such an adjustment; or
- (b) Deciding not to make such an adjustment.

(Added to NRS by 2003, 1967; A 2009, 801)

NRS 164.735 Applicability. Except as specifically provided in a trust instrument, a will or NRS 164.700 to 164.925, inclusive, the provisions of NRS 164.700 to 164.925, inclusive, apply to any trust or estate of a decedent existing on or after October 1, 2003.

(Added to NRS by 2003, 1967)

NRS 164.740 Duty to comply with prudent investor rule; trustee acting in reliance on trust terms immune from liability. Except as otherwise provided in chapter 669A of NRS, a trustee who invests and manages trust property owes a duty to the beneficiaries of the trust to comply with the prudent investor rule as set forth in NRS 164.700 to 164.775, inclusive, but a trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.

(Added to NRS by 2003, 1967; A 2011, 1817)

NRS 164.745 Satisfaction of prudent investor standard; evaluation of decisions; consideration of circumstances; verification of facts; types of investments; special skills or expertise of trustee.

1. A trustee shall invest and manage trust property as a prudent investor would, considering the terms, purposes, requirements for distribution, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

2. A trustee's decisions concerning investment and management as applied to individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall strategy of investment having objectives for risk and return reasonably suited to the trust.

3. Among circumstances that a trustee shall consider in investing and managing trust property are such of the following as are relevant to the trust or its beneficiaries:

- (a) General economic conditions;
- (b) The possible effect of inflation or deflation;
- (c) The expected tax consequences of decisions or strategies;
- (d) The role that each investment or course of action plays within the overall trust portfolio;
- (e) The expected total return from income and the appreciation of capital;
- (f) Other resources of the beneficiaries;
- (g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust property.

5. A trustee may invest in any kind of property or type of investment consistent with the standards of NRS 164.700 to 164.775, inclusive, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.

6. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that he or she has special skills or expertise, has a duty to use those special skills or expertise.

(Added to NRS by 2003, 1967)

NRS 164.750 Diversification of investments. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

(Added to NRS by 2003, 1968)

NRS 164.755 Duty to bring trust portfolio into compliance with terms and circumstances of trust and provisions of NRS within reasonable time. Within a reasonable time after accepting a trusteeship or receiving trust property, a trustee shall review the trust property and make and carry out decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, requirements for distribution and other circumstances of the trust, and with the requirements of NRS 164.700 to 164.775, inclusive.

(Added to NRS by 2003, 1968)

NRS 164.760 Incurring costs. In investing and managing trust property, a trustee may only incur costs that are appropriate and reasonable in relation to the property, the purposes of the trust and the skills of the trustee.

(Added to NRS by 2003, 1968)

NRS 164.765 Determination of compliance with prudent investor rule. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

(Added to NRS by 2003, 1968)

NRS 164.770 Delegation of functions by trustee; standard of care owed by agent; trustee immunity from liability; jurisdiction over agent.

1. A trustee may delegate functions of investment and management that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (a) Selecting an agent;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (c) Periodically reviewing the agent's actions in order to verify the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. A trustee who complies with the requirements of subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

4. By accepting the delegation of a function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(Added to NRS by 2003, 1968)

NRS 164.775 Terms and language of trust which authorize certain investments or strategies. The following terms or comparable language in the terms of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under NRS 164.700 to 164.775, inclusive: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule" and "prudent investor rule."

(Added to NRS by 2003, 1968)

Principal and Income (Uniform Act)

NRS 164.780 Short title. NRS 164.700, subsection 2 of NRS 164.720 and NRS 164.780 to 164.925, inclusive, may be cited as the Uniform Principal and Income Act (1997).

(Added to NRS by 2003, 1969)

NRS 164.785 Definitions. As used in NRS 164.780 to 164.925, inclusive:

1. "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

2. "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

3. "Fiduciary" includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

4. "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in NRS 164.825 to 164.895, inclusive.

5. "Income beneficiary" means a person to whom net income of a trust is or may be payable.

6. "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

7. "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

8. "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under NRS 164.780 to 164.925, inclusive, to or from income during the period.

9. "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

10. "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(Added to NRS by 2003, 1969)

NRS 164.790 Allocation of receipt or disbursement to principal when terms of trust and provisions of NRS do not provide rule. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of NRS 164.800 to 164.820, inclusive, a fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and NRS 164.780 to 164.925, inclusive, do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(Added to NRS by 2003, 1969)

NRS 164.795 Adjustment between principal and income; consideration of factors; adjustment prohibited under certain circumstances; release of power to adjust; effect of terms of trust that limit power to adjust.

1. A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in NRS 164.710 and 164.790, that he or she is unable to comply with subsection 2 of NRS 164.720.

2. In deciding whether and to what extent to exercise the power conferred by subsection 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (a) The nature, purpose and expected duration of the trust;
- (b) The intent of the settlor;
- (c) The identity and circumstances of the beneficiaries;
- (d) The needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (e) The assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the settlor;
- (f) The net amount allocated to income under the other provisions of NRS 164.780 to 164.925, inclusive, and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (g) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (h) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
- (i) The anticipated tax consequences of an adjustment.

3. A trustee may not make an adjustment:

- (a) That diminishes the income interest in a trust that requires all the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (b) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- (d) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
- (e) If possessing or exercising the power to make an adjustment causes a natural person to be treated as the owner of all or part of the trust for income tax purposes, and the natural person would not be treated as the owner if the trustee did not possess the power to make an adjustment;
- (f) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of a natural person who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the natural person if the trustee did not possess the power to make an adjustment;
- (g) If the trustee is a beneficiary of the trust; or
- (h) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

4. If paragraph (e), (f), (g) or (h) of subsection 3 applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

5. A trustee may release the entire power conferred by subsection 1 or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (a) to (f), inclusive, or (h) of subsection 3 or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 3. The release may be permanent or for a specified period, including a period measured by the life of a natural person.

6. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection 1.

(Added to NRS by 2003, 1969)

NRS 164.796 Circumstances under which trustee authorized to convert trust into unitrust; effect of such conversion on certain terms of trust; liability of trustee or disinterested person.

1. Unless expressly prohibited by the trust instrument, a trustee may convert a trust into a unitrust if:

- (a) The trustee determines conversion to a unitrust will better enable the trustee to carry out the intent of the settlor and the purpose of the trust;
- (b) The trustee gives written notice of his or her intention to convert the trust to a unitrust, including how the unitrust will operate, the income distributions rate established pursuant to subsection 3 of NRS 164.797 and subsection 1 of NRS 164.799, and what initial decisions the trustee will make pursuant to this section, to all beneficiaries who:
 - (1) Are presently eligible to receive income from the trust;
 - (2) Would be eligible, if a power of appointment were not exercised, to receive income from the trust if the interest of any beneficiary eligible to receive income terminated immediately before the trustee gives notice; and
 - (3) Would receive, if a power of appointment were not exercised, a distribution of principal if the trust terminated immediately before the trustee gives notice;
- (c) There is at least one beneficiary who meets the requirements of subparagraph (1) of paragraph (b) and at least one beneficiary who meets the requirements of subparagraph (2) of paragraph (b); and
- (d) No beneficiary objects, in writing and delivered to the trustee within 60 days of the mailing of the notice, to the conversion of the trust to a unitrust.

2. If a beneficiary timely objects to converting a trust into a unitrust, or if there are no beneficiaries under either subparagraph (1) or (3) of paragraph (b) of subsection 1, the trustee may petition the court to approve the conversion of the trust into a unitrust. The court shall approve the conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust.

3. A beneficiary may request that a trustee convert a trust into a unitrust. If the trustee does not convert the trust, the beneficiary may petition the court to order the conversion. The court shall direct the conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust.

4. A trustee, in determining whether and to what extent to convert a trust to a unitrust pursuant to subsection 1, shall consider all factors relevant to the trust and to the beneficiaries, including the factors set forth in subsection 2 of NRS 164.795, as applicable.

5. A conversion of a trust to a unitrust does not affect a term of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw all or a portion of the principal.

6. A trustee may not convert a trust into a unitrust in any circumstance set forth in subsection 3 of NRS 164.795.

7. If a trustee is prevented from converting a trust because a provision of paragraph (e), (f), (g) or (h) of subsection 3 of NRS 164.795 applies to the trustee and if there is a cotrustee to whom such provisions do not apply, the cotrustee may convert the trust unless the exercise of the power by the remaining trustee is not permitted by the terms of the trust. If all trustees are prevented from converting a trust because a provision of paragraph (e), (f), (g) or (h) of subsection 3 of NRS 164.795 applies to all of the trustees, the trustees may petition the court to direct a conversion.

8. A trustee may permanently, or for a specified period, including a period measured by the life of a person, release the power to convert a trust pursuant to subsection 1 if:

(a) The trustee is uncertain about whether possessing or exercising the power of conversion will cause a result described in paragraphs (a) to (f), inclusive, or (h) of subsection 3 of NRS 164.795; or

(b) The trustee determines that possessing or exercising the power of conversion may or will deprive the trust of a tax benefit or impose a tax burden not described in subsection 3 of NRS 164.795.

9. A trustee or disinterested person who, in good faith, fails to take any action under this section is not liable to any person affected by such action or inaction, regardless of whether the affected person received notice as provided in this section or was under a legal disability at the time of delivery of notice. An affected person's exclusive remedy is to petition the court for an order directing the trustee to convert the trust into a unitrust, to reconvert a unitrust into a trust or to change the percentage used to calculate the unitrust amount.

10. This section shall be construed to pertain to the administration of a trust, and the provisions of this section are available to any trust administered in this State or that is governed by the laws of this State, unless:

(a) The terms of the trust instrument show an intent that a beneficiary is to receive an amount other than a reasonable current return from the trust;

(b) The trust:

(1) Has a guaranteed annuity interest or fixed percentage interest as described in section 170(f)(2)(B) of the Internal Revenue Code;

(2) Is a charitable remainder trust within the meaning of section 664(d) of the Internal Revenue Code;

(3) Is a qualified subchapter S trust within the meaning of section 1361(c) of the Internal Revenue Code;

(4) Is a personal residence trust within the meaning of section 2702(a)(3)(A) of the Internal Revenue Code; or

(5) Is a trust in which one or more settlors retain a qualified interest within the meaning of section 2702(b) of the Internal Revenue Code;

(c) One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard or that can be exercised to discharge a duty of support; or

(d) The terms of the trust instrument expressly prohibit the use of the provisions of this section through reference to this section or the trust instrument expressly states the settlor's intent that net income is not calculated as a unitrust amount.

11. As used in this section, "ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code and any regulations of the United States Treasury promulgated thereunder.

(Added to NRS by 2009, 795)

NRS 164.797 Administration of unitrust: Duties of trustee; valuation of assets of trust. After a trust is converted into a unitrust:

1. A trustee shall follow an investment policy seeking a total return for the investments held by the trust whether or not the return is derived from appreciation of capital, from earnings and distributions of capital or from a combination thereof.

2. A trustee shall make regular distributions in accordance with the trust instrument and the provisions of this section.

3. Under the terms of the trust, the term "income" means an annual distribution from the trust equal to not less than 3 percent and not more than 5 percent of the net fair market value of the trust's assets. The value of the trust assets must be determined at the end of the calendar year by averaging, over the preceding 3 years or during the period of the trust's existence, whichever is less, both the income and the principal assets of the trust.

(Added to NRS by 2009, 797)

NRS 164.798 Administration of unitrust: Powers of trustee; manner of distributions.

1. A trustee of a unitrust may, in the trustee's discretion, determine:

(a) The effective date of a conversion to a unitrust;

(b) The provisions for prorating a unitrust distribution for a beneficiary whose right to payments commences or ceases during a calendar year;

(c) The frequency of unitrust distributions during a calendar year;

(d) The effect of other payments from or contributions to the trust on the trust's value;

(e) How frequently to value nonliquid assets and whether to estimate the value of nonliquid assets;

(f) Whether to omit from the calculations of the trust property occupied or possessed by a beneficiary; and

(g) Any other matters necessary for the proper functioning of the unitrust.

2. Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution. Unless otherwise provided by the trust instrument, the unitrust distribution must be paid from income. To the extent income is insufficient to pay a distribution, the distribution must be paid from realized short-term capital gains. To the extent income and realized short-term capital gains are insufficient, the distribution must be paid from realized long-term capital gains. To the extent none of these funds are sufficient, the distribution must be paid from the principal of the trust.

(Added to NRS by 2009, 797)

NRS 164.799 Trustee or beneficiary authorized to petition court to take certain actions concerning unitrust.

A trustee or a beneficiary of a unitrust may petition the court to:

1. Select an income distribution percentage different from 3 to 5 percent.

2. Provide for a distribution of net income as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

3. Average the value of the trust assets over a period other than 3 years.

4. Reconvert a unitrust to a trust.

(Added to NRS by 2009, 798)

NRS 164.800 Applicable rules after death of decedent or end of income interest in trust. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in NRS 164.810 to 164.925, inclusive, which apply to trustees and the rules in subsection 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in NRS 164.810 to 164.925, inclusive, which apply to trustees and by:

(a) Including in net income all income from property used to discharge liabilities;

(b) Paying from income or principal, in his or her discretion, fees of attorneys, accountants and fiduciaries, court costs and other expenses of administration, and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(c) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

4. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in NRS 164.805 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if he or she holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary may not reduce principal or income receipts from property described in subsection 1 because of a payment described in NRS 164.900 or 164.905 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(Added to NRS by 2003, 1971)

NRS 164.805 Distribution of net income to beneficiaries; rules for determining share of net income.

1. Each beneficiary described in subsection 4 of NRS 164.800 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the date of distribution. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each date of distribution, to the net income the fiduciary has received after the date of death or terminating event or earlier date of distribution but has not distributed as of the current date of distribution.

2. In determining a beneficiary's share of net income, the following rules apply:
 - (a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the date of distribution, including assets that later may be sold to meet principal obligations.
 - (b) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.
 - (c) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the date of distribution without reducing the value by any unpaid principal obligation.
 - (d) The date of distribution for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.
3. If a fiduciary does not distribute all the collected but undistributed net income to each person as of a date of distribution, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.
4. A trustee may apply the rules in this section, to the extent that the trustee considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier date of distribution from the disposition of a principal asset if this section applies to the income from the asset.
(Added to NRS by 2003, 1972)

NRS 164.810 Date on which income interest begins; date on which asset becomes subject to trust or successive income interest; date on which income interest ends.

1. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.
2. An asset becomes subject to a trust:
 - (a) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;
 - (b) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or
 - (c) On the date of the death of a natural person in the case of an asset that is transferred to a fiduciary by a third party because of the death of the natural person.
3. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.
4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.
(Added to NRS by 2003, 1973)

NRS 164.815 Allocation of certain income receipts and disbursements; due dates for certain payments and distributions.

1. A trustee shall allocate an income receipt or disbursement other than one to which subsection 1 of NRS 164.800 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.
2. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.
3. An item of income or an obligation is due on the date the payor is required to make a payment. If a date for payment is not stated, there is no due date for the purposes of NRS 164.780 to 164.925, inclusive. Distributions to shareholders or other owners from an entity to which NRS 164.825 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the date of declaration of the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.
(Added to NRS by 2003, 1973)

NRS 164.820 Payment of undistributed income upon end of mandatory income interest; prorating final payment upon end of obligation to pay fixed annuity or fixed fraction of value of trust's assets.

1. As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.
2. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, his or her share of the undistributed income that is not disposed of under the terms of the trust unless the trustee has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.
3. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.
(Added to NRS by 2003, 1973)

NRS 164.825 Allocation of money received from entity to income; allocation of receipts from entity to principal; determination of money as return of capital; reliance upon financial statements and other information about character of distribution or source of funds from which distribution is made.

