

ESTATE PLANNING PRACTICUM HYPOTHETICALS

Scenario No 1. Eleanor, your new estate planning client, was diagnosed with colorectal cancer four months ago; her doctors give her no more than two months to live. Last week she moved into hospice care from a more independent unit of her assisted living facility. A widow for many years, she lives off of a small pension and her monthly social security check. An estranged daughter is Eleanor's sole heir. Though she is very ill, Eleanor remains mentally sharp and apparently has no difficulty apprehending her current situation or recalling the details of her life.

Scenario No 2. Chad or Brigid, or Chad *and* Brigid, your new estate planning client(s), are single individuals *or* are a childless couple. Each, and together, have loads of school and consumer debt, uncertain or speculative income or wealth potential, and are not likely to receive a windfall inheritance. But they have their health, each other (maybe), and the freedom to travel and invent or reinvent themselves on account of their "sparse" lifestyle (i.e., their modest collection of mostly practical assets – sports equipment, second-hand household and personal items, wearing apparel; little available savings; inconsistent access to health insurance; but an iPhone, some handmade bicycles, and a European car). And all this before either turns 30.

Scenario No 3. Jason and Alice, husband and wife, your new estate planning clients, have postgraduate degrees, a mortgage and car payment, and one or more minor children. Each likely has reasonable wealth or income potential in their chosen professions, but in their "refining youth" neither believes she or he has necessarily found "their calling" (i.e., they may go back to school one day, quit their job to write that novel, become a homemaker, or learn how to design and weld custom bicycle frames for Chad or (*and?*) Brigid). They have modest retirement savings and are paying down a mortgage that, as of 2008, exceeded the value of their home.

Scenario No 4. It took Beatrice and her sister three days to cross into the United States then 20 years to grow a housecleaning business into a legacy for their, combined, ten children. Each woman acquired a *matrícula consular* (an I.D.) from the Mexican embassy, an ITINS, and a bank account. Together, they formed a corporation from which their housecleaning business operates. Undocumented immigrants themselves, most of their employees also are undocumented immigrants. Last week, Beatrice's sister was picked up by ICE agents and summarily deported. Beatrice has approached you for counsel and assistance in drawing up her estate plan and creating a contingency plan for dealing with her assets should she too be deported. In addition to a 50% interest in the business she formed with her sister, Beatrice owns a \$300k house, two cars, a modest number of personal and household items, and a savings account with a balance in excess of \$500k. Beatrice is a widow; she has six children: her oldest child is 18 and youngest is 9.

JUNE 16 ESTATE PLANNING HANDOUT

1. **PRESENTATION GOAL** – to provide attorneys with the information and context to handle some of the more common types of estate planning projects encountered and to issue spot more complex estate planning issues

2. **THE EP CHARGE** – when preparing an estate plan, the attorney’s goal must be to accomplish the client’s objectives

3. **PRESENTATION MAP**

a. **THE BASIC ESTATE PLAN** – Will, Personal Property Letter, Advance Directive (a healthcare power of attorney and living will), Power of Attorney, HIPAA Release

b. **TRUSTS** – focus on wholly owned *grantor trusts*, including testamentary trusts, QTIP trusts, revocable livings trusts (joint and individual) and ILITs; compare against trusts created by law (special needs trusts and constructive trusts)

c. **TAX PLANNING** – know your client’s exposure to income and transfer tax liability; if there is liability or potential liability, plan for it

4. **THE BASIC ESTATE PLAN**

a. **WHY ENGAGE IN ESTATE PLANNING** – to simplify the administration process and, frequently, reduce the cost of administration; testator chooses her/his personal representative (and elects whether bond must be posted); even for very small estates, allows for assets to more easily pass to individuals, charities, or other organizations

i. *Key Questions:* (i) What does the client want? (ii) What assets does the client have (or will the client have)? (iii) What is the best way to hold and/or transfer those assets?

ii. *Trivia:* engaging in estate planning (e.g., creating a Will) is the only way to disinherit a child

b. **THE WILL** – provides the “testator” with control and the sense that she/he has ordered her/his affairs; for many, a good alternative to intestacy (see [ORS Chapter 112](#)); simplifies estate administration (can limit probate court’s involvement)

i. Identify testator; helpful to include date of birth and social security number

ii. Identify testator's family; helpful to add the names of the testator's children and remembered heirs (including dates of birth)

iii. Designate testator's *personal representative* (a.k.a., *executor*); the personal representative is responsible for administering the testator's estate

iv. If testator has children, especially if minor or a child with a disability, you should address *conservator*, *guardian*, *custodian* and, if there is a testamentary trust (covered later), a *trustee*

(1) *Conservator* – a court may appoint a conservator to look after a minor beneficiary's assets; conservators are also sometimes used where an individual is deemed to lack the capacity to meet essential physical health or safety requirements because she/he is unable to receive and evaluate information effectively or to communicate decisions

(2) *Guardian* – a guardian is appointed to care for a minor child (and, sometimes, for an adult) when the court determines that, based on minority or otherwise, the individual is incapable of caring for her or himself; generally, courts appoint guardians for minors where no parental resource has been nominated or is available

(3) *Custodian* – distributions of assets made to a devisee or beneficiary who is a minor may be made to a custodian for the benefit of such individual (e.g., under the *Oregon Uniform Transfers to Minors Act*, [ORS Chapter 126](#)); the custodian holds the property for the beneficiary until she/he comes of age

v. Make bequests (personal property) and devises (real property); to provide more flexibility for specific bequests through life, use a separate *personal property letter* (and address in Will text); provide for contingent gifts (may defer to intestacy laws)

(1) The order of beneficiaries for intestate decedents is as follows: (i) to surviving spouse; then (ii) to children; then (iii) to children's heirs, if any; then (iv) to parents, if surviving; then (v) to siblings and their heirs, if any and surviving; then (vi) to grandparents (see [ORS 112.015](#) to [112.045](#))

(2) Helpful to include descriptive information on items specifically bequeathed

(3) With “pour-over Wills” the distribution scheme is stated in a trust

(4) *Elective share* – unless relinquished in a manner consistent with [ORS 114.620](#), the surviving spouse of a decedent dying after January 1, 2011, may claim an elective share of up to 33% of their late spouse’s *augmented* estate, which includes non-probate assets; see [ORS 114.600](#) to [114.725](#)

vi. Address subsidiary problems such as simultaneous death and disclaimers (i.e., provide for contingency if a gift fails for some reason)

vii. Provides estate administration guidance (to probate court and personal representative); *document testator’s intent and wishes*

viii. Remember that the testator must sign her/his Will before witnesses (at least two – see [ORS 112.235](#)); out of an abundance of caution, good practice to have the testator’s signature notarized

c. PERSONAL PROPERTY LETTER – preferred tool for accomplishing specific bequests or devises; separates certain property from residue of the estate; make sure the Will directs the personal representative to look for a letter; preferred to placing the specific bequest or devise in the Will because the Personal Property Letter can be completed at a later time and changed by the testator

i. Can raise issue of authenticity

d. ADVANCE DIRECTIVE – used to nominate a health care representative (i.e., an “attorney-in-fact” for health care) and provide instructions to health care providers if client becomes unable to direct the providers (i.e., a living will); may be for a limited duration (e.g., during the period that an individual is under anesthesia) or perpetual; remember that capacity is required; Advance Directives may be revoked at any time by completing another Advance Director and may be revoked without impacting the rest of the estate plan

i. Oregon has published a form Advance Directive that should be used for Oregon residents (see [ORS 127.531](#)); generally, you should not modify the form Advance Directive except in specific and limited ways; client’s specific end-of-life health care objectives can be addressed by preparing an addendum to the Advance Directive (e.g., provide for care that is consistent with client’s religious or spiritual beliefs)

ii. Oregon law prohibits certain individuals from acting as health care representatives; generally, an individual is not eligible where the individual is deemed to have a conflict of interest (e.g., doctor, employee of doctor; owner, operator, or employee of health care facility – *unless related by blood or appointed prior to admission to facility*) (see [ORS 127.520](#))

iii. PART A: IMPORTANT INFORMATION ABOUT THIS ADVANCE DIRECTIVE – provides instructions for completing Advance Directive, identifies the signing individual, and indicates whether the Advance Directive is for a limited duration or for an unlimited period

iv. PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE – enables an individual to appoint a health care representative who is authorized to make health care decisions for her/him if she/he is unable to do so

(1) Scope of authority; can establish specific limits; required to indicate whether personal representative may make decisions regarding life support and tube feeding (see [ORS 127.535](#))

(2) Limitation on scope of authority (see [ORS 127.540](#))

v. PART C: HEALTH CARE INSTRUCTIONS – allows an individual to instruct the physician; indicate: (i) positive instruction; (ii) negative instruction; or (iii) decision “as my physician recommends”