1. As used in this section, "entity" means a corporation, partnership, limited-liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which NRS 164.830 applies, a business or activity to which NRS 164.835 applies or an asset-backed security to which NRS 164.895 applies.

2. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

3. A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money;

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) Money received in a distribution if and to the extent that the trustee determines that the distribution is a return of capital; and

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. A trustee may determine that money is received as a return of capital if and to the extent that the money received exceeds the total amount of income tax that the beneficiaries must pay on their respective shares of the taxable income of the entity and the trust must pay from income under NRS 164.810 to 164.925, inclusive, on its share of the taxable income of the entity. A trustee may determine that money which represents gain upon the sale or other disposition of property described in subsection 5 is a return of capital.

5. In determining if and to what extent a distribution is a return of capital, a trustee may rely upon and determine the weight to be given to any information concerning the source of the money from which the distribution is made which is reasonably available to the trustee, including, without limitation, information concerning:

(a) The amount of the distribution in question compared to the amount of the entity's regular, periodic distributions, if any, during the year in which the distribution is made and in prior years;

(b) If the primary activity of the entity is not an investment activity described in paragraph (c), the amount of money the entity has received from the conduct of its normal business activities compared to the amount of money the entity has received from all other sources, including, without limitation:

(1) The sale of all or part of a business conducted by the entity or by another entity in which it owns an interest, directly or indirectly, including, without limitation, money representing any gain realized on such a sale;

(2) The sale of one or more business assets that are not sold to customers in the normal course of the entity's business, including, without limitation, money representing any gain realized on such a sale; and

(3) The sale of one or more investment assets, including, without limitation, money representing any gain realized on such a sale;

(c) If the primary activity of the entity is to invest funds in another entity or in investment property that the entity owns directly for the purpose of realizing gain on the disposition of all or a part of such an investment, the amount of money that the entity has received from the sale of all or part of one or more of those investments, including, without limitation, money representing any gain realized on such a disposition;

(d) The amount of money the entity has accumulated, to the extent that the governing body of the entity has decided the money is no longer needed for the business or investment needs of the entity;

(e) The amount of income tax, if any, that each beneficiary has paid on the undistributed income of the entity before the year of the distribution and the amount of income tax on the undistributed income of the entity that the trust has paid from the income or principal of the trust;

(f) The amount of money the entity has borrowed, whether or not repayment of the loan is secured to any extent by one or more of the entity's assets;

(g) The amount of money the entity has received from the sources described in NRS 164.855, 164.870, 164.875 and 164.880; and

(h) The amount of money the entity has received from a source not described in this subsection.

6. If a trustee is in doubt about the portion of a distribution that is a return of capital, the trustee shall resolve the doubt by allocating to income the amount, if any, the trustee believes is clearly not a return of capital and by allocating the balance of the distribution to principal.

7. A trustee may rely upon, without independent investigation, the financial statements of an entity and any other information provided by an entity about the character of a distribution or the source of funds from which the distribution is made if the information is provided at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors. The trustee is not bound by any statement made or implied by the entity about the extent to which a distribution is or is not a return of capital. If the trustee receives additional information about the distribution after the trustee has decided the amount that is a return of capital, the trustee is not required to change that decision.

(Added to NRS by 2003, 1974; A 2007, 409)

NRS 164.830 Allocation of amount received as distribution of income to income; allocation of distribution of principal to principal; purchase of interest in trust that is investment entity. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and a trustee shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, NRS 164.825 or 164.895 applies to a receipt from the trust.

(Added to NRS by 2003, 1974)

NRS 164.835 Accounting separately for business or other activity.

1. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

2. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

3. Activities for which a trustee may maintain separate accounting records include:

- (a) Retail, manufacturing, service and other traditional business activities;
- (b) Farming;
- (c) Raising and selling livestock and other animals;
- (d) Management of rental properties;
- (e) Extraction of minerals and other natural resources;
- (f) Timber operations; and
- (g) Activities to which NRS 164.890 applies.

(Added to NRS by 2003, 1975)

NRS 164.840 Allocation of assets, money, property and other receipts to principal. A trustee shall allocate to principal:

1. To the extent not allocated to income under NRS 164.780 to 164.925, inclusive, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payor under a contract naming the trust or its trustee as beneficiary;

2. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to NRS 164.780 to 164.925, inclusive;

3. Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (g) of subsection 1 of NRS 164.905 or for other reasons to the extent not based on the loss of income;

4. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

5. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

6. Other receipts as provided in NRS 164.810, 164.815 and 164.820.

(Added to NRS by 2003, 1975)

NRS 164.845 Allocation of receipts from rental property to income; treatment of refundable deposit. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

(Added to NRS by 2003, 1976)

NRS 164.850 Allocation of interest on obligation to pay money to trustee to income; allocation of amount received from disposition of certain obligations to principal; applicability of provisions.

1. An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

2. A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

3. This section does not apply to an obligation to which NRS 164.865, 164.870, 164.875, 164.880, 164.890 or 164.895 applies.

(Added to NRS by 2003, 1976)

NRS 164.855 Allocation of proceeds of life insurance policy and certain contracts to principal; allocation of dividends on insurance policy to income or principal.

1. Except as otherwise provided in this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

2. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to NRS 164.835, loss of profits from a business.

3. This section does not apply to a contract to which NRS 164.865 applies.

(Added to NRS by 2003, 1976)

NRS 164.860 Allocation of entire amount to principal if allocation between principal and income under certain circumstances is insubstantial. If a trustee determines that an allocation between principal and income required by NRS 164.865, 164.870, 164.875, 164.880 or 164.895 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection 3 of NRS 164.795 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection 4 of NRS 164.795 and may be released for the reasons and in the manner described in subsection 5 of NRS 164.795. An allocation is presumed to be insubstantial if:

1. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

2. The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(Added to NRS by 2003, 1976)

NRS 164.865 Allocation of certain payments received because of services rendered or property transferred to payor in exchange for future payments to income or principal, or both; certain exceptions for trusts that qualify for marital deduction under federal law.

1. As used in this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more natural persons because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor. As used in subsections 4 to 7, inclusive, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.

2. To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

3. If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

4. Except as otherwise provided in subsection 5, the provisions of subsections 6 and 7 apply and the provisions of subsections 2 and 3 do not apply in determining the allocation of a payment made from a separate fund to:

(a) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code, 26 U.S.C. § 2056(b)(7), has been made; or

(b) A trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code, 26 U.S.C. § 2056(b)(5).

5. The provisions of subsections 4, 6 and 7 do not apply if and to the extent that the series of payments would, without the application of subsection 4, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code, 26 U.S.C. § 2056(b)(7)(C).

6. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to NRS 164.780 to 164.925, inclusive. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

7. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the value of the fund, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the value of the fund, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, 26 U.S.C. § 7520, for the month preceding the accounting period for which the computation is made.

8. This section does not apply to a payment to which NRS 164.870 applies.

(Added to NRS by 2003, 1977; A 2009, 330)

NRS 164.870 Allocation of receipts from liquidating assets to income and principal.

1. As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to NRS 164.865, resources

subject to NRS 164.875, timber subject to NRS 164.880, an activity subject to NRS 164.890, an asset subject to NRS 164.895, or any asset for which the trustee establishes a reserve for depreciation under NRS 164.910.

2. A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.
(Added to NRS by 2003, 1977)

NRS 164.875 Allocation of receipts from interest in minerals to income or to income and principal; allocation of receipts from interest in water to income or to income and principal; applicability.

1. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in paragraph (a), (b) or (c), 90 percent of the net amount received must be allocated to principal and the balance to income.

2. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

3. NRS 164.780 to 164.925, inclusive, apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

4. If a trust owns an interest in minerals, water or other natural resources on October 1, 2003, the trustee may allocate receipts from the interest as provided in NRS 164.780 to 164.925, inclusive, or in the manner used by the trustee before October 1, 2003. If the trust acquires an interest in minerals, water or other natural resources after October 1, 2003, the trustee shall allocate receipts from the interest as provided in NRS 164.780 to 164.925, inclusive.

(Added to NRS by 2003, 1977)

NRS 164.880 Allocation of net receipts from sale of timber and related products to income or principal, or both; applicability.

1. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of timber or the net receipts are from the sale of standing timber;

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease of contract and applying the rules in paragraphs (a) and (b); or

(d) To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (a), (b) or (c).

2. In determining net receipts to be allocated pursuant to subsection 1, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

3. NRS 164.780 to 164.925, inclusive, apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

4. If a trust owns an interest in timberland on October 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in NRS 164.780 to 164.925, inclusive, or in the manner used by the trustee before October 1, 2003. If the trust acquires an interest in timberland after October 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in NRS 164.780 to 164.925, inclusive.

(Added to NRS by 2003, 1978)

NRS 164.885 Request of spouse if marital deduction is allowed and amounts transferred from principal to income and distributed are insufficient to obtain marital deduction; proceeds from sale or disposition of assets generally principal.

1. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under NRS 164.795 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by subsection 1 of NRS 164.795. The trustee may decide which action or combination of actions to take.

2. In cases not governed by subsection 1, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

(Added to NRS by 2003, 1978)

NRS 164.890 Allocation of receipts from and disbursements made in connection with transactions in derivatives to principal; allocation of amount received for granting certain options to principal.

1. As used in this section, "derivative" means a contract of financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a

tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

2. To the extent that a trustee accounts for transactions in derivatives pursuant to this section, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

3. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

(Added to NRS by 2003, 1979)

NRS 164.895 Allocation from proceeds of collateral financial assets to income and principal; allocation of payments in exchange for interest in asset-backed security to principal or to principal and income.

1. As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which NRS 164.825 or 164.865 applies.

2. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payor identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

3. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

(Added to NRS by 2003, 1979)

NRS 164.900 Disbursements required to be made from income; reduction of amount charged against income.

1. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of subsection 2 of NRS 164.800 applies:

(a) Except as otherwise provided in subsection 2 or otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(b) Except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(c) All the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(d) All recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

2. If the amount charged to the income of an irrevocable trust pursuant to paragraph (a) of subsection 1 exceeds 15 percent of the income of the trust in the accounting period, the trustee shall exercise the authority in NRS 164.795 to equitably reduce the amount charged against income for that accounting period unless:

(a) The trustee, after taking into consideration the terms of the trust instrument, reasonably concludes that the reduction is not in the best interest of the beneficiaries of the trust;

(b) The reduction of the amount charged to income would violate the express terms of the trust instrument other than a general directive to comply with the Uniform Principal and Income Act (1997) or with a general provision that contains language similar to that found in paragraph (a) of subsection 1;

(c) The trustee is authorized under the terms of the trust instrument to distribute trust principal to each income beneficiary; or

(d) The trustee gives notice in compliance with NRS 164.725 of the intent not to make the adjustment and no current income beneficiary objects.

(Added to NRS by 2003, 1979; A 2007, 411; 2009, 801; 2011, 1470)

NRS 164.905 Disbursements required to be made from principal.

1. A trustee shall make the following disbursements from principal:

(a) The remaining portion of the disbursements described in paragraph (a) of subsection 1 of NRS 164.900;

(b) All the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;

(c) Payments on the principal of a trust debt;

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(e) Premiums paid on a policy of insurance not described in paragraph (d) of subsection 1 of NRS 164.900 of which the trust is the owner and beneficiary;

(f) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

(g) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those

activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

2. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

(Added to NRS by 2003, 1980; A 2007, 412; 2011, 1471)

NRS 164.910 Transfer of net cash receipts from principal asset subject to depreciation to principal.

1. As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

2. A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) During the administration of a decedent's estate; or

(c) Under this section if a trustee is accounting under NRS 164.835 for the business or activity in which the asset is used.

3. An amount transferred to principal need not be held as a separate fund.

(Added to NRS by 2003, 1980)

NRS 164.915 Transfer of amount from income to principal to make certain principal disbursements.

1. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

2. Principal disbursements to which subsection 1 applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;

(d) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) Disbursements described in paragraph (g) of subsection 1 of NRS 164.905.

3. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.

(Added to NRS by 2003, 1981)

NRS 164.920 Payment of taxes required to be paid by trustee.

1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

2. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(a) From income to the extent that receipts from the entity are allocated only to income;

(b) From principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) From principal to the extent that the tax exceeds the total receipts from the entity.

4. After applying the provisions of subsections 1, 2 and 3, the trustee shall adjust income or principal receipts to the extent that the taxes on the trust are reduced because the trust receives a deduction for payments made to a beneficiary.

(Added to NRS by 2003, 1981; A 2009, 331)

NRS 164.925 Adjustments between principal and income to offset shifting economic interests or tax benefits between income beneficiaries and remainder beneficiaries; reimbursement of principal if estate taxes are increased and income taxes are decreased under certain circumstances.

1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(a) Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters;

(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or the trust; or

(c) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, the trust or a beneficiary.

2. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the

increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

(Added to NRS by 2003, 1981)

MISCELLANEOUS PROVISIONS

NRS 164.950 Distribution by trustee of community property in nontestamentary trust established by married settlors. If two settlors who are married establish a nontestamentary trust jointly, and the trust provides for the pecuniary or fractional division of the community property held by the settlors upon the death of one of the settlors, the trustee has the authority to distribute the community property unless the trust instrument expressly provides otherwise. The trustee may distribute the community property on a non-pro rata basis so long as the fair market value of the distribution is, at the time of the distribution, the same as if the distribution were made pro rata. The provisions of this section do not affect the distribution of assets that are specifically allocated in the trust instrument to be distributed in kind.

(Added to NRS by 2009, 798)

NRS 164.960 Applicability of NRS 111.781 to transfers of property made pursuant to trust. The provisions of NRS 111.781 concerning the revocation of certain transfers based upon divorce or annulment apply to transfers of property made pursuant to a trust.

(Added to NRS by 2011, 1469)

CASE NO. PR17-00445 **CONS: TRUST: SSJ'S ISSUE TRUST**

2/8/2019

DISCOVERY COMMISSIONER

WESLEY AYRES

L. Scurlock (Clerk)

RECORDED - JAVS

HEARING:

2/8/2019: DISCOVERY DISPUTE HEARING – ORAL ARGUMENTS

APPEARANCES:

Donald Lattin, Esq. and Carolyn Renner, Esq. were present on behalf of Todd Jaksick as sole Trustee of the SSJ Issue Trust and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, who was not present; Michael Kimmel as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, who was not present; Stanley Jaksick as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust and Kevin Riley, individually as former Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust and Trustee of the Wendy A. Jaksick 2012 BBHC Family Trust, who was not present. Mark Cannot, Esq. and Zachary Johnson, Esq. were present on behalf of Wendy Jaksick, who was not present. Adam Hosmer-Henner, Esq. was present on behalf of Stanley Jaksick in his individual capacity as Co-Trustee of the Family Trust, who was not present.

Court announced the matter, and is aware that there is an on-going issue with the Maupin, Cox and LeGoy privilege log; also a package was received from Maupin, Cox and LeGoy, a letter had been received from Counsel Connot and a response letter from Counsel Lattin.

Counsel Lattin addressed the Court and advised that Counsel Lattin had sent the Commissioner a complete package that involves this dispute.

Counsel Johnson addressed the Court and advised that clarification had been requested on the privilege log; he believes those issues have been resolved. Counsel Johnson further advised that the issue today is the production of the communications and the work product related to the Trust Administration; the attorney/client privilege should not apply. Counsel further presented arguments in support of having those documents produced.

Counsel Lattin objected and presented argument.

COURT RECOMMENDED: Documents pertaining to Trust Administration are not protected by attorney client privilege or work product doctrine; Trust Administration documents are discoverable.

Counsel Connot requested immediate production of those materials.

Counsel Lattin responded that he will confer with his clients and respond via email whether the materials will be produced.

1 DISC.
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 MAUPIN, COX & LeGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Telephone: (775) 827-2000
10 Facsimile: (775) 827-2185
11 *Attorneys for L. Robert LeGoy, Jr.*

12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 In the Matter of the:
17 SSJ's ISSUE TRUST.

Case No.: PR17-0445
Dept. No.: 15

18
19 In the Matter of the Administration of
20 THE SAMUEL S. JAKSICK, JR., FAMILY
21 TRUST.

Consolidated
Case No.: PR17-0446
Dept. No.: 15

22
23 **L. ROBERT LEGOY, JR. AND MAUPIN, COX & LEGOY CUSTODIAN'S SIXTH**
24 **SUPPLEMENT TO THEIR OBJECTIONS AND RESPONSES**
25 **TO SUBPOENA DUCES TECUM**

26 L. Robert LeGoy, Jr. ("Bob") and Custodian of Records, Maupin, Cox & LeGoy ("MCL
Custodian"), by and through their undersigned counsel, hereby supplements their objections and
responses to the Subpoena Duces Tecum served by Wendy Jaksick, as follows:

DOCUMENTS

The documents presented for discovery consist of documents Bates labeled, identified as
follows, and which will be provided electronically via a ShareFile download link (or via CD-ROM
for non-electronic service recipients). Documents which have been withheld are identified via the
privilege log attached hereto as Exhibit "1."

<u>Description</u>	<u>Bates No</u>
Certified Letter Dated September 3, 2014 from Bob LeGoy, Esq., to Wendy Jaksick, Re: Your Letter dated August 16, 2014	MCL002019-MCL002022
Certified Mail Return Receipt, Letter to Wendy Jaksick, Signed By Alexi Smrt	MCL002025
Letter Dated June 17, 2010 From Bob LeGoy, Esq., to Samuel S. Jaksick, Jr. and Todd B. Jaksick, Re: Evaluation of Real Estate Purchase for Sam's Incline Residence	MCL002026-MCL002033
Letter Dated April 12, 2007 From Bob LeGoy, Esq., Samuel J. Jaksick, Jr., President; Todd B. Jaksick, Secretary/Treasurer, Home Camp Land and Livestock Co., Inc.	MCL002044-MCL002045
Letter Dated June 29, 2006 From Bob LeGoy, Esq., to Samuel J. Jaksick, Jr., Re: Estate Planning of Samuel J. Jaksick, Jr.	MCL002066-MCL002077
Email Dated May 1, 2017 From Sue Mann, Maupin, Cox & LeGoy, to Dana Dwiggins, Esq., and Joshua M. Hood. Esq., Re: SSJ's Issue Trust	MCL002108
Email Dated May 1, 2017 From Sue Mann, Maupin, Cox & LeGoy, to Stan Jaksick, Re: SSJ's Issue Trust	MCL002109
Email Dated May 1, 2017 From Sue Mann, Maupin, Cox & LeGoy to Todd Jaksick, Re: SSJ's Issue Trust	MCL002110
Email Dated May 1, 2017 From Sue Mann, Maupin, Cox & LeGoy to Alexi Smrt, Re: SSJ's Issue Trust	MCL002111
Email Dated May 1, 2017 From Sue Mann, Maupin, Cox & LeGoy to Michael Kimmel and Kevin Riley, Re: SSJ's Issue Trust	MLC002112
Letter Dated May 1, 2017 From Bob LeGoy, Esq., to Wendy Jaksick and children, c/o Dana Dwiggins, Esq., and Joshua M. Hood. Esq.; Stanley S. Jaksick; Todd B. Jaksick; and Alexi Fields, Re: The SSJ's Issue Trust Agreement	MCL002113-MCL002115
Letter Dated April 26, 2016 to Shareholder, From Dan Douglass, President, Pioneer Group, Inc., Bronco Billy's, With Enclosed	MCL002123-MCL002136

Email Dated January 20, 2015 From Kevin Riley to Bob LeGoy, Esq., and Brian McQuaid, Esq., Re: Draft Financials, Forwarding Drafts	MCL002193-MCL002241
Letter Dated October 15, 2014 From Bob LeGoy, Esq., to Brett Buckingham, Investigator, Colorado Division of Gaming, Enforcement and Investigation Section, Re: Stanley S. Jaksick and Todd B. Jaksick	MCL002259-MCL002260
Letter Dated September 3, 2014 From Bob LeGoy, Esq., to Wendy Jaksick, Re: Your Letter Dated August 16, 2014	MCL002332-MCL002333
Letter Dated August 16, 2014 From Wendy Jaksick to Trustees of Sam Jaksick, Jr.; Todd Jaksick; Stan Jaksick; and Kevin Riley, Re: Wendy Jaksick 1995 Insurance Note	MCL002356-MCL002357
Email Dated June 5, 2014 From Kevin Riley to Wendy Jaksick, Re: Sam's family trust	MCL002383-MCL002384
Email Dated April 14, 2014 From Wendy Jaksick to Brian McQuaid, Esq., Stan Jaksick and Todd Jaksick, Re: Plane Appraisal	MCL002404-MCL002405
Agreement and Consent to Proposed Action Dated June 5, 2013	MCL002569-MCL002571
Email Dated September 2, 2014 From Bob LeGoy, Esq., to Todd Jaksick, Stan Jaksick, Alexi Smrt, Kevin Riley and Brian McQuaid, Esq., RE: Executed Agreement and Consent to Proposed Action/ Promissory Note/Security Agreement and Letter to Wendy	MCL002770-MCL002773
Spreadsheet, Revised June 5, 2013, Jaksick Entities	MCL002805-MCL0028012
Spreadsheet, Sam Jaksick Entities	MCL002813-MCL002814
List of Creditors for Sam S. Jaksick Jr. and Notes with Personal Guaranty (as of 04/30/2013)	MCL002984-002986
Spreadsheet, Sam Jaksick Entities	MCL002994-MCL002995

Bob and MCL Custodian reserve the right to supplement these disclosures as the discovery process is ongoing.

///

NRS 239B.030 Affirmation

Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not contain the Social Security Number of any person.

Dated this 9th day of February, 2019.

MAUPIN, COX & LEGOY

By: 

Donald A. Latin, NSB # 693
Brian C. McQuaid, Esq., NSB # 7090
Carolyn K. Renner, Esq., NSB #9164
4785 Caughlin Parkway
Reno, NV 89519
Attorneys for L. Robert LeGoy, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maupin, Cox & LeGoy, Attorneys at Law, and in that capacity and on the date indicated below, I deposited for mailing from a point within the State of Nevada a sealed envelope which had enclosed within a true and correct copy of the foregoing document, which envelope had postage fully prepaid thereon, and via electronic transmission, addressed as follows:

Philip L. Kreitlein, Esq.
Stephen C. Moss, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502
philip@klmlawfirm.com
*Attorneys for Stan Jaksick as Co-Trustee of
the Samuel S. Jaksick, Jr. Family Trust*

Mark Connot, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135
MConnot@foxrothschild.com

And

R. Kevin Spencer, Esq. (Pro Hac Vice)
Zachary E. Johnson, Esq. (Pro Hac Vice)
Spencer & Johnson PLLC
500 N. Akard Street, Suite 2150
Dallas, TX 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Wendy A. Jaksick

Kent R. Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharpe, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
krobison@rssblaw.com
tshanks@rssblaw.com
*Attorneys for Todd B. Jaksick, Individually,
and as beneficiary, SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

Adam Hosmer-Henner, Esq.
Sarah A. Ferguson, Esq.
McDonald Carano Wilson LLP
100 W. Liberty Street, 10th Floor
Reno, NV 89501
ahosmerhenner@mcdonaldcarano.com
sferguson@mcdonaldcarano.com
*Attorneys for Stan Jaksick, individually, and
as beneficiary of the Samuel S. Jaksick, Jr.
Family Trust and SSJ's Issue Trust*

///

///

1 Via placing an original or true copy thereof in a sealed envelope with sufficient postage
2 affixed thereto, in the United States mail at Reno Nevada, addressed to:

3 Alexi Smrt 4 3713 Wrexham 5 St Frisco, TX 75034	6 Luke Jaksick 7 c/o Wendy A. Jaksick 8 6501 Meyer Way 9 Apt. # 0705 McKinney Texas 75070
10 Regan Jaksick 11 Sydney Jaksick 12 Sawyer Jaksick 13 c/o Lisa Jaksick 14 5235 Bellazza Ct. 15 Reno, Nevada 89519	16 Benjamin Jaksick 17 Amanda Jaksick 18 c/o Dawn E. Jaksick 19 6220 Rouge Drive 20 Reno, Nevada 89511

21 DATED this 8th day of February, 2019.

22
23
24
25
26
Employee 

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL001956-MCL001959	10/14/16	Dawn Jaksick	Bob LeGoy & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	TBJ's Issue Trust	Privileged	Sixth Supplement	Attorney-Client
MCL001960-MCL001961	11/03/14	Doris Dotson-MCL	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Revised Certificate of Trust	Privileged	Sixth Supplement	Attorney-Client
MCL001962-MCL00194	10/09/14	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Attorney-Client Privilege and the Attorney Work Product Doctrine	Privileged	Sixth Supplement	Attorney-Client
MCL001965	08/12/14	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Bill for preparing Dawn's Estate Plan	Privileged	Sixth Supplement	Attorney-Client
MCL001966-MCL001969	07/29/14	Bob LeGoy	Dawn Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Estate Plan	Privileged	Sixth Supplement	Attorney-Client
MCL001970-MCL00194	06/09/14	Bob LeGoy	Dawn Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Estate Plan	Privileged	Sixth Supplement	Attorney-Client
MCL001975	04/05/14	Bob LeGoy	Doris Dotson-MCL & Debbie Mitchell, MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick billing address	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
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Second Judicial District Court – Consolidated Case No.: PR17-0445

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MCL001976- MCL001978	04/01/14	Bob LeGoy	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	Todd Jaksick's Will	Privileged	Sixth Supplement	Attorney-Client
MCL001979- MCL001981	03/17/14	Jaksick Office Admin	Bob LeGoy and Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Todd's Will and Trust Agreement	Privileged	Sixth Supplement	Attorney-Client
MCL001982	12/27/07	Jessica Clayton	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	TBJ Issue Trust	Privileged	Sixth Supplement	Attorney-Client
MCL001983- MCL001984	11/23/07	Bob LeGoy	Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	From Todd Jaksick	Privileged	Sixth Supplement	Attorney-Client
MCL001985- MCL001986	11/19/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Joe Gardner; TBJ Issue Trust	Privileged	Sixth Supplement	Attorney-Client
MCL001987- MCL001989	11/14/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL001990- MCL001991	11/13/07	Bob LeGoy	Geoff Grenert	Maupin, Cox & LeGoy, Staff	Email	Gardner & Jaksick; Todd Jaksick Life Insurance	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
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MCL001993-MCL001999	08/22/06	Bob LeGoy	Todd Jaksick & Geoff Grenert	Maupin, Cox & LeGoy, Staff	Letter	Estate Planning of Todd Jaksick	Privileged	Sixth Supplement	Attorney-Client
MCL002000-MCL002004	02/24/06	Bob LeGoy & Gus Rossi	Sam Jaksick, Todd Jaksick & Randall Venturacci	Maupin, Cox & LeGoy, Staff	Letter	Proposed Transfer of Home Camp Land and Livestock Co., Inc., a Nevada Corporation Taxed Under Subchapter S to A Irrevocable Generation-Skipping Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL0002005	07/21/14	Dawn Jaksick	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	The Dawn Jaksick Trust	Privileged	Sixth Supplement	Attorney-Client
MCL002006-MCL002007	08/03/18	Bob LeGoy & Don Lattin	Adam Hosner-Henner, Michael Kimmel, Philip Kreitlein, Kent Robison	Maupin, Cox & LeGoy, Staff	Letter	Jaksick Litigation	Privileged	Sixth Supplement	Attorney-Client
MCL002008-MCL002010	08/13/18	Bob LeGoy	Mark Knobel	Maupin, Cox & LeGoy, Staff	Email	Informed Consents to Representations and Waivers of Conflicts in Jaksick Litigation	Privileged	Sixth Supplement	Attorney-Client
MCL002011-MCL002018	10/27/14	Bob LeGoy	Stan Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Sam's death and Stan's agreement with prior wife	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
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Second Judicial District Court – Consolidated Case No.: PR17-0445

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MCL002026-MCL002033	06/17/10	Bob LeGoy & Melissa Johnson	Sam Jaksick, Todd Jaksick & Kevin Riley	Maupin, Cox & LeGoy, Staff	Letter	Evaluation of Real Estate Purchase Option for Sam's Incline Residence; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
								Sixth Supplement	
MCL002034-MCL002043	11/14/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration; Todd Jaksick Life Insurance	Privileged	Sixth Supplement	Attorney-Client
MCL002044-MCL002045	04/12/07	Bob LeGoy	Sam Jaksick, Todd Jaksick, Kevin Riley & Geoff Grenert	Maupin, Cox & LeGoy, Staff	Letter	Home Camp Land and Livestock; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002046-MCL002047	12/27/06	Bob LeGoy	Sam Jaksick, Todd Jaksick, Ernie Maupin, Gus Rossi, John Marvel, Kevin Riley, Geoff Grenert	Maupin, Cox & LeGoy, Staff	Letter	The SSJ's Issue Trust Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002048-MCL002065	12/06/06	Bob LeGoy	Sam Jaksick, Todd Jaksick, Ernie Maupin, Kevin Riley, Geoff Grenert	Maupin, Cox & LeGoy, Staff	Letter	The SSJ's Issue Trust Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY ('MCL') DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL002078-MCL002081	05/11/06	Bob LeGoy	Jessica Clayton & Geoff Grenert	Maupin, Cox & LeGoy, Staff	Email	From Todd and Sam Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002082-MCL002085	04/11/06	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002086-MCL002095	02/24/06	Bob LeGoy & Gus Rossi	Sam Jaksick, Todd Jaksick & Randall Venturacci	Maupin, Cox & LeGoy, Staff	Letter	Proposed Transfer of Home Camp Land and Livestock Co., Inc., a Nevada Corporation Taxed under Subchapter S to a Irrevocable Generation-Skipping Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002096-MCL002101	01/23/06	Geoffrey Gernert	Sam Jaksick, Todd Jaksick, Randy Venturacci & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Memorandum	Proposed Planning for 49 Mountain Property; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002102-MCL002103	01/21/16	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Land Owner; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002104-MCL002105	07/28/17	Bob LeGoy	Pierre Hascheff	Maupin, Cox & LeGoy, Staff	Email	Indemnification Agreements the Great Sam Jaksick gave Stan and Todd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL002106	01/27/17	Kevin Riley	Brian McQuaid, Don Lattin, Bob LeGoy, Stan Jaksick, Todd Jaksick & Mike Kimmel	Maupin, Cox & LeGoy, Staff	Email	Subtrust accounting; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002107	01/27/17	Kevin Riley	Stan Jaksick, Todd Jaksick, Mike Kimmel, Bob LeGoy & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	SJ trust distribution planning; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002109	05/01/17	Sue Mann	Stan Jaksick & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	SSJ's Issue Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002110	05/01/17	Sue Mann	Todd Jaksick & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	SSJ's Issue Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002112	05/01/17	Sue Mann	Mike Kimmel, Kevin Riley, Don Lattin, Brian McQuaid, Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	SSJ's Issue Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002116-MCL002121	05/23/16	Kevin Riley	Brian McQuaid, Bob LeGoy, Todd Jaksick, Stan	Maupin, Cox & LeGoy, Staff	Email	Debts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
			Jaksick & Procter Hug IV						
MCL002122	04/28/16	Brian McQuaid	Jessica Clayton, Bob LeGoy, Todd Jaksick, Stan Jaksick & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Pioneer Group- Sale Info- Docs- Timeline; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002137- MCL002139	01/13/16	Brian McQuaid	Kevin Riley, Todd Jaksick, Stan Jaksick, Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	White Pine Lumber co; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002140- MCL002142	01/11/16	Jessica Clayton	Brian McQuaid, Bob LeGoy, Todd Jaksick, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Stock Cert; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002143- MCL002148	01/06/16	Kevin Riley	Brian McQuaid, Todd Jaksick, Stan Jaksick, Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	White pine lumber co; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002149- MCL002153	12/18/15	Brian McQuaid	Kevin Riley, Bill Peterson, Todd Jaksick, Stan Jaksick, Jessica Clayton & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Assignment of Jackrabbitt LLC; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY ('MCL') DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL002154-MCL002156	12/17/15	Kevin Riley	Brian McQuaid, Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Jackrabbit properties LLC; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002157	12/03/15	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Firm's bill	Privileged	Sixth Supplement	Attorney-Client
MCL002158-MCL002164	12/01/15	Kevin Riley	Bill Peterson, Todd Jaksick & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Jackrabbit Properties LLC; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002165-MCL002166	11/12/15	Brian McQuaid	Jessica Clayton, Kevin Riley, Todd Jaksick, Stan Jaksick, & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Security for SSJ's Issue Trust Notes; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002167-MCL002169	11/12/15	Brian McQuaid	Todd Jaksick, Bob LeGoy, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Jackrabbit properties transfer; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002170	11/06/15	Jessica Clayton	Brian McQuaid & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Security for SSJ's Issue Trust Notes; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002171	11/03/15	Kevin Riley	Bob LeGoy, Brian McQuaid,	Maupin, Cox & LeGoy, Staff	Email	Jackrabbit properties transfer; Trust Administration; with Handwritten Notes	Privileged	Sixth Supplement	Attorney-Client