(1) Individual may provide specific instructions (items 1 through 4) or general instructions (item 5)

(2) Specific issues addressed are:

(A) Close to death

(B) Permanently unconscious

(C) Advanced progressive illness (“a progressive illness that will be fatal and is in an advanced stage, and I am consistently and permanently unable to communicate by any means, swallow food and water safely, care for myself and recognize my family and other people, and it is very unlikely that my condition will substantially improve”)

(D) Extraordinary suffering (life support will not help underlying condition – the election to make individual comfortable)

vi. *Bottom line:* an individual may express particular health care wishes and is not limited to the form

vii. Some medical providers have interpreted Part C as in conflict with Part B; the Estate Planning and Administration Section recommended in its April 2008 newsletter that attorneys include interpretive guidance in an addendum or amendment if both Part B and Part C are filled out; see *Update on the Advance Directive*, Estate Planning and Administration Section newsletter, April 2008, included with this handout

viii. If your client has completed a POLST (physician orders for life-sustaining treatment), consider including in the addendum language that harmonizes the guidance in the POLOST with the instructions in the Advance Directive

ix. Advance Directive must be signed in the presence of witnesses (at least two) (see [ORS 127.515](#))

e. POWER OF ATTORNEY – used to designate testator’s “attorney-in-fact”; an attorney-in-fact acts on testator’s behalf as her/his “agent” and makes decisions in the event she/he becomes incapacitated or unable to make decisions (see [ORS 127.005](#) to [127.045](#))

i. Power of Attorney stipulates the acts that attorney-in-fact may perform on individual’s behalf

ii. By statutory default (see [ORS 127.005\(1\)](#)), it is “durable” because it empowers agent to act on individual’s behalf during illness or incapacity and is a “lifetime” appointment, terminating immediately upon individual’s death (i.e., an attorney-in-fact does not evolve into a personal representative)

iii. Can be as broad or as narrow as individual wishes

iv. Commonly signed in the presence of a notary

v. Important that client notifies her/his family that she/he has signed a Power of Attorney; also helpful if client notifies her/his family of the identity of the attorney-in-fact

f. HIPAA RELEASE – HIPAA, or the Health Insurance Portability and Accountability Act of 1996, is a massive federal act that sets standards for the protection of certain health information, regulates the availability and breadth of group health

plans and certain individual health insurance policies, defines numerous offenses relating to health care and sets civil and criminal penalties for these offenses

i. Authorizes treating health care professionals to release to identified individuals (e.g., attorney-in-fact, health care representative, trustees) protected health information

g. ESTATE PLANNING WILDCARDS – a handful of some of the more interesting issues and techniques that sometimes arise in estate planning projects

i. *Codicils* – a “supplement” (or amendment) to a Will that make small changes to the Will; must follow same execution formalities as with the Will

ii. *Choice of law* – where you have a Will written in one state and a testator now residing in another state, does the testator need to execute a new Will? Answer: not necessarily, but may depend on state law. In Oregon, the law named in the Will controls unless against public policy (see [ORS 112.230](#)). So, a new Will isn’t required, but we encourage individuals to execute new Wills when they change their residency

(1) Does that mean that the Will must be probated in that other jurisdiction? Answer: generally, no. Where a Will is probated depends on a number of factors: the law governing the Will; the decedent’s state of residence and her/his domicile; where the personal representative is located; where the bulk of the decedent’s assets are located. However, if the decedent has assets in another jurisdiction, such as a house, the personal representative may need to initiate more than one probate proceeding (commonly referred to as an “ancillary probate proceeding”). Oregon law contemplates more than one probate proceeding for decedents who held property in multiple jurisdictions and who died outside of the state in which they were domiciled and/or a resident (see [ORS 113.015](#) and [113.065](#))

iii. *Divorce* – frequently, divorce alters an individual’s lifetime financial picture; new support obligations (child support, alimony) may require them to liquidate long term assets, buy life insurance; individuals may wish to go to extraordinary lengths to ensure their ex-spouse receives nothing from her/his estate

iv. *Remarriage* – when an individual remarries, her/his existing Will is voided ([ORS 112.305](#))

v. *“Will substitutes”* – used by testators to (try to) avoid taxes, legal fees of estate planning, and costs (and delay) of probate; “substitutes” may also transfer property upon death, but they are not Wills (do not meet formalities)

(1) Life insurance

(2) Joint tenancies or tenancy by the entirety (transfer occurs by operation of law as a result of how held); important to be cognizant of due on sale clauses in many mortgages, but the Garn St. Germain Act prevents enforcement of such clauses if the real property is the transferor’s primary residence and the transferee is the transferor’s *inter vivos* trust

(3) Contracts to make a Will are a popular “substitute” that Oregon has limited by statute; essentially, such contracts must comply with Will formalities (and be mentioned in the individual’s Will) (see [ORS 112.270](#))

(4) Totten Trusts/Transfer on Death Accounts (arguably effective by creating a revocable trust), joint or survivor accounts, and other “banking arrangements”

(5) Trusts (work in concert with a Will)

vi. *Privacy concerns* – most Internet email accounts are subject to terms of service agreements that state that a user’s rights in her/his account terminate on death and are non-transferrable; a decedent’s family members generally may not gain access to the decedent’s account unless they have the decedent’s login credentials. Thus, if your client wants anyone to have access to their email, s/he must record login credentials and keep them updated and accessible

vii. *Record retention issues* – Oregon attorneys may dispose of a Will in custody forty (40) years after execution of the Will if the testator can’t be found (after diligent inquiry), and if the Will is not subject to a contract to *make* or *not revoke* a Will ([ORS 112.815](#)). Will may be destroyed: (a) if testator doesn’t contact the attorney within ninety (90) days after published notice of intent to destroy ([ORS 112.820\(1\)\(b\)](#)); or (ii) Will remains unprobated forty (40) years after death of testator ([ORS 112.820\(2\)](#)). Attorney must file an affidavit in the county probate court within thirty (30) days of destroying a Will ([ORS 112.820\(1\)\(c\)](#))

h. ESTATE PLANNING TIPS – a handful of tips when preparing an estate plan

i. Know the difference between probate and non-probate assets

- ii. Always have the client sign an engagement letter that describes what you are providing to the client (i.e., ensure you and your client are on the same page)
- iii. Always ask the client to name one or more alternates (e.g., personal representative, guardian, trustee)
- iv. Get as much information as you can during intake – including an asset schedule; *very important to have a sense for client's assets*
- v. Ensure that client keeps updated all beneficiary designations (e.g., investment and certain banking accounts; car titles (sometimes); life insurance)
- vi. Recommend *against* using Joint Wills; prefer to create separate Wills for each spouse

5. TRUSTS

a. PURPOSE DRIVES TYPE OF TRUST – trusts are used to manage assets for the beneficiaries' benefit; there are many types of trusts; which type of trust to use depends on the *grantor's* (a.k.a., settlor, trustor) goal; trusts are frequently used for tax planning

b. ESSENTIAL TRUST INFORMATION – review some terms and concepts that might help you follow the discussion; please note that many of these terms and concepts deal with tax issues

i. *Apportionment* – property held or received by a trust may be directed, or apportioned, to one or more beneficiaries and/or one or more funds or trusts (within the trust); for example, in many QTIP trusts, income earned on trust assets is apportioned and distributed to a beneficiary while the principal is apportioned to the trust corpus (and to a particular fund or trust)

ii. *Asset distribution* – who gets what and when; generally trust assets are available to beneficiaries to varying degrees over their lives; minors often only receive indirect access to their trusts (i.e., through the trustee and their guardian or parent), and then only for certain expenses (e.g., related to health, maintenance, support, welfare, education)

(1) *Ascertainable standards* are key to ensuring that a trustee's estate is not found (by the IRS) to include the trust's property; arises when a trustee is also a trust beneficiary and has a power of appointment over a portion of the trust property; the standards limit how the trustee may

dispose of trust property; the IRS has provided these standards in [IRC 2041\(b\)\(1\)\(A\)](#) or [2514\(c\)\(1\)](#)

iii. *Credit shelter bypass fund* – often used by spouses to take full advantage of their combined federal estate tax exemption (i.e., to avoid the federal estate tax on the assets transferred using this fund); upon the death of the first spouse, specified assets “owned” by the decedent are transferred to the bypass fund (and out of the couple’s estate); typically, the trust agreement states that the surviving spouse (during her/his lifetime) is the income beneficiary, with the couple’s children named as the residuary beneficiaries; the trust agreement may allow the trustee to invade the principal of the bypass fund under certain conditions (e.g., ascertainable standards); this fund is implemented within a trust or Will

iv. *Funding* – a trust does not exist if it holds no *res* (property); how, when, and with what property is a trust funded are critical issues; often, for a trust to accomplish its purpose, property must be transferred to the trust during the grantor’s lifetime (i.e., via a bill of sale (for personal property) or a recorded *vel non* bargain and sale deed (for real property)); for certain trusts (e.g., the marital trust within a revocable trust), the funding occurs using a formula; two common formulas are:

(1) *Pecuniary formula* funds a trust with a specific dollar amount

(2) *Fractional formula* funds the marital and credit shelter trust proportionally with each asset in the estate or (if using the “pick-and-choose” variant of the formula) with specific assets

v. *Marital deduction fund* – similar to the credit shelter bypass fund, a marital deduction fund takes advantage of the unlimited marital deduction allowed under [IRC 2056](#) and [2523](#); this fund is implemented within a trust or Will

vi. *Trustee* – the person responsible for administering the trust and managing its assets for the benefit of the beneficiaries; a fiduciary charged with the duties of good faith and loyalty (see [ORS 130.655](#)); generally, the trustee’s powers are described in the trust document and are statutorily enumerated (see [ORS 130.720](#) and [130.725](#))

c. TESTAMENTARY TRUST – a trust that arises upon the death of the grantor; affords more control over how estate is held and how the proceeds are used (and when

the proceeds are distributed); frequently implemented in a Will; a good alternative to a conservatorship

d. QTIP TRUST – “QTIP” is “qualified terminable interest property”; the term refers to a federal income tax allowance ([IRC 2056\(b\)\(7\)](#)), and Oregon’s “special marital property election” (replaced the Oregon “QTIP”) (see [ORS 118.013](#) to [118.019](#)); a QTIP trust arises on the death of the first spouse and is implemented within the marital trust; property placed in the QTIP is technically transferred to the surviving spouse, but the surviving spouse receives only a lifetime income interest in the QTIP property; when the surviving spouse dies, ownership of the QTIP trust’s assets passes to the named beneficiaries (e.g., the first spouse’s children)

i. Oregon’s special marital property election differs slightly from its federal analogue; Oregon’s election creates a means to convert a transfer that does not qualify for the federal marital deduction into a transfer which will be treated as qualifying for Oregon inheritance tax purposes; similar to the federal QTIP, the surviving spouse does not receive a power of appointment; unlike with the federal QTIP, the surviving spouse does not need to be entitled to all income from the property subject to the election

e. REVOCABLE LIVING TRUST – created and funded during a grantor’s lifetime; commonly becomes irrevocable upon the death of the grantor; property not used at creation to fund the trust may “flow” into the trust via a pour-over Will (on the grantor’s death); used to avoid probate, provide a safeguard if the grantor becomes incapacitated, and to pass property outside of public view (unlike a Will, a revocable living trust is not filed in the court probate records – it does not become a public document)

f. ILIT – “ILIT” is “irrevocable life insurance trust”; an irrevocable trust that is created to hold a life insurance policy and, ultimately, to receive its proceeds; removes the value of the proceeds from the estate of the individual on whose life the policy is written; frequently used to hold a life insurance policy purchased to provide liquidity to its owner’s estate at the time of her/his death to pay anticipated estate and inheritance tax liabilities

g. TRUST WILDCARDS – a handful of some of the more interesting issues and techniques that sometimes arise in projects involving trusts

i. *Crummey Trusts* – trusts created for minor beneficiaries to hold property until the beneficiary reaches an age specified by the grantor; minor does not have direct access to the property held by the trust; trustee must ensure that

the beneficiary receives written notice of, and opportunity to withdraw, gifts for gifts to be present interests qualifying for the grantor's annual exclusion

ii. *Spendthrift Trusts* – created to place assets outside the control of the settlor and beneficiary. Can be implemented as a standalone trust or within a grantor trust (e.g., a domestic asset protection trust, or “DAPT”) using a spendthrift clause. Benefit of spendthrift trusts and clauses is they limit a creditor's ability to reach assets. For a spendthrift trust or provision to be effective, the beneficiary must have very limited access to and control over the trust assets

iii. *Interests in S corporations* – a trust must meet certain requirements before it may hold or receive interests in a S corporation; failure to qualify can vitiate the entity's S corporation election (with disastrous results); these requirements are:

- (1) There is only one income beneficiary and she/he is a U.S. citizen or resident (spouses can be co-beneficiaries if both are U.S. citizens or residents)
- (2) All income of the trust is required to be distributed currently to the one income beneficiary
- (3) All corpus distributions must go to the one beneficiary
- (4) The beneficiary's income interest must terminate at the earlier of the beneficiary's death or trust's termination
- (5) The trust and beneficiary must together elect to be treated as an eligible S corporation shareholder

h. TRUST PRACTICE TIPS – a handful of tips when preparing, reviewing, or evaluating a trust

i. *Notice to beneficiaries* – unless waived by a beneficiary, a trustee is required to provide notice, information, and reports to beneficiaries after a trust becomes irrevocable and/or the grantor is no longer “financially capable”; be sure to advise trustee on these obligations (see [ORS 130.020\(3\)](#) and [130.710](#))

ii. *Using the correct language when transferring property* – to ensure that transfers are effective, describe the transferring and receiving parties (as well as

the estates created) in a manner consistent with the conveyances guide published by the Oregon State Bar, a copy of which is included with this handout

6. TAX PLANNING – information on tax planning is included only to offer a general and very basic sense for what such planning involves; new estate planning attorneys should be aware of tax planning issues and wary: US transfer tax regimes have been in flux for over a decade now and likely will continue changing over the coming years; bottom line is tax planning involves complex issues and requires continuing study to stay atop of changing laws and interpretations

a. FEDERAL ESTATE TAX – after enjoying a year long hiatus in 2010, the estate tax returned in 2011, boasting a top rate of 35%, and a lifetime exemption of \$5 million per individual that is now “portable” after the death of the first spouse

b. OREGON INHERITANCE TAX – applies a marginal rate of 8%* to 16% to estates in excess of \$1 million (see [ORS Chapter 118](#)) (* = note that the rate actually starts at 41% of the portion of estates valued at between \$1 million and \$1,093,784)

c. INCOME TAX (FEDERAL AND STATE) – decedents receiving taxable income in the year in which they die may owe federal and state income taxes

d. FEDERAL GIFT TAX – current federal rate is 35% with a \$13,000 annual gift exclusion and a \$5 million lifetime gift exclusion for U.S. residents (\$60,000 for non-resident alien donors); estates of individuals who died in 2010, have the option of following the 2010 estate tax rules, meaning no tax due on the estate, but the carryover basis rule is in effect, or using the 2011 estate tax rules, which include a 35% tax on estates worth more than \$5 million and stepped-up basis on bequeathed assets; gifts of payment of tuition and medical care (if made directly to the educational institution or medical provider) are exempt from the exemption – i.e., a gift tax freebie

e. TAX PLANNING WILDCARDS – some things to keep in mind

i. Apportionment – in the context of tax planning, apportionment refers to divvying up transfer tax liability among beneficiaries by reducing one or more beneficiaries’ net inheritance. Although apportionment occurs during the administration of an estate, providing for transfer taxes should be part of the estate planning phase and should be reflected in client’s plan documents

ii. Oregon Natural Resources Tax Credit – credit against Oregon’s inheritance tax worth up to \$705,200; properties qualifying for the credit include farms and farm homesites, forestland, ranches, and commercial fishing operations (credit also applies to crops, timber, livestock, gear and equipment,

working capital, and other property or assets used for farm, forestry or commercial fishing purposes); estates whose gross value exceed \$15 million are ineligible; additional restrictions and conditions apply

iii. *Charitable planning* – can be a useful tool for reducing estate tax liability, honoring a family member, supporting organizations; charities are frequently used as a contingent beneficiary and for tax planning purposes

iv. *GST* – “GST” is “generation skipping tax”; imposes a tax on both outright gifts and transfers in trust to or for the benefit of unrelated beneficiaries more than 37 and a half years younger than the donor or to related persons more than one generation younger than the donor, such as grandchildren (i.e., a “skip transfer”); imposed only if the transfer avoids incurring a gift or estate tax at each generation level. The GST was repealed for 2010; this means that no GST is imposed on a taxable termination, taxable distribution, or direct skip transfer made in 2010, regardless of when the trust under which the event occurs was created. For 2011 and 2012, the GST exemption is \$5 million; transfers in excess of the exemption are subject to a 35% tax. After 2012, the GST exemption will be adjusted for inflation

**LAST WILL AND TESTAMENT
OF**

I, _____, a resident of the State of Oregon, declare this to be my Will, and revoke all prior Wills and Codicils.

**ARTICLE 1
IDENTIFICATION OF FAMILY**

1.1 Family. I am a single person and my Social Security Number is ____-____-____. I have no children, living or deceased.