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MAUPIN, COX & LEGOY ('MCL') DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
			Todd Jaksick & Stan Jaksick						
MCL002172-MCL002173	07/23/15	Todd Jaksick	Brian McQuaid & Todd Jaksick, Kevin Riley, Stan Jaksick, Jessica Clayton & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Janene Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002174-MCL002189	03/12/15	Brian McQuaid	Jessica Clayton, Bob LeGoy, Kevin Riley, Todd Jaksick & Stan Jaksick	Maupin, Cox & LeGoy, Staff	Email	RIB LOC Renewal Docs; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002190-MCL002192	01/21/15	Brian McQuaid	Kevin Riley, Bob LeGoy, Todd Jaksick, Stan Jaksick	Maupin, Cox & LeGoy, Staff	Email	Revision to Sam's Family Trust Agreement to elect QSST status; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002193-MCL002241	01/20/15	Kevin Riley	Bob LeGoy & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Draft financials; Trust Administration	Redacted & Produced	Fifth Supplement	Attorney-Client
MCL002242-MCL002243	01/06/15	Bob LeGoy	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Revision to Sam's Family Trust Agreement to elect QSST Status; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002244-MCL002248	11/24/15	Brian McQuaid	Jessica Clayton, Todd Jaksick, Kevin Riley, Stan Jaksick & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Security for SSJ's Issue Trust Notes; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002249-MCL002250	12/01/14	Bob LeGoy	Todd Jaksick, Stan Jaksick, Jessica Clayton, Kevin Riley, Brian McQuaid, Procter Hug IV	Maupin, Cox & LeGoy, Staff	Email	Checkpoint document for LRL@MCLRENOLAW.COM ; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002251-MCL002255	10/28/14	Brian McQuaid	Stan Jaksick, Todd Jaksick, Jessica Clayton & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Stan's Promissory Notes; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002256-MCL002258	10/27/14	Bob LeGoy	Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Montreux Development Group, LLC; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002561-MCL002273	09/25/14	Brian McQuaid	Todd Jaksick, Jessica Clayton, Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Revised Loan Docs; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002274	09/24/14	Brian McQuaid	Todd Jaksick, Jessica Clayton, Bob LeGoy, Kevin Riley, Stan Jaksick	Maupin, Cox & LeGoy, Staff	Email	Additional Loan to Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002275-MCL002276	09/05/14	Brian McQuaid	Bob Sader, Todd Jaksick, Arlo Stockham, Stan Jaksick & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Lot 1023; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002277-MCL002329	09/03/14	Robert Sader	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Lot 1023; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002330-MCL002331	09/03/14	Todd Jaksick	Brian McQuaid, Stan Jaksick, Kevin Riley & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Lot 1023; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002334-MCL002337	09/03/14	Bob LeGoy	Wendy Jaksick, Todd Jaksick, Stan Jaksick, Kevin Riley, Brian McQuaid, Procter Hug IV	Maupin, Cox & LeGoy, Staff	Email	Executed Agreement and Consent to Proposed Action/Promissory Note/Security and Letter to Wendy; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002338-MCL002350	08/19/14	Brian McQuaid	Jessica Clayton, Todd Jaksick, Bob LeGoy, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Options for Loan to Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002351-MCL002355	08/18/14	Jessica Clayton	Brian McQuaid & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Options for Loan to Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002358-MCL002370	08/11/14	Jessica Clayton	Brian McQuaid, Doris Dotson-MCL, Kevin Riley, Stan Jaksick, Bob LeGoy, Procter Hug IV, Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Monday Conference call; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002371	06/25/14	Brian McQuaid	Jessica Clayton, Kevin Riley, Todd Jaksick & Stan Jaksick	Maupin, Cox & LeGoy, Staff	Email	BHC Payment to AG Credit; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002372-MCL002378	06/24/14	Kevin Riley	Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	BHC Payment to AG Credit; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002379	06/11/14	Shawn Pearson	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Sam Jaksick, Jr.; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002380-MCL002382	06/11/14	Brian McQuaid	Todd Jaksick, Bob LeGoy, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Fiduciary duty list; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002383-MCL002384	06/06/14	Jessica Clayton	Brian McQuaid & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Sams's Family Trust; Trust Administration	Redacted & Produced	Sixth Supplement	Attorney-Client
MCL002385	08/29/16	Stan Jaksick	Brian McQuaid, Kevin Riley, Todd Jaksick, Bob LeGoy & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Demand letter from Wendy's lawyer; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002386	02/11/15	American Express	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Memo	Voicemail; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002387-MCL002389	10/05/17	Bob LeGoy	Stan Jaksick	Maupin, Cox & LeGoy, Staff	Fax	Assignment to Jackrabbit; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002390-MCL002397	12/15/14	Brian McQuaid	Jessica Clayton, Kevin Riley, Bob LeGoy, Stan Jaksick & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	FIB Renewal docs for Line of Credit; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL0023398-MCL002400	06/04/14	Bob LeGoy	Brian McQuaid, Jessica Clayton, Todd Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Trust distribution; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002401-MCL002402	04/19/14	Todd Jaksick	Stan Jaksick, Bob Legoy, Kevin Riley, Brian McQuaid & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Agreement for Payment Extension; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002403	04/19/14	Todd Jaksick	Stan Jaksick, Bob LeGoy, Kevin Riley, Todd Jaksick & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Premarital agreement	Privileged	Sixth Supplement	Attorney-Client
MCL002404-MCL002405	04/14/14	Wendy Jaksick	Brian McQuaid, Stan Jaksick, Todd Jaksick, Wendy/Luke Jaksick	Maupin, Cox & LeGoy, Staff	Email	Plane Appraisal; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002406-MCL002407	03/31/14	Stan Jaksick, Todd Jaksick, Kevin Riley	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Representation of the Samuel S. Jaksick, Jr. Family Trust and all sub trusts, the Estate of Samuel S. Jaksick, Jr., Todd B. Jaksick, Stanley S. Jaksick, and related Persons and Entities (“Jaksicks”); Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002408-MCL002410	04/04/14	Procter Hug IV	Bob LeGoy, Brian McQuaid & Jan Olivero-MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Lakeridge Parcels; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002411-MCL002415	04/02/14	Bob LeGoy	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Representation of the Samuel S. Jaksick, Jr. Family Trust and all sub trusts, the Estate of Samuel S. Jaksick, Jr., Todd B. Jaksick, Stanley S. Jaksick, and related Persons and Entities (Jaksicks'); Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002416-MCL002418	03/28/14	Brian McQuaid	Jessica Clayton, Todd Jaksick & Stan Jaksick	Maupin, Cox & LeGoy, Staff	Email	Sam Jaksick Jr loan; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002419	03/26/14	Bob LeGoy	Todd Jaksick & Kevin Riley	Maupin, Cox & LeGoy, Staff	Letter	Valuation of Sam Jaksick's interest in Montreux Development Group, LLC; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002420	03/18/14	Doris Dotson-MCL	Ronald Carciere	Maupin, Cox & LeGoy, Staff	Letter	18077 Bordeaux Drive, Reno, Nevada; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002421	03/21/14	Bruce Thee	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Montreux Development Group, LLC Toiyabe Investment Co.; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002422-MCL002423	03/05/14	Kevin Riley	Bob LeGoy & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Montreux; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002424-MCL002427	03/04/14	Steve West	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Certified Mail; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002428-MCL002432	02/19/14	Bob LeGoy	Steve West, Todd Jaksick, Stan Jaksick, Kevin Riley & Roger Morris	Maupin, Cox & LeGoy, Staff	Email	New Shareholders' Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002433-MCL002437	02/19/14	Bob LeGoy	Steve West, Stan Jaksick, Todd Jaksick, Kevin Riley, Roger Morris	Maupin, Cox & LeGoy, Staff	Email	New Shareholder Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002438	02/12/14	Bob LeGoy	Jessica Clayon & Kevin Riley	Maupin, Cox & LeGoy, Staff	Letter	Appraisal of the two vacant parcels located in the Lakeridge Golf Course development; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002439-MCL002442	02/03/14	Kevin Riley	Bob LeGoy, Stan Jaksick, Todd Jaksick, Roger Morris	Maupin, Cox & LeGoy, Staff	Email	Email to Steve West, Esq. re new Shareholders' Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002443-MCL002444	01/14/14	Steve West	Kevin Riley & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Amendment and Restated Shareholder Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002445-MCL002450	01/02/14	Bruce Thee	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Montreux Development Group, LLC Toiyabe Investment Company, Inc; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002451-MCL002453	12/13/13	Steve West	Shareholders Pioneer Group, Inc.	Maupin, Cox & LeGoy, Staff	Letter	Shareholder Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002454	11/18/13	Jessica Clayton	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Appraisal for the Bronco Billy's Casino and Hotel; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002455-MCL002456	10/24/13	Bob LeGoy	Todd Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Letter	Supplement and amend the engagement letter; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002457	10/16/13	Heather Motta, MCL	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002458-MCL002459	10/15/13	Bob LeGoy	Jessica Clayton, Stan Jaksick, Todd Jaksick, Kevin Riley, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Lee Smith Appraisals; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002460	09/18/13	Bob LeGoy	Jessica Clayton & Kevin Riley	Maupin, Cox & LeGoy, Staff	Letter	Appraisal of Sam's airplane prepared by Sterling Air; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002461-MCL002465	09/05/13	Bob LeGoy	Brett Scolari, John Desmond, Benjamin Kennedy,	Maupin, Cox & LeGoy, Staff	Email	Montreux Development Group, LLC vs Gateway, et al; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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			Todd Jaksick, Stan Jaksick, Mike Malloy, Brian McQuaid, Procter Hug IV, Rob Winkler						
MCL002466-MCL002467	08/06/13	Bob LeGoy	Todd Jaksick, Stan Jaksick & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Estate of Sam Jaksick Appraisal; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002468-MCL002469	08/06/13	Bob LeGoy	Todd Jaksick, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Estate of Sam Jaksick Appraisal; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002470-MCL002472	08/07/13	Steve West	Bob LeGoy, Bob Morris & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Jaksicks; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002473-MCL002474	08/06/13	William Kimmel	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Estate of Sam Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002475-MCL002476	08/06/13	William Kimmel	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Letter	Estate of Sam Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002477-MCL002478	07/24/13	Kevin Riley	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Indemnification agreement; Trust Administration; with Handwritten Notes	Privileged	Sixth Supplement	Attorney-Client
MCL002479-MCL002480	07/17/13	Bob LeGoy	Jessica Clayton, Todd Jaksick, Stan Jaksick, Brian McQuaid & Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Agreement and Consent to Proposed Action- Executed; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002481-MCL002482	07/17/13	Jessica Clayton	Bob LeGoy, Kevin Riley, Todd Jaksick, Stan Jaksick, Brian McQuaid, & Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Agreement and Consent to Proposed Action- Executed; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002483-MCL002484	07/16/13	Jessica Clayton	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Address info; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002485-MCL002487	07/16/13	Heather Motta- MCL	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Probate Petition; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002488-MCL002491	07/16/13	Heather Motta- MCL	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Probate Petition; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002492	07/14/13	Roger Morris	Bob LeGoy & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Jaksick Probate Petition; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002493-MCL002494	07/06/13	Brian McQuaid	Jessica Clayton & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Addresses; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002495	07/05/13	Todd Jaksick	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Executors for Probate; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002496-MCL002515	07/05/13	Brian McQuaid	Jessica Clayton, Todd Jaksick, Stan Jaksick, Kevin Riley, Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Probate time from for bank accounts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002516	07/05/13	Jessica Clayton	Brian McQuaid, Todd Jaksick, Kevin Riley and Stan Jaksick	Maupin, Cox & LeGoy, Staff	Email	4005 Quail Rock Lane Residence; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002517-MCL002518	07/02/13	Jessica Clayton	Bob LeGoy, Brian McQuaid, Stan Jaksick, Todd Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Umqua Funds; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002519-MCL002521	06/22/13	Bob LeGoy	Stan Jaksick & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Roger Morris; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002522	06/21/13	Brian McQuaid	Matt Grey, Stan Jaksick, Todd Jaksick, Jessica Clayton, Kevin Riley, Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick Trust Documents; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002523-MCL002525	06/21/13	Bob LeGoy	Stan Jaksick, Jessica Clayton, Kevin Riley, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Roger Morris; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002526-MCL002535	06/20/13	Kevin Riley	Bob LeGoy, Jessica Clayton, Stan Jaksick, Todd Jaksick, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Sam's Estate- NSB Update- Message Failure 2 nd attempt Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002536-MCL002545	06/19/13	Jessica Clayton	Bob LeGoy, Kevin Riley, Todd Jaksick, Stan Jaksick & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Sam's Estate- NSB Update- Message Failure 2 nd attempt; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002546-MCL002555	06/19/13	Bob LeGoy	Stan Jaksick, Todd Jaksick, Jessica Clayton & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Sam's Estate- NSB Update- Message Failure 2 nd attempt; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL02556-MCL002559	06/19/13	Todd Jaksick	Kevin Riley, Jessica Clayton, Bob LeGoy, Stan Jaksick, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Sam's Estate- NSB Update- Message Failure 2 nd attempt; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002560-MCL002561	06/19/13	Bob LeGoy	Nik Palmer, Todd Jaksick, Stan Jaksick, Jessica Clayton & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Roger Morris; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002562-MCL002563	06/18/13	Bob LeGoy	Todd Jaksick, Stan Jaksick, Kevin Riley, Brian McQuaid & Nic Palmer	Maupin, Cox & LeGoy, Staff	Email	Pioneer group trust docs; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002564	06/18/13	Bob LeGoy	Jessica Clayton, Todd Jaksick, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Assignment of Gift- Bank Accounts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002565-MCL002567	06/17/13	Brian McQuaid	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	List of Creditors- additional comment; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
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MAUPIN, COX & LEGOY (‘MCL’) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL002568-MCL002571	06/14/13	Jessica Clayton	Bob LeGoy, Kevin Riley & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Tahoe Beneficiary consent; Trust Administration	Redacted & Produced	Sixth Supplement	Attorney-Client
MCL002572-MCL002576	06/15/13	Bob LeGoy	Jessica Clayton, Stan Jaksick, Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Sam's Estate- NSB Update- Message Failure 2 nd attempt; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002577-MCL002579	06/14/13	Bob LeGoy	Kevin Riley, Jessica Clayton & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Details about Administrative Trust, etc?; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002580-MCL002589	06/12/13	Bob LeGoy & Brian McQuaid	Todd Jaksick, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Engagement Letter; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002590-MCL002593	06/04/13	Jessica Clayton	Brian McQuaid, Todd Jaksick, Kevin Riley & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Ltd, a Nevada Limited-Liability Company; Trust Administration; with Handwritten Notes	Privileged	Sixth Supplement	Attorney-Client
MCL002594	06/04/13	Soraya Tabibi Aguirre, Esq.	Bob LeGoy, Susan Levin, BofA	Maupin, Cox & LeGoy, Staff	Email	Estate of Samuel S. Jaksick, JR. Our File No. 44736-0100; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002595-MCL002596	06/06/13	Brian McQuaid	Procter Hug IV & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
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MCL002597- MCL002599	06/06/13	Bob LeGoy	Nanette, Nik Palmer, Todd Jaksick, Stan Jaksick, Jessica Clayton, Doris Dotson- MCL	Maupin, Cox & LeGoy, Staff	Email	Meeting re: Pioneer group; Trust Administration; with Handwritten Notes	Privileged	Sixth Supplement	Attorney-Client
MCL002600- MCL002604	06/05/13	Brian McQuaid	Todd Jaksick & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Draft Agreement re: Life Insurance; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002605	06/05/13	Todd Jaksick	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Fax	Fax cover sheet; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002606	05/20/13	U.S. Trust B of A	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Samuel S Jaksick Jr; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002607	06/04/13	Soraya Tabibi Aguirre, Esq.	Bob LeGoy, Susan Levin, BofA	Maupin, Cox & LeGoy, Staff	Email	Estate of Samuel S. Jaksick, JR. Our File No. 44736-0100; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002608- MCL002611	06/04/13	Brian McQuaid	Todd Jaksick & Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Draft Agreement re: Life Insurance; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002612- MCL002618	06/04/13	Brian McQuaid	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Ltd, a Nevada Limited Liability Company; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002619- MCL002620	06/04/13	Bob LeGoy	Jessica Clayton, Todd Jaksick, Nik Palmer & Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Correspondence- Pioneer Group; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002621- MCL002625	06/03/13	Brian McQuaid	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Ltd, a Nevada Limited- Liability Company; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002626	06/03/13	Todd Jaksick	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Tahoe House; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002627- MCL002630	06/02/13	Kevin Riley	Brian McQuaid, Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Lts, a Nevada Limited-Liability Company; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002631	06/02/13	Todd Jaksick	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Tahoe house; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002632- MCL002638	06/02/13	Todd Jaksick	Brian McQuaid, Todd Jaksick, Kevin Riley, Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Lts, a Nevada Limited-Liability Company; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
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MCL002639	05/31/13	Bob LeGoy	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002640	05/31/13	Bob LeGoy	Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Sam's Loan from Nevada State Bank; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002641-MCL002642	05/30/13	Bob LeGoy	Jessica Clayton, Todd Jaksick, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Lts, a Nevada Limited-Liability Company; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002643-MCL002645	05/30/13	Bob LeGoy	Jessica Clayton, Todd Jaksick, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	From Todd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002646-MCL002649	05/30/13	Bob LeGoy	Jessica Clayton & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Declaration of Gift- Bank Accounts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002650-MCL002654	05/29/13	Bob LeGoy	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Question on List of Creditors; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002655-MCL002656	05/28/13	Bob LeGoy	Brian McQuaid, Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Incline TSS Lts, a Nevada Limited-Liability Company; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002657-MCL002658	05/24/13	Bob LeGoy	Jessica Clayton & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Notice to Creditors; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002659	05/21/13	Jessica Clayton	Bob LeGoy, Kevin Riley & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Letter from Diversified re Sam/Pivots; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002660	05/14/13	Diversified Financial Services	Mrs. Jaksick Administrator	Maupin, Cox & LeGoy, Staff	Letter	Contract 009-163920-001; Possible Creditor's Claim; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002661-MCL002662	05/21/13	Bob LeGoy	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	BofA/US Trust/Letter re: Tahoe house; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002663-MCL002666	05/20/13	Bob LeGoy	Doris Dotson-MCL, Brian McQuaid, Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Trustee Certificate of Incumbency; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002667	05/10/13	Marc Murphy, Bronco Billy's	Stan Jaksick & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Stan Jaksick Stock; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002668-MCL002669	06/15/13	Bob LeGoy	Brian McQuaid & Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	List of Creditors; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002670- MCL002672	06/05/13	Bob LeGoy	Brian McQuaid & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Draft Agreement re: Life Insurance; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002673- MCL002675	05/22/13	Nik Palmer, Steve West	Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Pioneer Group Stock; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002676	05/28/13	Nik Palmer	Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Roger Morris; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002677- MCL002679	05/08/13	Nik Palmer, Steve West	Todd Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Bronco Billy's; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002680- MCL002681	12/30/14	Bob LeGoy, Steve West	Doris Dotson-MCL, Jessica Clayton, Todd Jaksick, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Jaksick Distribution; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002682- MCL002683	12/08/14	Todd Jaksick	Kevin Riley, Todd Jaksick, Bob Legoy, Stan Jaksick, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Stan's entry to Incline TSS Ltd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

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MCL002684-MCL002686	12/08/14	Bob LeGoy	Stan Jaksick, Todd Jaksick, Kevin Riley, Brian McQuaid, Roger Morris	Maupin, Cox & LeGoy, Staff	Email	Transfer of PGI Stock to Trusts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002687-MCL002692	11/18/14	Jessica Clayton	Brian McQuaid & Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Draft promissory notes-Wendy; Trust Administration; with Handwritten Notes	Privileged	Sixth Supplement	Attorney-Client
MCL002693-MCL002694	11/17/14	Jessica Clayton	Bob LeGoy, Brian McQuaid, Todd Jaksick, Stan Jaksick, Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Information for Unclaimed Property- Today's 1pm meeting; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002695-MCL002696	10/24/14	Bob LeGoy	Stan Jaksick & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	Montreux Development Group, LLC; Trust Administration; with Handwritten Notes	Privileged	Sixth Supplement	Attorney-Client
MCL002697-MCL002744	10/16/14	Procter Hug, IV	Brian McQuaid	Maupin, Cox & LeGoy, Staff	Memo	Samuel S. Jaksick Jr. Trust and Estate Administration; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002745-MCL002761	10/09/14	Steve West	Bob LeGoy,	Maupin, Cox & LeGoy, Staff	Email	Amended & Restated Shareholder Agreement; Draft; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL002762-MCL002765	09/17/14	Steve West	Bob LeGoy, Roger Morris, Todd Jaksick, Stan Jaksick & Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	Amended & Restated Shareholder Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002766-MCL002769	06/16/14	Steve West	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Amended & Restate Shareholder Agreement; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002770-MCL002773	09/03/14	Bob LeGoy	Jessica Clayton, Stan Jaksick, Todd Jaksick, Lexi Smrt, Kevin Riley, Brian McQuaid	Maupin, Cox & LeGoy, Staff	Email	Executed Agreement and Consent to Proposed Action/Promissory Note/ Security Agreement and Letter to Wendy; Trust Administration	Redacted & Produced	Sixth Supplement	Attorney-Client
MCL002774-MCL002779	07/16/14	Jessica Clayton	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Call in number; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002780-MCL002786	06/11/14	Brian McQuaid	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick-Consent; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002787-MCL002788	06/08/14	Bob LeGoy	Doris Dotson-MCL	Maupin, Cox & LeGoy, Staff	Email	Meeting with Todd in Person; Trust Administration	Privileged	Sixth Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
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MCL002789- MCL002794	04/04/14	Bob LeGoy	Procter Hug IV, Brian McQuaid & Jan Olivero- MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Lakeridge Parcels; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002795	04/05/14	Bob LeGoy	Doris Dotson- MCL & Debbie Mitchell- MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksicks; Trust Administration	Privileged	Sixth Supplement	Attorney-Client
MCL002796- MCL002804	08/23/06	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Estate Documents	Certification of Todd Jaksick Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002815- MCL002851	Unknown	Maupin, Cox & LeGoy	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Trust Documents	The TBJ's Issue Trust Agreement (unsigned) (with handwritten notes); Draft; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002852	1/27/17	Kevin Riley	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Spreadsheet	Samuel S Jaksick Jr Family Trust Settlement of Samuel S Jaksick Jr Family Trust's obligations (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002853	1/25/17	Kevin Riley	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Spreadsheet	Todd and Stan Jaksick's Trusts under the Samuel S Jaksick Jr Family Trust Summarized cash activity through 1/25/17 (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL002854	1/26/17	Kevin Riley	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Spreadsheet	Samuel S. Jaksick Family Trust Profit & Loss April 2016 through March 2017 (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002949-MCL002956	06/20/07	Hale Lane Peek Dennison and Howard	Sam Jaksick & George Brown	Maupin, Cox & LeGoy, Staff	Document	Guarantee between Sam Jaksick, George Brown, Sharon Brown and Evelyn Oliver (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002959-MCL002983	11/2013	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Document	DRAFT Modification of Deed of Trust (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL002984-MCL002986	8/2013	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Spreadsheet	List of Creditors for Sam Jaksick and Notes with Personal Guaranty (as of 04/30/13) (with handwritten notes)	Redacted & Produced	Sixth Supplement	Attorney-Client; Work Product
MCL002990-MCL002993	4/30/13	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Spreadsheet	List of Creditors for Sam Jaksick and Notes with Personal Guaranty (as of 04/30/13)	Redacted & Produced	Sixth Supplement	Attorney-Client; Work Product
MCL002996-MCL003057	9/17/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Document	Amended and Restated Shareholder Agreement (unsigned) (with handwritten notes & redline edits); Draft; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL003058-MCL003059	02/21/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Document	Member's Information 2009 and Subsequent Years Nevada Pronghorn (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003060-MCL003061	02/21/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Document	Member's Information 2009 and Subsequent Years Homecamp Land and Livestock (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003062-MCL003063	02/21/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Document	Member's Information 2009 and Subsequent Years TBJ SC Trust (with handwritten notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003067	12/27/13	Maupin, Cox & LeGoy	Maupin, Cox & LeGoy	Maupin, Cox & LeGoy, Staff	Billing	AR Journal	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003079	Unknown; Post Sam DOD¹	Jaksick Administrative Offices	Don Lattin	Maupin, Cox & LeGoy, Staff	Notes	Notes: for your letter Don; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003080	11/17/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Todd Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

¹ Subject of current litigation with Wendy Jaksick

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MCL003081	10/03/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003082	09/06/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003083	01/19/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Todd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003084-MCL003085	09/30/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Todd- Estate Planning; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003086-MCL003113	12/23/15	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Notes	Assets of Trusts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003114	03/10/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Todd, Jaksick Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003115-MCL003117	04/08/08	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam & Todd Estate Planning; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL003118	11/17/06	Bo LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Todd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003119	08/10/18	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Litigation; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003120-MCL003121	03/21/18	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Trust Litigation; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003122	05/18/18	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick SSJ's Issue Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003123-MCL003124	09/15/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003125-MCL003126	09/15/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003127-MCL003128	10/10/18	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Samuel Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL003129- MCL003130	10/03/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003131- MCL003133	09/11/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003134- MCL003135	09/05/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Stanley- estate Planning; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003136- MCL003137	07/24/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003138- MCL003141	07/10/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003142- MCL003143	05/22/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003144	05/16/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Trust Admin.	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
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MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003145	05/01/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003146-MCL003148	05/01/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003149	04/10/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Samuel JaksickFamily Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003150	04/07/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick- Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003151	03/24/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- SSJ's Issue Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003152	01/18/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003153-MCL003154	03/01/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
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MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003155- MCL003156	02/06/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003157	01/30/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003158- MCL003161	01/25/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003162- MCL003163	01/10/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Trust Admin.	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003164	11/09/11	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Estate Planning	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003165	10/05/11	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Estate Plan	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003166- MCL003168	04/08/08	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam & Todd Estate Plan	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003169-MCL003171	11/14/07	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick- Home Camp; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003172	12/06/06	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick- Home Camp; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003173	06/05/06	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam & Todd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003174	Unknown	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Todd Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003175-MCL003176	04/20/11	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003177	04/17/06	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Estate Planning	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003178-MCL003182	04/14/06	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam & Todd; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003183	06/08/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Bright-Holland; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003184	09/13/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003185-MCL003188	09/06/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003189-MCL003192	08/30/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003193-MCL003197	08/29/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003198	06/06/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003199	05/31/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003200-MCL003201	05/16/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003202	05/09	Molly LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003203	11/19/16	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Conference with Todd Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003204-MCL003205	07/11/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003206	12/2/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003207	11/15/15	Unknown	File	Maupin, Cox & LeGoy, Staff	Memo	Memo to File: Conference call with Todd Jaksick and Kevin Riley re: Jackrabbitt; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003208	11/03/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Trust Admin.	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003209-MCL003210	10/19/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003211	08/25/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003212-MCL003213	08/10/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003214	08/10/15	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003215	05/11/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003216-MCL003220	06/26/07	Hale Lane Peek Dennison and Howard	George Brown & Sam Jaksick, Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Notes	Reducing Revolving Promissory Note (with Bob LeGoy Notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003221-MCL003233	06/26/07	Hale Lane Peek Dennison and Howard	George Brown & Sam Jaksick, Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Notes	Reducing Revolving Loan Agreement (with Bob LeGoy Notes); Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003234-MCL003235	03/09/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003236-MCL003237	02/23/16	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003238-MCL003239	01/29/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003240	01/12/15	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Samuel Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003241	12/18/17	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick- Jackrabbitt; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003242-MCL003243	12/29/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003244	11/17/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003245-MCL003246	11/14/15	Bob LEGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003247	10/31/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003248-MCL003249	10/21/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003250-MCL003251	10/20/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003252	10/06/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003253-MCL003254	09/22/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003255	09/17/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003256	08/25/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trusts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003257	08/04/14	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Todd: Stan: Kevin: PHIV; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003258	07/28/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003259-MCL003260	07/21/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003261	07/15/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003262	07/14/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin.	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003263-MCL003264	06/30/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003265	06/25/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	T/C Todd Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003266-MCL003267	06/16/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003268	06/09/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Samuel Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003269	06/05/14	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Bob Sader; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003270-MCL003271	06/04/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel S. Jr Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product

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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003272-MCL003273	06/02/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Trusts; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003274-MCL003275	05/12/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003276	05/05/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003277-MCL003278	04/28/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003279-MCL003280	04/21/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003281	04/15/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003282-MCL003283	04/14/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL003284	04/09/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003285	03/24/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003286-MCL003287	03/10/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003288-MCL003290	03/05/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003291-MCL003292	03/03/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003293	02/24/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003294	02/12/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL003295-MCL003297	01/29/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003298-MCL003299	01/27/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003300	01/29/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003301	01/27/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003302-MCL003303	01/22/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003304-MCL003305	01/14/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Samuel Jaksick Jr. Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003306	01/13/14	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam JR. Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