**ARTICLE 2
LEGAL REPRESENTATIVES**

2.1 Personal Representative. I name _____ as my Personal Representative; however, if _____ is unable to act or continue to act, I name _____ as alternate Personal Representative. If _____ is unable to act or continue to act, I name _____ as alternate Personal Representative. If _____ is unable to act or continue to act, I name _____ as alternate Personal Representative.

2.2 Custodian. If any distribution of assets is to be made outright and free of trust to a devisee who is under the age of twenty-five [25] years and for whom no Custodian is named, I direct such distribution to be made to a custodian for the benefit of such devisee, under the Oregon Uniform Transfers to Minors Act, who shall be named by my Personal Representative; or if no Personal Representative is acting, then by the then acting Trustee.

**ARTICLE 3
PAYMENT OF DEBTS AND EXPENSES**

3.1 Direction to Pay. I direct my Personal Representative to pay from my estate all my just debts, expenses of my last illness, funeral and expenses of administration of my estate.

3.2 Debts Not Currently Due. My Personal Representative shall not be obligated to pay any debts which are not currently due or which are secured by estate assets and payable in installments.

**ARTICLE 4
PAYMENT OF TAXES**

4.1 Direction to Pay. I direct my Personal Representative to pay out of the residue of my estate, without apportionment, all estate, inheritance and other death taxes (including interest and penalties) payable by reason of my death, whether on property passing under this Will or otherwise.

**ARTICLE 5
PERSONAL PROPERTY AND SPECIFIC DEVICES**

5.1 Tangible Personal Property. I give all my interest in tangible personal property, including household goods and furnishings, antiques, my wearing apparel, jewelry and personal effects, recreation equipment, automobiles and other property for personal or household use, together with any insurance on this property to those individuals identified in a letter which I may leave with my Personal Representative. However, in the event I do not leave such a letter or in the event all my tangible personal property is not covered by such a letter, I give all such tangible personal property (or all remaining tangible personal property, as the case may be) to _____.

**ARTICLE 6
RESIDUE**

6.1 Outright Distribution of Residue. I give the residue of my estate as follows: _____
_____.

6.2 Contingent Beneficiary. If, under any contingency not herein provided for, there should remain in the hands of the Personal Representative or Trustee any part of the estate or trust estate for which there is no named or described beneficiary, such part shall be distributed forthwith as follows: _____
_____.

**ARTICLE 7
SIMULTANEOUS DEATH**

7.1 Survivorship. In the event any individual who is a devisee named in my Will shall die simultaneously with me or under circumstances which render it difficult to determine the order of death, then I shall be deemed to have survived such individual.

**ARTICLE 8
PROVISIONS FOR PERSONAL REPRESENTATIVE**

8.1 General Powers. I give to my Personal Representative, in addition to all powers conferred by law, full power, without requirement of any order of court, to continue, operate, discontinue or wind up any business, partnership or other contract or transaction in which I may be interested at the time of my death; to borrow money, to compromise, settle or waive any claims due to or by my estate, and to sell, assign, transfer, convey, lease, option or mortgage any real or personal property belonging to my estate, at public or private sale, in whole or in part, upon such terms as my Personal Representative may deem reasonable or for cash, without petition to, or license or leave of court, and without issuance of notice or citation, and without reporting to any court or securing from any court an order authorizing or confirming any such sale or other disposition.

8.2 Tax Elections and Decisions. My Personal Representative shall have discretion to elect to treat administration expenses as Federal income tax deductions or as Federal estate tax deductions, and elect the date on which the properties constituting my estate are valued for Federal estate tax purposes, regardless of the resulting effect on other provisions of my Will. In addition, my Personal Representative shall have the sole discretionary authority to take any action and to make any election with respect to tax liabilities of my estate, any trust created by me, and the beneficiaries of any such trust. This authority shall include, but shall not be limited to, the authority to select assets to be sold by my estate and to be distributed to the various beneficiaries in a manner which will minimize the total income tax of the estate, my devisees and any trust beneficiaries. This authority shall also include the authority to disclaim.

8.3 Distributions. My Personal Representative may distribute property in cash or in kind or both and may make pro rata and non-pro rata distributions of cash or property without regard to differences in tax basis of the property and without the necessity of making adjustments because of such distributions.

8.4 No Bond Required. No bond or other undertaking shall be required of any Personal Representative named in this Will.

**ARTICLE 9
NO INTENT TO BENEFIT OTHERS**

9.1 Unless expressly stated otherwise in this Will, I have no intent to benefit the former spouse or domestic partner of any beneficiary of any gift in this Will. Therefore, if any beneficiary is a party to pending proceedings for separation or dissolution of marriage or termination of a domestic partnership on the date of my death, or is named as a party to such proceedings after my death but before the distribution to the beneficiary is complete, I express my strong desire that any interest the beneficiary has in my probate or trust estate not be considered a marital asset or domestic partnership asset.

**ARTICLE 10
DEFINITIONS**

10.1 Death Taxes. All references in this Will to death taxes shall include federal, foreign, state, and local estate and inheritance taxes, including penalties and interest, but not generation-skipping or special use valuation recapture taxes.

10.2 Gender. The masculine, feminine, or neuter gender and the singular or plural number shall each include the others whenever the context indicates.

10.3 Clause Headings. Clause headings are for reading convenience and shall be disregarded when construing this Will.

IN WITNESS WHEREOF, I hereby set my hand to this page and each of the preceding _____ [] pages of this, my **Last Will and Testament** on this _____ day of _____, 20____.

The foregoing instrument was, on the date hereof, signed, published and declared by _____ to be _____ Last Will and Testament in our sight and presence, who at _____ request and in _____ presence and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

Witness

Residing at

City, State

Witness

Residing at

City, State

**AFFIDAVIT OF ATTESTING WITNESSES
TO LAST WILL AND TESTAMENT**

We, the undersigned, being sworn, each for myself say:

The foregoing instrument, consisting of _____ [] typewritten pages, including this page, was on this ____ day of _____, 20____, in our presence signed, published and declared to be _____ Will by _____ and we attested the Will by signing our names as witnesses.

To the best of our knowledge and belief, _____ is over the age of eighteen [18] years, of sound and disposing mind and memory and not acting under restraint, undue influence, fraud, or duress of any person.

_____ Residing at _____
Witness City, State

_____ Residing at _____
Witness City, State

SUBSCRIBED AND SWORN to by each of the affiants above named this ____ day of _____, 20____.

STATE OF OREGON)
) SS:
COUNTY OF _____) Dated this ____ day of _____, 20 ____

Personally appeared the above named affiants who executed and acknowledged this Affidavit of Attesting Witnesses to Last Will and Testament to be their voluntary acts and deeds.

Before me:

Notary Public for Oregon
My Commission Expires: _____

ADVANCE DIRECTIVE

YOU DO NOT HAVE TO FILL OUT AND SIGN THIS FORM

PART A: IMPORTANT INFORMATION ABOUT THIS ADVANCE DIRECTIVE

This is an important legal document. It can control critical decisions about your health care. Before signing, consider these important facts:

Facts About PART B (Appointing a Health Care Representative)

You have the right to name a person to direct your health care when you cannot do so. This person is called your “health care representative.” You can do this by using PART B of this form. Your representative must accept on PART E of this form.

In this document, you can write any restrictions you want on how your representative will make decisions for you. Your representative must follow your desires as stated in this document or otherwise made known. If your desires are unknown, your representative must try to act in your best interest. Your representative can resign at any time.

Facts About PART C (Giving Health Care Instruction)

You also have the right to give instructions for health care providers to follow if you become unable to direct your care. You can do this by using PART C of this form.

Facts About Completing This Form

This form is valid only if you sign it voluntarily and when you are of sound mind. If you do not want an advance directive, you do not have to sign this form.

Unless you have limited the duration of this directive, it will not expire. If you have set an expiration date, and you become unable to direct your health care before that date, this advance directive will not expire until you are able to make those decisions again.

You may revoke this document at any time. To do so, notify your representative and your health care provider of the revocation.

Despite this document, you have the right to decide your own health care as long as you are able to do so.

If there is anything in this document that you do not understand, ask a lawyer to explain it to you.

You may sign PART B, PART C, or both parts. You may cross out words that don’t express your wishes or add words that better express your wishes. Witnesses must sign PART D.

Print your NAME, BIRTHDATE, and ADDRESS here:

(Name)

(Birthdate)

(Address)

Unless revoked or suspended, this advance directive will continue for:

INITIAL ONE:

_____ My entire life

_____ Other period (_____ Years)

PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE

I appoint _____ as my health care representative.

My representative's address is _____

and telephone number is _____.

I appoint _____ as my alternate health care

representative. My alternate's address is _____

and telephone number is _____.

I authorize my representative (or alternate) to direct my health care when I can't do so.

NOTE: You may not appoint your doctor, an employee of your doctor, or an owner, operator or employee of your health care facility, unless that person is related to you by blood, marriage or adoption, or that person was appointed before your admission into the health care facility.