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MCL003307	12/16/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003308-MCL003309	12/19/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003310	12/22/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003311	10/28/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Conference with Todd Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003312	12/21/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003313	10/10/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003314	10/07/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003315	09/30/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003316	09/23/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel S. Jr. Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003317	09/03/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Samuel Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003318	09/13/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003319	07/09/13	Roger Morris	File	Maupin, Cox & LeGoy, Staff	Notes	The Firm: Roger M. Morris, LLCI Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003320	09/16/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003321-MCL003322	08/20/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003323	08/21/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003324-MCL003325	08/21/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003326-MCL003327	08/13/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003328-MCL003329	8/12/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel-Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003330	08/05/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003331-MCL003332	08/05/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick, Jr. Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003333	08/01/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003334-MCL003335	07/29/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003336-MCL003337	07/22/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003338-MCL003339	07/19/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003340	07/17/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Samuel S. Jr. Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003341	07/11/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Conference with Todd Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003342	07/10/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003343	07/09/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick- Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003344-MCL003345	07/08/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003346-MCL003347	07/08/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003348	08/02/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003349-MCL003350	06/24/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003351-MCL003352	07/01/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003353	06/18/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust Admin	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003354	06/17/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick Family Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003355-MCL003356	06/17/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003357-MCL003360	06/11/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003361-MCL003362	05/23/13	Brian McQuaid	File	Maupin, Cox & LeGoy, Staff	Notes	Per LRL re: Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003363	05/31/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003364-MCL003365	05/21/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam- Trust; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003366-MCL003372	05/08/13	Bob LeGoy	File	Maupin, Cox & LeGoy, Staff	Notes	Jaksick, Sam; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003375	Unknown	Unknown	File	Maupin, Cox & LeGoy, Staff	Notes	Sam Jaksick's obituary; Trust Administration	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003376-MCL003417	Unknown	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	U.S. v. Marshall, Cite as 114 Afr 2s 2014-6578, Code Sec(s) 6324; 6601; 6621; 6901; 2511; 6901, (CA5), 11/10/2014	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003418-MCL003436	9/13/14	NV State Legislature	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Chapter 143- Powers and duties of personal representatives	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003437-MCL003445	1/21/15	NV State Legislature	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Chapter 165- Trustees' Accounting (uniform act)	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003446-MCL003455	6/11/14	IRS	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	IRS: Chapter 17. Legal Reference Guide for Revenue Officers; Section 13. Insolvencies and Decedents' Estate	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003456-MCL003474	6/10/14	NV State Legislature	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Chapter 143- Power and Duties of Personal Representatives	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003475-MCL003480	4/24/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	140 Completing CCC-901's	Privileged	Sixth Supplement	Attorney-Client; Work Product

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL003481	4/24/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Section 6: Trust Revocable and Irrevocable Trusts	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003482	4/24/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Trust Eligibility Determinations	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003483	4/24/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Completing CCC-901's (Continued)	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003484	4/24/14	CFR- Fed. Gov.	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Trust Actively Engaged in Farming Determinations	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003485- MCL003486	4/24/14	Unknown	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Trust Case Examples	Privileged	Sixth Supplement	Attorney-Client; Work Product
MCL003487- MCL003510	6/14/13	NV State Legislature	Maupin Cox & LeGoy, Unknown Other Recipients	Maupin, Cox & LeGoy, Staff	Research	Chapter 164- Administration of Trusts	Privileged	Sixth Supplement	Attorney-Client; Work Product

1 DISC.
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 MAUPIN, COX & LeGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Telephone: (775) 827-2000
10 Facsimile: (775) 827-2185
11 *Attorneys for L. Robert LeGoy, Jr.*

12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 In the Matter of the:
17 SSJ's ISSUE TRUST.

Case No.: PR17-0445
Dept. No.: 15

18
19 In the Matter of the Administration of
20 THE SAMUEL S. JAKSICK, JR., FAMILY
21 TRUST.

Consolidated
Case No.: PR17-0446
Dept. No.: 15

22
23 **L. ROBERT LEGOY, JR. AND MAUPIN, COX & LEGOY CUSTODIAN'S SEVENTH**
24 **SUPPLEMENT TO THEIR OBJECTIONS AND RESPONSES**
25 **TO SUBPOENA DUCES TECUM**

26 L. Robert LeGoy, Jr. ("Bob") and Custodian of Records, Maupin, Cox & LeGoy ("MCL Custodian"), by and through their undersigned counsel, hereby supplements their objections and responses to the Subpoena Duces Tecum served by Wendy Jaksick, in accordance with the order of the Discovery Commissioner on February 8, 2019, as follows:

27
28 **DOCUMENTS**

29 The documents presented for discovery consist of documents previously identified and Bates labeled in Maupin, Cox & LeGoy ("MCL") Document Production Privilege Log (Revised 2/08/19), and which will be provided electronically via a ShareFile download link (or via CD-

1 ROM for non-electronic service recipients). Some documents remain withheld are identified via
2 the attached privilege log and pertain to personal estate planning matters of Todd Jaksick.

3
4 **NRS 239B.030 Affirmation**

5 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not
6 contain the Social Security Number of any person.

7 Dated this 8th day of February, 2019.

8 MAUPIN, COX & LEGOY

9
10 By: 

11 Donald A. Lattin, NSB # 693
12 Brian C. McQuaid, Esq., NSB # 7090
13 Carolyn K. Renner, Esq., NSB #9164
14 4785 Caughlin Parkway
15 Reno, NV 89519
16 *Attorneys for L. Robert LeGoy, Jr.*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maupin, Cox & LeGoy, Attorneys at Law, and in that capacity and on the date indicated below, I deposited for mailing from a point within the State of Nevada a sealed envelope which had enclosed within a true and correct copy of the foregoing document, which envelope had postage fully prepaid thereon, and via electronic transmission, addressed as follows:

Philip L. Kreitlein, Esq.
Stephen C. Moss, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502
philip@klmlawfirm.com
*Attorneys for Stan Jaksick as Co-Trustee of
the Samuel S. Jaksick, Jr. Family Trust*

Mark Connot, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135
MConnot@foxrothschild.com

And

R. Kevin Spencer, Esq. (Pro Hac Vice)
Zachary E. Johnson, Esq. (Pro Hac Vice)
Spencer & Johnson PLLC
500 N. Akard Street, Suite 2150
Dallas, TX 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Wendy A. Jaksick

Kent R. Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharpe, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
krobison@rssblaw.com
tshanks@rssblaw.com
*Attorneys for Todd B. Jaksick, Individually,
and as beneficiary, SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

Adam Hosmer-Henner, Esq.
Sarah A. Ferguson, Esq.
McDonald Carano Wilson LLP
100 W. Liberty Street, 10th Floor
Reno, NV 89501
ahosmerhenner@mcdonaldcarano.com
sferguson@mcdonaldcarano.com
*Attorneys for Stan Jaksick, individually, and
as beneficiary of the Samuel S. Jaksick, Jr.
Family Trust and SSJ's Issue Trust*

///

///

1 Via placing an original or true copy thereof in a sealed envelope with sufficient postage
2 affixed thereto, in the United States mail at Reno Nevada, addressed to:

3 Alexi Smrt
4 3713 Wrexham
5 St Frisco, TX 75034

6 Regan Jaksick
7 Sydney Jaksick
8 Sawyer Jaksick
9 c/o Lisa Jaksick
5235 Bellazza Ct.
Reno, Nevada 89519

Luke Jaksick
c/o Wendy A. Jaksick
6501 Meyer Way
Apt. # 0705
McKinney Texas 75070

Benjamin Jaksick
Amanda Jaksick
c/o Dawn E. Jaksick
6220 Rouge Drive
Reno, Nevada 89511

10 DATED this 8th day of February, 2019.

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12 Employee
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In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(2nd REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL001956-MCL001959	10/14/16	Dawn Jaksick	Bob LeGoy & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	TBJ's Issue Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001960-MCL001961	11/03/14	Doris Dotson-MCL	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Revised Certificate of Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001962-MCL00194	10/09/14	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Attorney-Client Privilege and the Attorney Work Product Doctrine	Privileged	Seventh Supplement	Attorney-Client
MCL001965	08/12/14	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Bill for preparing Dawn's Estate Plan	Privileged	Seventh Supplement	Attorney-Client
MCL001966-MCL001969	07/29/14	Bob LeGoy	Dawn Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Estate Plan	Privileged	Seventh Supplement	Attorney-Client
MCL001975	04/05/14	Bob LeGoy	Doris Dotson-MCL & Debbie Mitchell, MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Billing Address	Privileged	Seventh Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL001976-MCL001978	04/01/14	Bob LeGoy	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	Todd Jaksick's Will	Privileged	Seventh Supplement	Attorney-Client
MCL001979-MCL001981	03/17/14	Jaksick Office Admin	Bob LeGoy and Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Todd's Will and Trust Agreement	Privileged	Seventh Supplement	Attorney-Client
MCL001982	12/27/07	Jessica Clayton	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	TBJ Issue Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001983-MCL001987	11/23/07	Bob LeGoy	Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	From Todd Jaksick; TBJ Issue Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001988-MCL001989	11/19/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Joe Gardner; TBJ Issue Trust; Todd Jaksick Life Insurance	Privileged	Seventh Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY ("MCL") DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL001990-MCL001991	11/13/07	Bob LeGoy	Geoff Grenert	Maupin, Cox & LeGoy, Staff	Email	Gardner & Jaksick; Todd Jaksick Life Insurance	Privileged	Seventh Supplement	Attorney-Client
MCL001993-MCL001999	08/22/06	Bob LeGoy	Todd Jaksick & Geoff Grenert	Maupin, Cox & LeGoy, Staff	Letter	Estate Planning of Todd Jaksick	Privileged	Seventh Supplement	Attorney-Client
MCL0002005	07/21/14	Dawn Jaksick	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	The Dawn Jaksick Trust	Privileged	Seventh Supplement	Attorney-Client
MCL002082-MCL002085	04/11/06	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration; TBJ Trust	Privileged	Sixth Supplement	Attorney-Client
MCL002034-MCL002043	11/14/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration; Todd Jaksick Life Insurance	Privileged	Seventh Supplement	Attorney-Client
MCL002157	12/03/15	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Firm's bill	Privileged	Seventh Supplement	Attorney-Client

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY ("MCL") DOCUMENT PRODUCTION PRIVILEGE LOG
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Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL002795	04/05/14	Bob LeGoy	Doris Dotson-MCL & Debbie Mitchell- MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Billing Address	Privileged	Seventh Supplement	Attorney-Client
MCL002796-MCL002804	08/23/06	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Estate Documents	Certification of Todd Jaksick Family Trust; Trust Administration	Privileged	Seventh Supplement	Attorney-Client; Work Product
MCL003067	12/27/13	Maupin, Cox & LeGoy	Maupin, Cox & LeGoy	Maupin, Cox & LeGoy, Staff	Billing	AR Journal	Privileged	Seventh Supplement	Attorney-Client; Work Product

MARK J. CONNOT (10010)
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899 telephone
(702) 597-5503 fax
mconnot@foxrothschild.com

R. KEVIN SPENCER (*Admitted PHV*)
Texas Bar Card No. 00786254
ZACHARY E. JOHNSON (*Admitted PHV*)
Texas Bar Card No. 24063978
SPENCER & JOHNSON, PLLC
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Respondent/Counter-Petitioner
Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

In the Matter of the Administration of the
SSJ'S ISSUE TRUST,

CASE NO.: PR17-00445
DEPT. NO. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST,

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; AND STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; KEVIN RILEY, INDIVIDUALLY AND
AS FORMER TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST AND TRUSTEE
OF THE WENDY A. JAKSICK 2012 BHC
FAMILY TRUST,

Petitioners and Counter-Respondents.

**SUPPLEMENTAL DECLARATION
OF MARK J. CONNOT IN SUPPORT
OF WENDY JAKSICK'S
EMERGENCY MOTION TO EXTEND
DISCOVERY DEADLINES AND
TRIAL FOR CAUSE AND
ALTERNATIVELY MOTION TO
CONTINUE TRIAL PURSUANT TO
NRS 16.010**

1 I, MARK J. CONNOT, declare as follows:

2 1. I am a partner with the law firm of Fox Rothschild LLP, counsel for
3 Respondent/Counter-Petitioner Wendy A. Jaksick ("Respondent") in the above-referenced
4 action.

5 2. I make this supplemental declaration (the "Supplemental Declaration") in support
6 of Wendy A. Jaksick's *Emergency Motion to Extend Discovery Deadlines and Trial for Cause*
7 *and Alternatively Motion to Continue Trial Pursuant to NRS 16.010* (the "Motion").

8 **A. The documents unreasonably withheld from Wendy are material to this action.**

9 3. As stated and described in my original Declaration in support of Wendy's *Motion*,
10 a substantial amount of documentation related to the administration of the Trusts, and their assets
11 and liabilities, have been unreasonably withheld from Wendy.

12 4. The Family Subtrust Accountings. The terms of the Family Trust and Nevada
13 statute required the Co-Trustees to prepare and deliver Wendy's 2017 Subtrust Accounting on
14 or before April 1, 2018. After failing to deliver the accounting, Wendy has repeatedly and
15 diligently sought to obtain copies of the accounting beginning in as early as August 2018.¹ Since
16 that time, Wendy has also formally requested the delivery of Todd's and Stan's Subtrust
17 Accountings. The Co-Trustees had no basis or excuse for not producing Wendy's Subtrust
18 Accounting. In fact, their failure to do so was a breach of the terms of the Family Trust, Nevada
19 statutes and a *per se* breach of their fiduciary duties. Additionally, because the Co-Trustees
20 made the decision to distribute and administer assets of Wendy's Subtrust in their personal
21 Subtrusts, it is impossible for Wendy to fully understand the administration of the Family Trust
22 and her Subtrust without Todd's and Stan's Subtrust Accountings.² The Subtrust Accountings

23
24 ¹ Oral requests for the 2017 Family Trust accountings began in August 2018, when Wendy's
25 counsel learned Todd's counsel had received and been sitting on the Issue Trust accounting prior
to Todd's deposition scheduled for the week of August 13, 2018. Wendy's first formal demand
for the Subtrust Accountings was sent in October 2018.

26 ² The Co-Trustees have a duty of full disclosure including all facts that materially affect the
27 rights and interests of Wendy. *Foley v. Morse & Mowbray*, 109 Nev. 116, 848 P. 2d. 519 (1993);
28 *Golden Nugget, Inc. v. Ham*, 95 Nev. 45, 589 P.2d 173 (1979)

1 are affirmative statements and admissions of the Co-Trustees about the assets and their
2 administration, which is absolutely material to this litigation concerning the Co-Trustees'
3 administration and breaches of fiduciary duty. Without her Subtrust Accounting, Wendy is
4 forced to guess what assets are in her Subtrust and what has transpired with the administration
5 of her Subtrust since December 31, 2016. Additionally, without Todd's and Stan's Subtrust
6 Accountings, Wendy has no ability to understand what has happened with her Subtrust assets
7 that were distributed to these Subtrusts. Todd and Stan, Wendy's fiduciaries, strategically
8 decided not to prepare these accountings in order to deprive Wendy of the information and to
9 obtain an advantage in this litigation to the detriment of Wendy. Wendy should have had these
10 Subtrust Accountings in April 2018 when they were required to be prepared, which would have
11 been prior to the exchange of written discovery, all of the party and non-party depositions, the
12 designation of experts and the expert depositions.

13 5. Sam Jaksick's Income Tax Returns. Wendy originally sought Sam's and his
14 Estate's Income Tax Returns in Request 56 of her First Request for Production to Todd, which
15 was served May 25, 2018. Among other reasons, Sam's Income Tax Statements are critical and
16 material to this litigation because one of Todd's key justifications for Sam's transfer of the Tahoe
17 Property out of his Estate in 2012 was to avoid an additional tax applicable to any sale of the
18 Tahoe Property after 2012. Todd testified to this as follows:

19 081318, (Pages 19:21 to 21:13)

20 19

21 Q And anything else other than creditor
22 protection? Any other rationale for your dad wanting
23 to get the Tahoe house out of the estate?

24 A One key factor, I guess, time frame, you
25 know, as these discussions evolved, I don't know if it

26 20

1 happened right there in 2010 or, you know, maybe
2 starting in '11 and then some in '12, but there was
3 some substantial additional key elements of as to why
4 dad wanted to get the house out of the estate.

5 Q Such as?

6 A There was the potential for a substantial

14 It was also -- I remember Kevin Riley
15 stating that it was his number one priority,
16 recommendation to dad, to get that Tahoe house out of
17 his estate. I can't tell you exactly what the
18 terminology is, but it had something to do with the
19 house being in dad's estate that dad's estate wouldn't
20 qualify for certain tax benefits in terms of being
21 able to defer estate taxes or being able to, you know,
22 take estate taxes, and instead of them having all be
23 due in nine months we were able to defer them and pay
24 them over time.

1 exact terminology, I believe it was called like an
2 excise tax that was approximately 3.8 percent that was
3 going to be kicking in in 2013 that could have cost an
4 additional \$500,000 or so.

9 Q So there is the creditor issues on one
10 side, and then all of these tax benefits to getting it
11 out of the estate on the other side?

12 A That there were some -- yes, I would say
13 that's accurate, yes.

6. In addition, Wendy included Request 56 in her December 26, 2018 correspondence to Todd's counsel identifying the "mission critical" requests. Todd never produced any documents in response to Wendy's December 26, 2018 correspondence. On January 14, 2019, with Wendy's expert depositions pending, Wendy's counsel sent correspondence to Todd's counsel communicating she must have the income tax returns for her expert to be able to prepare for and sit for his deposition and requesting they be produced

immediately. Todd's counsel never responded to the correspondence. Wendy's counsel brought this issue up and the need for the income tax returns at the January 15, 2019 discovery conference. Commissioner Ayres directed that Sam's 2012 and 2013 Income Tax Returns be immediately produced and provided to Wendy's counsel. Despite that directive from Commissioner Ayres, Todd's counsel purposefully withheld the production of the tax returns for ten (10) days until Wendy's expert depositions were complete. Wendy should have had these income tax returns in June or July 2018, prior to the depositions of the parties and non-parties, the designation of experts and the expert depositions. Wendy has clearly been prejudiced by Todd's initial decision not to produce this material information in response to a proper request for production, and Todd's intentional decision to further delay providing this information even after he was directed to immediately produce it.

7. Maupin Cox & LeGoy Production. Maupin Cox and LeGoy ("MCL") served as counsel for Sam, the Family Trust, the Issue Trust and Todd, in his individual capacity, for many years. MCL did not produce a single page of records in response to Wendy's August 6, 2018 Subpoena until December 17, 2018. The timing of the discovery and production is detailed in the following table:

Document	Date	Production	Actual Pages	Privilege Log
Wendy's Subpoena	07/31/18			
MCL's Objection and Response	08/20/18	-	0	
First Supplement	12/14/18	MCL 0001-1108	1,108	
Second Supplement	12/18/18	MCL 1109-1138	30	
Third Supplement	12/21/18	MCL 1139-1350	212	
Fourth Supplement	12/26/18	MCL 1351-1955	605	
Fifth Supplement	01/29/18	MCL 2855-3078 ³	111	Provided
Sixth Supplement	02/08/19	MCL 2019-2995 ⁴	133	1 st Revised
Seventh Supplement	02/08/19	MCL 1987-3510 ⁵	1,477	2 nd Revised

³ Thousands of pages of privileged documents withheld within this Bates range.

⁴ Additional production within this Bates range.

⁵ Additional production within this Bates range.

1	Total		3,676	
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2
3 8. As of December 13, 2018, after most of the parties had been deposed and just
4 days before the December 17, 2018 deadline to designate expert witnesses, MCL had produced
5 no records. From December 14, 2018 and December 26, 2018, MCL produced 1,955 pages of
6 records and withheld more than 1,721 pages of records based on assertions of attorney-client
7 privilege. On January 29, 2018, less than nine (9) days before trial, MCL for the first time
8 produced a 54 page privilege log. Wendy's counsel identified numerous issues with MCL's
9 privilege log in her Emergency Motion to Extend. Wendy's Emergency Motion, p. 10, ¶¶ 31-2.
10 Wendy's counsel also delivered correspondence to the Co-Trustee's counsel challenging many
11 of the entries in MCL's privilege log. In response, MCL agreed the attorney-client privilege did
12 not apply to: (i) documents that included Wendy and/or her counsel as authors or recipients and
13 (ii) communications with Sam concerning his Estate planning. As a result, MCL supplemented
14 its production with 133 pages on February 8, 2019.

15 9. On February 8, 2019, Commission Ayres heard arguments concerning Co-
16 Trustees' attorney-client privilege and work product objections. A majority of Co-Trustees'
17 objections concerned communications and documents related to the administration of the Trusts.
18 At the conclusion of the hearing, Commissioner Ayres announced his recommendation that all
19 documents pertaining to trust administration are not protected by attorney client privilege or
20 work product doctrine and are discoverable.⁶ A copy of the Minutes from the February 8, 2019
21 discovery dispute hearing is attached hereto as *Exhibit "I"*. At 4:33 p.m. on February 8, 2019,
22 Co-Trustees counsel served MCL's Seventh Supplemental Production, which included 1,477
23 pages of records. A copy of MCL's Seventh Supplemental Production is attached hereto as

24
25 ⁶ Commissioner Ayres' position that attorney-client privilege does not apply to documents and
26 communications concerning trust administration was previously confirmed in the
27 Recommendation Order he issued in this litigation on May 15, 2018. Recommendation Order,
28 pp. 8-9. Counsel for Co-Trustees were aware of this position and, therefore, their withholding
of these documents despite such knowledge appears to be more gamesmanship aimed to avoid
or delay the production of the information to Wendy.

1 *Exhibit “2”*. Wendy’s counsel worked through these records over the weekend and believe the
2 documents produced are most of the records identified on MCL’s privilege log that relate to the
3 administration of the Trusts. However, there are still a number of entries on MCL’s second
4 revised privilege log served with the Seventh Supplemental Production that do not appear to be
5 privileged. Additionally, MCL’s production does not include MCL’s billing invoices, which
6 were specifically requested in Wendy’s Subpoena and were not included on the MCL privilege
7 log.⁷

8
9 10. The records requested from MCL are critical and material to Wendy’s claims in
10 this litigation because Todd and the other Co-Trustees have pleaded the affirmative defense of
11 reliance on counsel. To oppose the Co-Trustees’ advice of counsel defense, Wendy must be able
12 to discover the information that was conveyed to MCL, what facts were provided by Co-Trustees
13 to MCL, what facts may have been obtained by MCL from sources other than the Co-Trustees,
14 the legal research conducted by and considered by MCL, the opinions MCL gave Co-Trustees
15 and whether Co-Trustees selectively ignored any of the facts and opinions given them by their
16 counsel. As a result of MCL’s last minute production and withholding of documents based on
17 its extensive privilege log, Wendy either still does not have material information responsive to
18 her Subpoena or just received such information after the close of discovery. The Co-Trustees
19 have designated Robert LeGoy and Brian McQuaid of MCL as unretained expert witnesses and,
20 therefore, Mr. LeGoy and Mr. McQuaid will be central witnesses to the Co-Trustees’ advice of
21 counsel defense. Wendy has absolutely been prejudiced by not having the information from
22 MCL for the depositions of the Parties, and specifically Mr. LeGoy and Mr. McQuaid. To
23 mitigate this prejudice, Mr. LeGoy and Mr. McQuaid should be stricken as witnesses for Todd
24 and the Co-Trustees. Wendy, who also designated Mr. LeGoy and Mr. McQuaid as witnesses,
25 should be entitled to call them to testify as adverse witnesses, and Todd’s and Co-Trustees’ scope
26 of cross-examination should be limited solely to the issues addressed in Wendy’s adverse

27 ⁷ Request No. 4 sought MCL’s billing statements.

1 examination.

2 11. Todd Jaksick Production. Pursuant to the two Recommendation of Orders
3 entered by Commissioner Ayres on January 23, 2019 and January 24, 2019, Todd is required to
4 produce documents responsive to Wendy's requests as set forth in the orders. Those requests
5 were served on May 25, 2018 and the requests are all extremely relevant to this action and
6 deemed by Wendy's counsel to be the most important to her case.

7 12. On January 30, 2019, Todd served *Todd Jaksick's Partial Supplemental*
8 *Response to Wendy A. Jaksick's Requests for Production of Documents as Required by*
9 *Commissioner's January 23, 2019 Recommendation* and *Todd Jaksick's Partial Supplemental*
10 *Response to Wendy A. Jaksick's Fourth Request for Production of Documents as Required by*
11 *Commissioner's January 24, 2019 Recommendation* (collectively the "Supplemental
12 Responses"). On January 31, 2019, Todd produced approximately 1,700 pages of records in
13 partial response to Commissioner Ayers' Recommendation Orders.

14 13. Todd's Supplemental Responses confirm that, as of January 30, 2019, Todd was
15 still searching for and/or would produce records responsive to following "mission critical"
16 requests addressed in Commissioner Ayres' Recommendation Orders:

Wendy's Request for Production to Todd	Requests
First	39, 41, 67, 77, 80, 81, 82
Second	47, 51, 52, 53, 54, 76, 87, 104
Third	22*, 40, 42, 79, 85, 86, 88, 90
Fourth	77, 109, 126

21 Additionally, the Supplemental Objections indicate Todd planned to file an objection to
22 Commissioner Ayres' Recommendation regarding Request No. 22 of the Third Request for
23 Production, but Todd never filed an objection. Therefore, Todd waived any objection to
24 Commissioner Ayres' recommendation for production in relation to Request No. 22 of the Third
25 Request for Production. Finally, the Supplemental Responses indicated that Todd is searching
26 for documents responsive to Request Nos. 26 and 164 of the Fourth Request for Production.
27
28

1 These are documents related to the indispensable third-parties that were joined.

2 14. Since serving the Supplemental Responses and production on January 31, 2019,
3 Todd has not supplemented his written responses or produced any additional documents
4 responsive to these Requests. The materials sought by the requests are material to Wendy's
5 claims and her ability to understand the property of Sam's Estate and Trusts and the
6 administration of same. For example, several of the Parties have testified Sam, his Estate and/or
7 his Trusts owned millions of dollars of water rights. Based on discussions with Sam, Wendy
8 believes the water rights may be the most valuable asset of Sam's Estate and Trusts. However,
9 none of the Parties were able to provide more detailed information concerning the extent and
10 value of the water rights in their depositions and have not provided such information through
11 their document productions. Additionally, Wendy does not believe the water rights or value of
12 the water rights are reflected or disclosed on the Purported Trust Accountings. Therefore,
13 Request No. 39 of the First Request for Production; Request Nos. 50, 51, 52 of the Second
14 Request for Production; and Request Nos. of the 40 and 42 of the Third Request for Production
15 concerning the water rights are critical to Wendy and her claims.

16 15. Wendy has alleged claims against Todd for self-dealing and administering the
17 Trusts for the benefit of him and/or his family. Therefore, Request Nos. 41, 67, 81 and 82 of the
18 First Request for Production; Request Nos. 47, 53, 54 and 87 of the Second Request for
19 Production; Request No. of the 79 of the Third Request for Production; and Request Nos. of the
20 77, 79 and 81 of the Fourth Request for Production concerning transactions involving Sam's
21 Estate, Trusts, Todd, Todd's family, Todd's entities and Todd's Purported Indemnification
22 Agreement payments are critical to Wendy and her claims.

23 16. Todd has raised the affirmative defense of statute of limitations in relation to
24 Wendy's claims. As a result, the timing of the disclosure of information to Wendy is critical and
25
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27
28

1 material to the resolution Wendy's claims in this litigation. Request No. 104 of the Third
2 Request for Production seeks all documents mentioning or evidencing the delivery of any Family
3 Trust accounting to Wendy, her attorney, or anyone else acting on Wendy's behalf during the
4 relevant time period.
5

6 17. Todd has raised the affirmative defense of advice of counsel in relation to
7 Wendy's claims. As a result, the information exchanged between Todd and his counsel and the
8 work done by Todd's counsel in advising Todd during the administration of the Trusts is critical
9 and material. Request No. 22 of the Third Request for Production seeks all fee agreements, time
10 and billing statements or print-outs, bills receipts and canceled checks from the payment of any
11 fees between the Issue Trust, or any one acting on behalf of the Issue Trust, and any attorney or
12 law firm representing the Issue Trust during the relevant time period. The fee agreement, billing
13 statements and invoices include evidence of the attorneys' involvement in the representation of
14 Todd and the Issue Trust, including but not limited to information concerning the timing of
15 communications and meetings, the individuals involved in communications and meetings, the
16 issues or subjects addressed and the timing the issues or subjects were addressed during the
17 representation, whether research was conducted or memoranda were prepared in relation the
18 representation of Todd and the Issue Trust.

19 18. Based on the above and Todd's representations in his Supplemental Responses
20 served on January 30, 2019, Wendy anticipates obtaining additional documentation from Todd
21 and MCL that are being improperly withheld from her and are material to the preparation of her
22 case.

23 19. Jessica Clayton Production. In Jessica Clayton's *Opposition to Wendy Jaksick's*
24 *Motion to Compel Production* from Jessica Clayton filed on December 13, 2018 she admits she
25 has 2,966 e-mails regarding the document titled "Obligations" which is attached as Exhibit "A"
26 to Todd's Indemnification Agreement or the creation of the document titled "Obligations", she
27 admits she would have to review 2,966 e-mails that could be responsive to such request.
28

1 20. Debbie Harris, the Legal Administrator for the law firm representing Ms. Clayton
2 states in response to Category No. 6:

3 “I searched for emails containing the word “obligations.” There
4 were 1,900 potentially responsive emails. I also searched for terms
5 “Exhibit A” and found 771 emails containing that term and 295
6 emails containing the term “Indemnification Agreement.”⁸

7 21. Jessica played a pivotal and integral role in the day-to-day operation of the Trusts
8 and various entities. She participated in and communicated directly with attorneys, accountants
9 and others in determining what obligations fell or fall under the Indemnification Agreement; her
10 emails must contain vital information to the preparation of Wendy’s case. Wendy cannot imagine
11 how some, if not all, of those emails are not responsive. A recurring theme throughout this case
12 is that the Co-Trustees have been unable to determine the scope of the Indemnification
13 Agreement. The scope of the Indemnification Agreement directly affects the inheritance the
14 beneficiaries receive from the Family Trust. It is also unclear to the beneficiaries of the Family
15 Trust whether it is obligated to pay obligations of Todd as a matter of course or only when a
16 demand, based upon his guarantee, is presented. It is undisputed the e-mails related to that topic
17 – specifically, the “Obligations” in “Exhibit A” attached to the Indemnification Agreement – are
18 material and germane to a fundamental topic in this trial. The only excuse for not producing
19 them is that it will require some effort. The requests were made months ago and there has been
20 plenty of time, even at a slow pace, to go through that many e-mails; Jessica Clayton’s delay
21 does not and cannot create a burden on her. This entire case has required a great deal of effort
22 and attention on the part of the Court, its staff, the Parties and the witnesses. Withholding
23 documents because Jessica does not want to go through them is a weak reason to refuse to
24 provide crucial information in the trial. In other words, the burden of reviewing the e-mails here
25 does not outweigh the burden on Wendy going to trial without the information.