PART B: APPOINTMENT OF HEALTH CARE REPRESENTATIVE (CONTINUED)

1. Limits.

Special Conditions or Instructions: _____

INITIAL IF THIS APPLIES:

_____ I have executed a Health Care Instruction or Directive to Physicians. My representative is to honor it.

2. Life Support.

“Life support” refers to any medical means for maintaining life, including procedures, devices and medications. If you refuse life support, you will still get routine measures to keep you clean and comfortable.

INITIAL IF THIS APPLIES:

_____ My representative MAY decide about life support for me. (If you don’t initial this space, then your representative MAY NOT decide about life support.)

3. Tube Feeding.

One sort of life support is food and water supplied artificially by medical device, known as tube feeding.

INITIAL IF THIS APPLIES:

_____ My representative MAY decide about tube feeding for me. (If you don’t initial this space, then your representative MAY NOT decide about tube feeding.)

(Date)

SIGN HERE TO APPOINT A HEALTH CARE REPRESENTATIVE

(Signature of person making appointment)

PART C: HEALTH CARE INSTRUCTIONS

NOTE: In filling out these instructions, keep the following in mind:

- The term “as my physician recommends” means that you want your physician to try life support if your physician believes it could be helpful and then discontinue it if it is not helping your health condition or symptoms.
- “Life support” and “tube feeding” are defined in PART B above.
- If you refuse tube feeding, you should understand that malnutrition, dehydration and death will probably result.
- You will get care for your comfort and cleanliness, no matter what choices you make.
- You may either give specific instructions by filling out Items 1 to 4 below, or you may use the general instruction provided by Item 5.

Here are my desires about my health care if my doctor and another knowledgeable doctor confirm that I am in a medical condition described below:

1. Close to Death. If I am close to death and life support would only postpone that moment of my death:

A. INITIAL ONE:

- _____ I want to receive tube feeding.
_____ I want tube feeding only as my physician recommends.
_____ I DO NOT WANT tube feeding.

B. INITIAL ONE:

- _____ I want any other life support that may apply.
_____ I want life support only as my physician recommends.
_____ I want NO life support.

2. Permanently Unconscious. If I am unconscious and it is very unlikely that I will ever become conscious again:

A. INITIAL ONE:

- _____ I want to receive tube feeding.
_____ I want tube feeding only as my physician recommends.
_____ I DO NOT WANT tube feeding.

B. INITIAL ONE:

- _____ I want any other life support that may apply.
_____ I want life support only as my physician recommends.
_____ I want NO life support.

PART C: HEALTH CARE INSTRUCTIONS (CONTINUED)

3. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an advanced stage, and I am consistently and permanently unable to communicate by any means, swallow food and water safely, care for myself and recognize my family and other people, and it is very unlikely that my condition will substantially improve:

A. INITIAL ONE:

- _____ I want to receive tube feeding.
_____ I want tube feeding only as my physician recommends.
_____ I DO NOT WANT tube feeding.

B. INITIAL ONE:

- _____ I want any other life support that may apply.
_____ I want life support only as my physician recommends.
_____ I want NO life support.

4. Extraordinary Suffering. If life support would not help my medical condition and would make me suffer permanent and severe pain:

A. INITIAL ONE:

- _____ I want to receive tube feeding.
_____ I want tube feeding only as my physician recommends.
_____ I DO NOT WANT tube feeding.

B. INITIAL ONE:

- _____ I want any other life support that may apply.
_____ I want life support only as my physician recommends.
_____ I want NO life support.

5. General Instruction.

INITIAL IF THIS APPLIES:

_____ I do not want my life to be prolonged by life support. I also do not want tube feeding as life support. I want my doctors to allow me to die naturally if my doctor and another knowledgeable doctor confirm I am in any of the medical conditions listed in Items 1 to 4 above.

6. Additional Conditions or Instructions. (Insert description of what you want done.)

PART C: HEALTH CARE INSTRUCTIONS (CONTINUED)

7. Other Documents. A “health care power of attorney” is any document you may have signed to appoint a representative to make health care decisions for you.

INITIAL ONE:

_____ I have previously signed a health care power of attorney. I want it to remain in effect unless I appointed a health care representative after signing the health care power of attorney.

_____ I have a health care power of attorney, and I REVOKE IT.

_____ I DO NOT have a health care power of attorney.

(Date)

SIGN HERE TO GIVE INSTRUCTIONS

(Signature)

PART D: DECLARATION OF WITNESSES

We declare that the person signing this advance directive:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed or acknowledged that person’s signature on the advance directive in our presence;
- (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- (d) Has not appointed either of us as health care representative or alternative representative;
and
- (e) Is not a patient for whom either of us is attending physician.

Witnessed By:

(Signature of Witness/Date)

(Printed Name of Witness)

(Signature of Witness/Date)

(Printed Name of Witness)

NOTE: One witness must not be a relative (by blood, marriage or adoption) of the person signing this advance directive. That witness must also not be entitled to any portion of the person’s estate upon death. That witness must also not own, operate or be employed at a health care facility where the person is a patient or resident.

PART E: ACCEPTANCE BY HEALTH CARE REPRESENTATIVE

I accept this appointment and agree to serve as health care representative. I understand I must act consistently with the desires of the person I represent, as expressed in this advance directive or otherwise made known to me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document allows me to decide about that person's health care only while that person cannot do so. I understand that the person who appointed me may revoke this appointment. If I learn that this document has been suspended or revoked, I will inform the person's current health care provider if known to me.

(Signature of Health Care Representative/Date)

(Printed Name)

(Signature of Alternate Health Care Representative/Date)

(Printed Name)

ADDENDUM TO ADVANCE DIRECTIVE

I instruct my health care representative to follow these attached written instructions as further evidence of my end-of-life health care decisions.

1. _____ Health Care Representative Decides. I want any decision(s) about life support or tube feeding to be made by my health care representative according to the approaches we have discussed and which reflect my health care choices across my life, after consultation with my doctors, and as guided by my health care instructions.

2. _____ Religious/Spiritual Beliefs. It is important that medical decisions made regarding my care are guided by particular religious beliefs or spiritual values. I have followed a course of traditional Chinese medicine throughout my adult life, primarily relying on acupuncture and herbal medicine. Other than palliative care, this is the only course of treatment that I want, as discussed with and agreed to by my health care representative.

3. _____ Home Death. If possible, I would prefer to die at home and not in a hospital or other care facility. When, in the opinion of a licensed physician I am likely to die within six (6) months, I wish to be transferred to my home. I wish to be transferred to my home even if there is a risk that the transfer itself may accelerate my time of death. However, if dying at home becomes too much of a burden to my family or others living with me, my health care representative may arrange for me to receive care elsewhere.

4. _____ Pain Control. If I have a terminal diagnosis and can no longer speak for myself, I want to receive enough medicine to relieve my pain even though, as a result, I may become unconscious or have difficulty breathing.

IN WITNESS WHEREOF, I have signed and delivered this **Addendum to Advance Directive** this _____ day of _____, 20____.

After recording, return to:
[ATTORNEY]

Grantor's name and address:
[CLIENT]
[Address]
[City, State, Zip]

Grantee's name and address:
[SPOUSE]

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, [CLIENT], Grantor, do hereby revoke all prior Powers of Attorney (recorded or unrecorded) and do hereby make, constitute and appoint [SPOUSE], Grantee, as my true and lawful agent and Attorney-in-Fact. If [SPOUSE] is unable or unwilling to act or to continue to act as my agent and Attorney-in-Fact, I appoint [ALT1], Grantee, as my true and lawful agent and Attorney-in-Fact. If [ALT1] is unable or unwilling to act or to continue to act as my agent and Attorney-in-Fact, I appoint [ALT2], Grantee, as my true and lawful agent and Attorney-in-Fact. If [ALT2] is unable or unwilling to act or to continue to act as my agent and Attorney-in-Fact, I appoint [ALT3], Grantee, as my true and lawful agent and Attorney-in-Fact. My agent shall have full power and authority to:

- (1) Make expenditures for my care, support and maintenance and for the care, support and maintenance of other members of my immediate family who are or who may become dependent upon me for support;
- (2) Take possession of, manage, administer, operate, maintain, improve and control all of my property, real and personal; to insure and keep the same insured and to pay any and all taxes, charges and assessments that may be levied or imposed upon any such property;
- (3) Demand, sue for, recover, collect and receive any money, property, debts or claims whatsoever, now or hereafter due, owing and payable or

belonging to me and to give receipts, acquittances or other sufficient discharges for any of the same;

(4) Retain any property in the form in which it was received; and to make investments and changes of investments in such securities, including common and preferred stocks of corporations, mutual funds, or other property, real or personal, as my attorney in my attorney's sole discretion may deem prudent;