26 _____
27 ⁸ Please see the analysis of Discovery Commissioner Wesley M. Ayres in the *Recommendation*
28 *for Order*, dated December 28, 2018 on Pages 6-8 and footnote #8 (on Page 6).

1 22. Wendy's Expert Witnesses. As a result of the actions of Todd, MCL and others
2 working with or for Todd, Wendy was forced to designate her expert witnesses on December 17,
3 2018, without the benefit of thousands of pages of records. Wendy's experts were required to
4 prepare, submit reports and sit for their depositions without the benefit of this critical and
5 material information and any additional information Wendy and her counsel would have been
6 able to develop through discovery related to this material information. There is no question
7 Todd and the Co-Trustees have gained a strategic advantage and Wendy has been prejudiced in
8 this ligation as a result of Todd's actions.

9 23. Wendy's counsel is still working through the thousands of pages of additional
10 last-minute production while also preparing for trial. Wendy's counsel was able to provide some
11 of MCL's and Todd's additional production to Gary Stolbach. Mr. Stolbach is still attempting
12 to review and digest the additional materials, but based on his initial review, Mr. Stolbach
13 believes (1) the documents produced by MCL confirm the option agreement and exercise of
14 same was an extremely risky transaction that was not in Sam's or his Estate's best interest and
15 only appears to have been implemented for the benefit of Todd at the detriment of Sam's other
16 issue and (2) that the position taken in Sam's 2012 Income Tax Return concerning the treatment
17 of the income from the exercise of the option agreement and purported sale of the Tahoe Property
18 is arguably fraudulent. Because Wendy is still reviewing the last-minute document dump from
19 Todd, MCL and others and expects to receive additional information from Todd and MCL, to
20 mitigate the prejudice caused by Todd's actions, Wendy's experts should be permitted to
21 supplement their opinions and prior testimony during trial based on the newly disclosed
22 information and the additional information Wendy expects to receive.

23 **B. Wendy has diligently sought production from the Parties.**

24 24. As detailed her Motion, and the original Declaration filed in support of the
25 Motion, Wendy has been diligent in seeking discovery, and she has fully and timely responded
26 to, and complied with, her discovery obligations.

27 //

1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
2 is true and correct.
3

4 **AFFIRMATION STATEMENT**
5 Pursuant to NRS 239B.030

6 The undersigned does hereby affirm that the foregoing Supplemental Declaration filed
7 by Wendy A. Jaksick in the above-captioned matter does not contain the social security number
8 of any person.

9 DATED this 11th day of February, 2019.
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11
12 /s/ Mark J. Connot
13 MARK J. CONNOT
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 11th day of February, 2019, I served a true and correct copy of **SUPPLEMENTAL DECLARATION OF MARK J. CONNOT IN SUPPORT OF WENDY JAKSICK'S EMERGENCY MOTION TO EXTEND DISCOVERY DEADLINES AND TRIAL FOR CAUSE AND ALTERNATIVELY MOTION TO CONTINUE TRIAL PURSUANT TO NRS 16.010** by the Court's electronic file and serve system addressed to the following:

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503
*Attorneys for Todd B. Jaksick, Beneficiary
SSJ's Issue Trust and Samuel S. Jaksick, Jr.,
Family Trust*

Philip L. Kreitlein, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Ste. 101
Reno, NV 89502
Attorneys for Stanley S. Jaksick

Donald A. Lattin, Esq.
L. Robert LeGoy, Jr., Esq.
Brian C. McQuaid, Esq.
Carolyn K. Renner, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
*Attorneys for Petitioners/Co-Trustees Todd B.
Jaksick and Michael S. Kimmel of the SSJ's
Issue Trust and Samuel S. Jaksick, Jr., Family
Trust*

Adam Hosmer-Henner, Esq.
McDonald Carano
100 West Liberty Street, 10th Fl.
P.O. Box 2670
Reno, NV 89505
Attorneys for Stanley S. Jaksick

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 11th day of February, 2019.

/s/ Doreen Loffredo
An Employee of Fox Rothschild LLP

LIST EXHIBITS

Exhibit No.	Document	Pages
1	Minutes – 2/8/19 Discovery Dispute Hearing	2
2	L. Robert LeGoy, Jr. and Maupin, Cox & LeGoy Custodian's Seventh Supplement to Their Objections and Responses to Subpoena Duces Tecum	9

Exhibit 1

CASE NO. PR17-00445 **CONS: TRUST: SSJ'S ISSUE TRUST**

2/8/2019

DISCOVERY COMMISSIONER

WESLEY AYRES

L. Scurlock (Clerk)

RECORDED - JAVS

HEARING:

2/8/2019: DISCOVERY DISPUTE HEARING – ORAL ARGUMENTS

APPEARANCES:

Donald Lattin, Esq. and Carolyn Renner, Esq. were present on behalf of Todd Jaksick as sole Trustee of the SSJ Issue Trust and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, who was not present; Michael Kimmel as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, who was not present; Stanley Jaksick as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust and Kevin Riley, individually as former Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust and Trustee of the Wendy A. Jaksick 2012 BBHC Family Trust, who was not present. Mark Cannot, Esq. and Zachary Johnson, Esq. were present on behalf of Wendy Jaksick, who was not present. Adam Hosmer-Henner, Esq. was present on behalf of Stanley Jaksick in his individual capacity as Co-Trustee of the Family Trust, who was not present.

Court announced the matter, and is aware that there is an on-going issue with the Maupin, Cox and LeGoy privilege log; also a package was received from Maupin, Cox and LeGoy, a letter had been received from Counsel Connot and a response letter from Counsel Lattin.

Counsel Lattin addressed the Court and advised that Counsel Lattin had sent the Commissioner a complete package that involves this dispute.

Counsel Johnson addressed the Court and advised that clarification had been requested on the privilege log; he believes those issues have been resolved. Counsel Johnson further advised that the issue today is the production of the communications and the work product related to the Trust Administration; the attorney/client privilege should not apply. Counsel further presented arguments in support of having those documents produced.

Counsel Lattin objected and presented argument.

COURT RECOMMENDED: Documents pertaining to Trust Administration are not protected by attorney client privilege or work product doctrine; Trust Administration documents are discoverable.

Counsel Connot requested immediate production of those materials.

Counsel Lattin responded that he will confer with his clients and respond via email whether the materials will be produced.

Exhibit 2

Exhibit 2

1 DISC.
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 MAUPIN, COX & LeGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Telephone: (775) 827-2000
10 Facsimile: (775) 827-2185
11 *Attorneys for L. Robert LeGoy, Jr.*

12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 In the Matter of the:
17 SSJ's ISSUE TRUST.

Case No.: PR17-0445
Dept. No.: 15

18
19 In the Matter of the Administration of
20 THE SAMUEL S. JAKSICK, JR., FAMILY
21 TRUST.

Consolidated
Case No.: PR17-0446
Dept. No.: 15

22
23 **L. ROBERT LEGOY, JR. AND MAUPIN, COX & LEGOY CUSTODIAN'S SEVENTH**
24 **SUPPLEMENT TO THEIR OBJECTIONS AND RESPONSES**
25 **TO SUBPOENA DUCES TECUM**

26 L. Robert LeGoy, Jr. ("Bob") and Custodian of Records, Maupin, Cox & LeGoy ("MCL Custodian"), by and through their undersigned counsel, hereby supplements their objections and responses to the Subpoena Duces Tecum served by Wendy Jaksick, in accordance with the order of the Discovery Commissioner on February 8, 2019, as follows:

DOCUMENTS

The documents presented for discovery consist of documents previously identified and Bates labeled in Maupin, Cox & LeGoy ("MCL") Document Production Privilege Log (Revised 2/08/19), and which will be provided electronically via a ShareFile download link (or via CD-

1 ROM for non-electronic service recipients). Some documents remain withheld are identified via
2 the attached privilege log and pertain to personal estate planning matters of Todd Jaksick.

3
4 **NRS 239B.030 Affirmation**

5 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not
6 contain the Social Security Number of any person.

7 Dated this 8th day of February, 2019.

8 MAUPIN, COX & LEGOY

9
10 By: 

11 Donald A. Lattin, NSB # 693
12 Brian C. McQuaid, Esq., NSB # 7090
13 Carolyn K. Renner, Esq., NSB #9164
14 4785 Caughlin Parkway
15 Reno, NV 89519
16 *Attorneys for L. Robert LeGoy, Jr.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maupin, Cox & LeGoy, Attorneys at Law, and in that capacity and on the date indicated below, I deposited for mailing from a point within the State of Nevada a sealed envelope which had enclosed within a true and correct copy of the foregoing document, which envelope had postage fully prepaid thereon, and via electronic transmission, addressed as follows:

Philip L. Kreitlein, Esq.
Stephen C. Moss, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502
philip@klmlawfirm.com
*Attorneys for Stan Jaksick as Co-Trustee of
the Samuel S. Jaksick, Jr. Family Trust*

Mark Connot, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135
MConnot@foxrothschild.com

And

R. Kevin Spencer, Esq. (Pro Hac Vice)
Zachary E. Johnson, Esq. (Pro Hac Vice)
Spencer & Johnson PLLC
500 N. Akard Street, Suite 2150
Dallas, TX 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Wendy A. Jaksick

Kent R. Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharpe, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
krobison@rssblaw.com
tshanks@rssblaw.com
*Attorneys for Todd B. Jaksick, Individually,
and as beneficiary, SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

Adam Hosmer-Henner, Esq.
Sarah A. Ferguson, Esq.
McDonald Carano Wilson LLP
100 W. Liberty Street, 10th Floor
Reno, NV 89501
ahosmerhenner@mcdonaldcarano.com
sferguson@mcdonaldcarano.com
*Attorneys for Stan Jaksick, individually, and
as beneficiary of the Samuel S. Jaksick, Jr.
Family Trust and SSJ's Issue Trust*

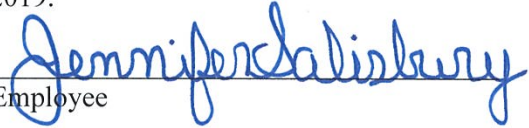
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1 Via placing an original or true copy thereof in a sealed envelope with sufficient postage
2 affixed thereto, in the United States mail at Reno Nevada, addressed to:

3 Alexi Smrt 4 3713 Wrexham 5 St Frisco, TX 75034	6 Luke Jaksick 7 c/o Wendy A. Jaksick 8 6501 Meyer Way 9 Apt. # 0705 McKinney Texas 75070
10 Regan Jaksick 11 Sydney Jaksick 12 Sawyer Jaksick 13 c/o Lisa Jaksick 14 5235 Bellazza Ct. 15 Reno, Nevada 89519	16 Benjamin Jaksick 17 Amanda Jaksick 18 c/o Dawn E. Jaksick 19 6220 Rouge Drive 20 Reno, Nevada 89511

21 DATED this 8th day of February, 2019.

22 
23 Employee

In the Matter of the: SSJ's Issue Trust
In the Matter of the Administration of: The Samuel S. Jaksick, Jr., Family Trust
Second Judicial District Court – Consolidated Case No.: PR17-0445

MAUPIN, COX & LEGOY (“MCL”) DOCUMENT PRODUCTION PRIVILEGE LOG
(2nd REVISED 2/08/19)

Bates Number(s)	Date	Author(s)	Recipient(s)	Others Potential Viewers	Type	Description	Status	Purpose of Production	Privilege
MCL001956-MCL001959	10/14/16	Dawn Jaksick	Bob LeGoy & Kevin Riley	Maupin, Cox & LeGoy, Staff	Email	TBJ's Issue Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001960-MCL001961	11/03/14	Doris Dotson-MCL	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Revised Certificate of Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001962-MCL00194	10/09/14	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Attorney-Client Privilege and the Attorney Work Product Doctrine	Privileged	Seventh Supplement	Attorney-Client
MCL001965	08/12/14	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Bill for preparing Dawn's Estate Plan	Privileged	Seventh Supplement	Attorney-Client
MCL001966-MCL001969	07/29/14	Bob LeGoy	Dawn Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Estate Plan	Privileged	Seventh Supplement	Attorney-Client
MCL001975	04/05/14	Bob LeGoy	Doris Dotson-MCL & Debbie Mitchell, MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Billing Address	Privileged	Seventh Supplement	Attorney-Client

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MCL001976-MCL001978	04/01/14	Bob LeGoy	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	Todd Jaksick's Will	Privileged	Seventh Supplement	Attorney-Client
MCL001979-MCL001981	03/17/14	Jaksick Office Admin	Bob LeGoy and Todd Jaksick	Maupin, Cox & LeGoy, Staff	Email	Todd's Will and Trust Agreement	Privileged	Seventh Supplement	Attorney-Client
MCL001982	12/27/07	Jessica Clayton	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	TBJ Issue Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001983-MCL001987	11/23/07	Bob LeGoy	Jessica Clayton	Maupin, Cox & LeGoy, Staff	Email	From Todd Jaksick; TBJ Issue Trust	Privileged	Seventh Supplement	Attorney-Client
MCL001988-MCL001989	11/19/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Joe Gardner; TBJ Issue Trust; Todd Jaksick Life Insurance	Privileged	Seventh Supplement	Attorney-Client

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MCL001990-MCL001991	11/13/07	Bob LeGoy	Geoff Grenert	Maupin, Cox & LeGoy, Staff	Email	Gardner & Jaksick; Todd Jaksick Life Insurance	Privileged	Seventh Supplement	Attorney-Client
MCL001993-MCL001999	08/22/06	Bob LeGoy	Todd Jaksick & Geoff Grenert	Maupin, Cox & LeGoy, Staff	Letter	Estate Planning of Todd Jaksick	Privileged	Seventh Supplement	Attorney-Client
MCL0002005	07/21/14	Dawn Jaksick	Doris Dotson, MCL	Maupin, Cox & LeGoy, Staff	Email	The Dawn Jaksick Trust	Privileged	Seventh Supplement	Attorney-Client
MCL002082-MCL002085	04/11/06	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration; TBJ Trust	Privileged	Sixth Supplement	Attorney-Client
MCL002034-MCL002043	11/14/07	Geoff Grenert	Bob LeGoy	Maupin, Cox & LeGoy, Staff	Email	Jaksick; Trust Administration; Todd Jaksick Life Insurance	Privileged	Seventh Supplement	Attorney-Client
MCL002157	12/03/15	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Letter	Firm's bill	Privileged	Seventh Supplement	Attorney-Client

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MCL002795	04/05/14	Bob LeGoy	Doris Dotson-MCL & Debbie Mitchell- MCL	Maupin, Cox & LeGoy, Staff	Email	Jaksick Billing Address	Privileged	Seventh Supplement	Attorney-Client
MCL002796-MCL002804	08/23/06	Bob LeGoy	Todd Jaksick	Maupin, Cox & LeGoy, Staff	Estate Documents	Certification of Todd Jaksick Family Trust; Trust Administration	Privileged	Seventh Supplement	Attorney-Client; Work Product
MCL003067	12/27/13	Maupin, Cox & LeGoy	Maupin, Cox & LeGoy	Maupin, Cox & LeGoy, Staff	Billing	AR Journal	Privileged	Seventh Supplement	Attorney-Client; Work Product