(5) Pay my debts and other obligations; to sue upon, defend, compromise, submit to arbitration or adjust any controversies in which I may be interested; and to act in my name in any complaints, proceedings or suits with all the powers I would possess if personally present and under no legal disability;

(6) Bargain for, buy and deal in real and personal property and goods of every description;

(7) Grant, sell, convey, exchange, transfer, option, convert, mortgage, pledge, consign, lease, hypothecate and in any and every manner dispose of or deal in and with any of my property, or any interest therein, whether real or personal;

(8) Advance or loan my attorney's own funds on my behalf; and to borrow any sums of money on such terms and at such rate of interest as my attorney may deem proper and to give security for the repayment of the same;

(9) Make, execute and file on my behalf income tax and other tax returns and reports;

(10) Make and deliver any conveyances, contracts, covenants and other instruments, undertakings or agreements, either orally or in writing, which my attorney may deem proper;

(11) Sign, endorse, sell, discount, deliver and/or deposit checks, drafts, notes and negotiable instruments and to accept drafts;

(12) Appear and vote for me in person or as my proxy at any corporate or other meeting;

(13) Have access to any safe deposit box which has been rented in my name or in the name of myself and any other person or persons;

(14) Withdraw any monies deposited with any credit union, bank, mutual savings bank or savings and loan association in my name or in the name of myself and any other person or persons and generally to do any business with all such financial institutions on my behalf;

(15) Appoint and substitute for my attorney, agents, nominees or attorneys for any and all of the purposes aforesaid and to revoke such authority as my attorney deems advisable;

(16) Disclaim or renounce any interest or power and to do all acts pursuant to such disclaimer or renunciation required under any state law or under applicable federal law, including Section 2518 of the Internal Revenue Code of 1986, as presently stated or as it may be amended, and the Regulations thereunder;

(17) Have authority to receive confidential information and full power to perform on behalf of the undersigned the following acts with respect to any and all tax matters; to receive payment of any refund, to execute waivers of restriction on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund; to execute consents extending the statutory period for assessment or collection of taxes, to execute closing agreements under Section 7121 of the Internal Revenue Code; to delegate authority or to substitute another representative;

(18) Purchase, redeem, invest or reinvest, change address and perform any other transactions as deemed necessary regarding any Series E, EE, H, and HH Bonds as well as U.S. Treasury Bills, Notes, Bonds or other securities issued or guaranteed by the U.S. Government its agencies or instrumentalities;

(19) Without limiting the generality of the foregoing, to receive and collect all proceeds from any and all annuities owned by me (the "Annuities"), and to otherwise exercise all the powers which I might exercise over the Annuities; except the power to revoke or change the beneficiary designation on any of the Annuities. Only I may revoke the Annuities or change beneficiary designations. The issuer of any Annuities shall be entitled to rely on this power of attorney until it receives actual knowledge of any revocation of it;

(20) Initiate, continue or cause the then serving Trustee of my Trust to initiate or continue any program of annual gifting to my children and lineal descendants and their spouses, provided such gifts are within the Federal Gift

Tax annual exclusion amount for each donee and provided further that such gifts will not diminish the funds available to me which are reasonably anticipated for my support and reasonable comfort during my lifetime;

(21) Continue or cause the then serving Trustee of my trust to continue any formal or informal program of gifting on my behalf, charitable or otherwise, and to pay any pledges as they become due and to execute pledges on my behalf;

(22) Sell and convey to any party or parties at such price or prices and upon such terms as my attorney shall deem proper, all or any portion or interest in that certain real property described on **Exhibit A** attached hereto and by this reference incorporated herein and incident thereto to execute such agreements, deeds, escrow instructions and any other documents or instruments as my attorney may deem proper, including but not limited to the execution of a contract or deed necessary to document the conveyance of the said real property;

(23) Establish my residence, arrange transportation and travel, purchase, store, repair and dispose of my clothing, consumables, household goods, furnishings and personal effects, arrange care and disposition of my pet animals, employ, compensate and discharge domestic companions and other nonmedical personnel, arrange for my spiritual or religious needs, request, review and receive any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records and execute on my behalf any releases or other documents that may be required to obtain this information and consent to the disclosure of this information.

(24) My Agent shall have the power to establish one or more "individual retirement accounts" or other retirement plans or arrangements in my name.

In connection with any pension, profit sharing or stock bonus plan, individual retirement arrangement, Roth IRA, § 403(b) annuity or, account, § 457 plan, or any other retirement plan, arrangement or annuity in which I am a participant or of which I am a beneficiary (whether established by my Agent or otherwise) (each of which is hereinafter referred to as "such Plan"), my Agent shall have the following powers, in addition to all other applicable powers granted by this instrument:

(a) To make contributions (including “rollover” contributions) or cause contributions to be made to such Plan with my funds or otherwise on my behalf.

(b) To receive and endorse checks or other distributions to me from such Plan, or to arrange for the direct deposit of the same in any account in my name or in the name of [NAME OF CLIENT'S LIVING TRUST].

(c) To elect a form of payment of benefits from such Plan, to withdraw benefits from such Plan, to make contributions to such Plan and to make, exercise, waive or consent to any and all elections and/or options that I may have regarding the contributions to, investments or administration of, or distribution or form of benefits under, such Plan.

(d) To designate my spouse, [SPOUSE NAME], if living, otherwise my issue surviving me by right of representation, as beneficiary of any benefits payable under such Plan on account of my death,

I authorize my attorney, for me and in my name generally, to do and to perform all and every act and thing necessary or desirable to conduct, manage and control all my business and my property, wheresoever situate, as my attorney may deem for my best interest, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, and to execute and acknowledge any and all instruments necessary or proper to carry out the foregoing powers, hereby releasing all third persons from responsibility for its acts and omissions; and I hereby ratify and confirm all that my attorney or my attorney’s substitute or substitutes shall lawfully do or cause to be done pursuant to this instrument.

I expressly declare that I am familiar with the provisions of ORS 127.005 which provide that the powers of my attorney herein described shall be exercisable by my attorney on my behalf notwithstanding that I may become legally disabled or incompetent.

The provisions of this Power of Attorney shall specifically apply to any real property in which I may have an interest, including but not limited to, the following real property described on **Exhibit A**, attached hereto and incorporated as if fully set forth herein.

IN WITNESS WHEREOF, I have hereunto set my hand this [DAY] day of [MONTH], [YEAR].

[CLIENT]

STATE OF OREGON)
) ss.
County of Multnomah)

On the [DAY] day of [MONTH], [YEAR], personally appeared the above named [CLIENT], Grantor, and acknowledged the foregoing instrument to be Client: [his/her] voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission expires: _____

EXHIBIT A
TO POWER OF ATTORNEY
FOR [CLIENT]

The following described real property, commonly known as [xxx], Tax Account No. [xxx]:

[Month] [Day], [Year]

[SPOUSE]

[ALT1]

[ALT2]

[ALT3]

[ALT4]

To Whom It May Concern:

I enclose a General Power of Attorney by which I have constituted each of you, in the order of priority shown, as my agent and Attorney-in-Fact. I ask you to hold the Power of Attorney for me in case at any time I may ask you to act on my behalf thereunder or in case at any time you decide that I have become incapacitated or disabled by reason of illness or accident, or for any other reason, to the extent that I am unable to manage business or personal affairs, in which event I instruct you to act on my behalf thereunder. In determining whether I have become so incapacitated or disabled, the fact of incapacity or disability may be determined by you by any means deemed by you to be adequate, including but not limited to consultation with my attending physician. If you act in good faith in the belief that I am so incapacitated or disabled, you shall not be liable for any acts or omissions on your part in reliance upon that belief.

Except in the circumstances and under the conditions hereinbefore described, it is understood that you will not act under the enclosed Power of Attorney without my consent.

Whenever it is incumbent upon you to exercise your powers as my agent or Attorney-in-Fact, you are to do so in accordance with the best judgment on my behalf, and, provided you are acting within your powers, you shall be responsible for good faith only.

This Power of Attorney has been reviewed by my attorney at law, [ATTORNEY], who approves the same as a matter of form.

Very truly yours,

[CLIENT]

Enclosure

Physician Orders for Life-Sustaining Treatment (POLST)

First follow these orders, then contact physician, NP, or PA. These medical orders are based on the person's **current** medical condition and preferences. Any section not completed does not invalidate the form and implies full treatment for that section.

Last Name/ First/ Middle Initial

Address

City / State / Zip

Date of Birth (mm/dd/yyyy)

Last 4 SSN

Gender

M F

A CARDIOPULMONARY RESUSCITATION (CPR): Person has no pulse and is not breathing.

Attempt Resuscitation/CPR Do Not Attempt Resuscitation/DNR (Allow Natural Death)

When not in cardiopulmonary arrest, follow orders in **B**, **C** and **D**.

B MEDICAL INTERVENTIONS: Person has pulse and/or is breathing.

Comfort Measures Only Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. *Patient prefers no transfer to hospital for life-sustaining treatment. Transfer if comfort needs cannot be met in current location.*

Limited Additional Interventions Includes care described above. Use medical treatment, IV fluids and cardiac monitor as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). *Transfer to hospital if indicated. Avoid intensive care.*

Full Treatment Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and cardioversion as indicated. *Transfer to hospital if indicated. Includes intensive care.*

Additional Orders: _____

C ANTIBIOTICS

No antibiotics. Use other measures to relieve symptoms.

Determine use or limitation of antibiotics when infection occurs.

Use antibiotics if medically indicated.

Additional Orders: _____

D ARTIFICIALLY ADMINISTERED NUTRITION: Always offer food by mouth if feasible.

No artificial nutrition by tube.

Defined trial period of artificial nutrition by tube.

Long-term artificial nutrition by tube.

Additional Orders: _____

E REASON FOR ORDERS AND SIGNATURES

My signature below indicates to the best of my knowledge that these orders are consistent with the person's **current** medical condition and preferences as indicated by **discussion with:**

Patient Health Care Representative Surrogate for patient with developmental disabilities or significant mental health condition (Note: Special requirements for completion. See reverse side.)

Parent of Minor Court-Appointed Guardian

Other _____

Print Primary Care Professional Name	Office Use Only
Print Signing Physician / NP / PA Name and Phone Number ()	
Physician / NP / PA Signature (mandatory) Date	

ORIGINAL TO ACCOMPANY PERSON IF TRANSFERRED OR DISCHARGED, SUBMIT COPY TO REGISTRY

Update on the Oregon Advance Directive

Concerns About the Advance Directive

The Oregon Advance Directive, ORS 127.531, allows a person to prepare for a time when he or she may be unable to make decisions about health care. Part A provides information about the form. Part B provides for the appointment of a health care representative—a person authorized to direct health care for the principal when the principal can no longer do so. Part C provides instructions to health care providers, to be followed when the principal can no longer direct his or her own care.

The statutory language of the Advance Directive continues to generate concern that a properly executed Advance Directive regarding end-of-life medical care and treatment may not be honored in a manner consistent with the principal's wishes. In the wake of the national attention surrounding the Terri Schiavo case in 2005, there was a renewed awareness of the need to execute an Advance Directive as a written expression of end-of-life care decisions. Around this same time, a group of lawyers learned that the Veterans Administration refused to acknowledge the authority of a health care representative appointed under a properly executed Advance Directive. The hospital interpreted the principal's initials on a statement in Part C of the form—indicating that the principal did not have a health care power of attorney—as nullifying the then contemporaneous appointment of a health care representative under Part B of the form. It became clear that the legal and medical practitioners were assigning different meanings to the statutory language. Attorneys began to explore ways to ensure that end-of-life wishes expressed in an Advance Directive would be honored. The ideas ran the gamut from modifying the statutory form to attaching handwritten or computer generated addendums. Many questioned whether their efforts at clarity would be effective.

In response to the ongoing concern, the Estate Planning and Administration Executive Committee of the Oregon State Bar hired this author to communicate with the medical and legal community in the hope that consensus could be reached as to the interpretation of the statutory language that favors protecting the rights of Oregonians who wish to make their end-of-life decisions known. There was no interest in pursuing a clarification of the statutory language because of the difficulty in achieving agreement among competing interest groups. Any legislative attempt to fix the problem could make things worse.

In the author's efforts to contact the community, she discovered the Oregon Health Decisions' *Crucial Conversations* project. Oregon Health Decisions plans to publish educational materials and provide statewide training at a future date. In the

interim, the Executive Committee decided to use the *Crucial Conversations* newsletter to provide lawyers with information and analysis about end-of-life decision-making and the current Oregon Advance Directive.

Attachments and Amendments

To achieve some consensus among lawyers and medical professionals the author recommends preparing an attachment or addendum to the Advance Directive that allows the principal to define certain terms and explain his or her intent. Some lawyers have wondered whether one can make changes to the statutory form. The statutory form allows the principal to "cross out words that don't express your wishes or add words that better express your wishes." ORS 127.531. Thus the principal may cross out any item he or she wishes to delete, or add words that clarify his or her wishes (*i.e.*, create an addendum). The framework of the Advance Directive is statutory, but the additional words are unique to the principal, and therefore, whether handwritten or computer generated as an attachment, the additional words should be given the full force and effect as a principal's expressed wishes. We recommend that the principal write "see attachment," or "the attached addendum reflects my expressed wishes, and my representative is to honor it" on the Advance Directive. The principal should date and initial the addendum.

Part B: Appointing a Health Care Representative

Alternate Health Care Representatives. Typically clients want to add more than two health care representatives. Despite the potential risk associated with modifying the statutory form, many attorneys simply add lines to add more people. However, if the lawyer is concerned about violating the integrity of the statutory form, he or she can add this information to the addendum by writing on the form, "See addendum for additional health care representatives."

Honor the Health Care Instruction. After item one in Part B, the principal can initial the following statement: "I have executed a Health Care Instruction or Directive to Physicians. My representative is to honor it." By initialing this statement, the principal is presumably notifying his or her health care representative that the principal has executed Part C (Health Care Instructions) and the principal's health care representative is to follow those instructions. It makes sense to read Parts B and C together and to permit the principal to execute both parts and direct the way the representative should make decisions.

Scope of Authority of Health Care Representative. Most

principals are unaware that many health care decisions, including life-support decisions, go beyond the four health conditions referenced in Part C. Thus, although the principal may initial statement 1, directing the representative to follow the health care instructions by executing Part B, the principal is also giving the representative broad authority to “direct my health care when I can’t do so.” Ideally, before executing the Advance Directive, the principal should discuss with his or her family and physician the kinds of decisions the health care representative should make and the principal’s wishes with respect to his or her care. Part B permits a principal to list any special conditions or instructions with respect to his or her care. By initialing statement 2 (Life Support) and statement 3 (Tube Feeding) in Part B, a principal is authorizing the health care representative to make medical decisions pertaining to life support and tube feeding, consistent with the health care instructions in Part C.

Life Support. Occasionally, a health care provider may want to consult with, or recognize the authority of, the health care representative as the final decision maker when a principal has executed Part C and is diagnosed with one of the four identified medical conditions. Statutorily, the representative has the same authority over the principal’s health care as the principal if the principal were not incapable, subject to certain limitations. ORS 127.535. Therefore, even absent specific authority in the Advance Directive, the health care representative is authorized to make medical decisions concerning life support, consistent with the known or expressed wishes of the principal.

Tube Feeding. The authority of the health care representative does not include the withdrawal or withholding of artificially administered nutrition and hydration except as provided under ORS 127.580. The statutory exceptions for tube feeding are not as clearly delineated as those governing life support. Therefore, it becomes even more critical that the principal understand the importance of initialing statement 3 in Part B, which gives the health care representative specific authority to make medical decisions about tube feeding.

One source of confusion has been over who makes the final decision if the principal has completed Part C. One physician in charge of training on end-of-life issues for a major Portland hospital indicated that if Part C is completed, and if the principal is in one of the four conditions listed, the treating physician need not consult with the health care representative.

The concern surrounding who has the final say is not to disregard the principal’s known or expressed wishes, but to make sure health care decisions are made consistent with the intent of the principal’s expressed wishes. If the principal intends that the health care representative have the final say, the principal should grant specific authority in the Advance Directive by initialing statements 2 and 3 in Part B. By initialing these statements, the principal states that at all times

the appointed health care representative stands in the shoes of the principal and is authorized to receive medical information and make appropriate medical decisions consistent with the principal’s known or expressed wishes. In an attempt to clarify the principal’s intent regarding the final decision maker, the sample addendum that follows this article includes a statement to that effect.

As My Physician Recommends. Some principals may not want to grant the health care representative such broad authority or may wish to leave medical decisions pertaining to life support or tube feeding to doctors as they “recommend.” It is helpful to remind clients that, depending on the nature of the medical setting, the “personal physician” may not necessarily be involved in the decision-making process. Either way, conversations about the nature or extent of the authority granted to individual health care professionals should be encouraged.

Part C and the Meaning of “Other Documents”

The various interpretations of statement 7 of Part C have given lawyers the most cause for concern. In Part C the principal indicates his or her instructions regarding health care. At the end of Part C, statement 7 attempts to establish whether the principal has a health care power of attorney and the status of that power (*i.e.*, revoked or still in effect). The fact that many principals execute Parts B and C at the same time has led to confusion. Many principals may initial “I DO NOT have a health care power of attorney,” believing this statement to refer to some “other document,” different from the Advance Directive that the principal is currently signing. Other principals may initial “I have a health care power of attorney and I REVOKE IT,” intending to revoke a power granted at some earlier time and not to revoke the new health care representative appointed under Part B. It seems illogical to disregard the appointment of a health care representative in a contemporaneously signed document. That does not, however, preclude a medical provider from determining, as the Veterans Administration has done, that making such a designation under Part C cancels the appointment under Part B.

In reading through the legislative history, it appears that the legislative intent was to combine the appointment of a health care representative and the giving of health care instructions into one document and yet enable each to stand alone, so that a principal could have a valid and properly executed Advance Directive if he or she filled out only Part B, Part C, or both. Most of the time, however, our clients are executing an Advance Directive for the first time. These clients fill out both Parts B and C and then often initial one line of statement 7, in an attempt to communicate that a health care representative is

Continued next page

being replaced, or that there is no authority granted outside of this contemporaneously executed Advance Directive.

Therefore, if a principal is executing an Advance Directive for the first time, we recommend that the principal leave statement 7 blank. Instead, if the principal intends to revoke a previously appointed health care representative, insert: "I have a health care power of attorney [signed before today] and I REVOKE IT." The principal can also date the execution of the prior documents, such as, "signed on 'x' date." Added to line 2 or 3, this phrase should eliminate needless ambiguity and potential misinterpretation.

Addendum

The following addendum offers sample language that a lawyer might include in preparing an Advance Directive for a client. The goal is to provide a practical guide for lawyers to use in discussions with their clients in the hope that greater clarity will eliminate confusion and increase the likelihood that end-of-life decisions will be respected and honored.

*Ruth Simonis
Portland, Oregon*

Addendum to the Advance Directive

I instruct my health care representative to follow these attached written instructions as further evidence of my end-of-life health care decisions.

_____ **Health Care Representative Decides.** I want any decision(s) about life support or tube feeding to be made by my health care representative, after consultation with my doctors and as guided by my health care instructions.

- OR -

_____ **Doctors Decide.** I want any decision(s) about life support or tube feeding to be made by my doctor, after consultation with my health care representative and as guided by my health care instructions.

_____ **Religious/Spiritual Beliefs.** It is important that medical decisions made regarding my care are guided by particular religious beliefs or spiritual values as follows:
_____.

_____ **Pain Control.** If I have a terminal diagnosis and can no longer speak for myself, I want to receive enough medication to relieve my pain even though, as a result, I may become unconscious or have difficulty breathing.

_____ **Hospital/Hospice.** I authorize my health care representative to admit me to the hospital for treatment and diagnosis and arrange for hospice care as appropriate.

_____ **Long-Term Care Services.** My health care representative is authorized to arrange for me to receive long-term care services as appropriate.

_____ **Hiring and Discharge of Doctors.** My health care representative is authorized to hire or discharge doctors and other health care professionals.

_____ **Medical Records.** My health care representative may review my medical records and authorize their release to those persons whom my health care representative designates. My health care representative shall be considered my "personal representative" as that term is used in HIPAA. I authorize my physicians and other health care professionals to discuss my medical condition with my health care representative and those designated by my health care representative.

_____ **Visitors.** I authorize the following individuals to visit me in the hospital or any other care facility to the same extent that my relatives would be allowed to visit me.
_____.

_____ **Copies of Advance Directive.** A photographic or facsimile copy of this Advance Directive shall have the same force and effect as the original.

_____ **Home Death.** If possible, I would prefer to die at home and not in a hospital or other care facility. When, in the opinion of a licensed physician I am likely to die within six months, I wish to be transferred to my home. I wish to be transferred to my home even if there is a risk that the transfer itself may accelerate my time of death. However, if dying at home becomes too much of a burden to my family or others living with me, my health care representative may arrange for me to receive care elsewhere.

_____ **Organ Donor.** I authorize my health care representative to arrange for organ donation upon my death. I have spoken to my family about organ and tissue donation. I wish to donate:

A: Any organ and tissues.

B: Only the following organs or tissues: _____
_____.

C: Entire body for medical education (additional forms needed). _____

Signature of person executing Advance Directive

Date

§16.51/Conveyances

4. (§16.51) Statutory Quitclaim Deed

_____ Grantor, releases and quitclaims to _____
Grantee, all right, title and interest in and to the following described real
property:

(Description of property, including City (if any), County and State)

The true and actual consideration for this conveyance is \$_____.
(See ORS 93.030.)

Until a change is requested, all tax statements are to be sent to the
following address: _____

Dated this ____ day of _____, 19____.

(ACKNOWLEDGMENT)

B. Designation of Parties

1. (§16.52) Grantors

Individuals and Married Couples:

(a) Married couples, tenancy by the entirety:

JOHN A. SMITH and MARY B. SMITH, husband and wife

(b) Grantor who took title under different name:

MARY B. SMITH, who took title as MARY B. JONES

(c) Surviving spouse of tenancy by the entirety:

JOHN A. SMITH, the surviving spouse of MARY B. SMITH,
deceased

Partnerships:

(a) Title in partnership name:

THE BLUE MOON COMPANY, a co-partnership

(b) Title in name of partners:

JOHN A JONES, RICHARD B. ROE and HENRY C. BLACK,
partners doing business as The Blue Moon Company, a co-partner-
ship

(c) Limited partnership:

THE BLUE MOON COMPANY, LTD., an Oregon limited partnership

Corporations:

(a) Ordinary corporations:

THE YELLOW SUN CORPORATION, an Oregon corporation

(b) Corporation which took title under a different name:

THE YELLOW SUN CORPORATION, an Oregon corporation, formerly THE MERCURY COMPANY, INC.; or THE YELLOW SUN CORPORATION, an Oregon corporation, successor in interest (by merger) to JUPITER PRODUCTS COMPANY, an Idaho corporation

(c) Corporation which took title under an incorrect name:

SUNNY DAY CORPORATION, an Oregon corporation, grantor, being the same corporation which took title as "The Sunny Day Corporation"

(d) National bank:

GROVE NATIONAL BANK, a National Banking corporation of Portland, Oregon

(e) Changed corporate name:

SUNNY DAY CORPORATION, an Oregon corporation, formerly the Cloudy Day Corporation

(f) Dissolved corporation:

JOHN SMITH COMPANY, a dissolved Oregon corporation

Sole proprietorship:

JOHN A. JONES, doing business under the assumed business name of THE JONES COMPANY

Unincorporated Associations:

JOHN A. JONES, ROBERT B. SMITH and RICHARD D. ROE, Trustees for and on behalf of the Royal and Benevolent Association of Turtles

§16.53/Conveyances

Conservators:

JOHN A. JONES, Conservator of the estate of ROBERT B. SMITH,
a minor (or incapacitated person)

Personal Representatives:

JOHN A. JONES, personal representative of the estate of ROBERT
B. SMITH, deceased

(See also Execution §16.57)

2. (§16.53) Grantees and Estates Created

Tenants by the entirety:

to JOHN A. JONES and MARY B. JONES, husband and wife, Grantees

(or)

to JOHN A. JONES and MARY B. JONES, husband and wife, Grantees,
as tenants by the entirety.

*Tenancy by the entirety (bargain and sale deed from one spouse who owns
separately):*

JOHN A. SMITH, Grantor, conveys to MARY A. SMITH, his wife,
Grantee, an undivided one-half interest in the following described real
property, it being the grantor's intention to create hereby an estate in
entirety.

Tenancy in common — married couples:

to JOHN A. JONES and MARY B. JONES, husband and wife, each
as to an undivided one-half interest, as tenants in common and not
as tenants by the entirety

Tenancy in common:

to ROBERT B. JONES, Grantee, an undivided one-half interest, and
to THOMAS P. JONES, Grantee, an undivided one-half interest, in
the following described real property as tenants in common

*Tenancy in common (Bargain and sale deed by grantor retaining an
undivided interest):*

JOHN A. SMITH, Grantor, conveys to ROBERT B. JONES, Grantee,
an undivided one-third interest and to THOMAS P. JONES, Grantee,
an undivided one-third interest in the following described property, it
being the grantor's intention to create hereby a tenancy in common

between himself and the grantees, each with an undivided one-third interest.

Tenancy in common (a husband and wife holding their share as tenants by the entirety as to each other):

to JOHN A. SMITH, Grantee, an undivided one-half interest, and to ROBERT B. JONES and MARY C. JONES, husband and wife, Grantees, an undivided one-half interest as tenants by the entirety, in the following described property

Survivorship estate (language from *Erickson v. Erickson*, 167 Or 1, 115 P2d 172 (1941):

to JOHN A. SMITH, ROBERT B. JONES and RICHARD B. BROWN, Grantees, the following described property, not as tenants in common, but with the right of survivorship; that is, the fee shall vest in the survivor of the grantees,

Survivorship estate (language from *Holbrook v. Holbrook*, 240 Or 567, 403 P2d 12 (1965):

to JOHN A. SMITH, and ROBERT B. JONES, Grantees, the following described property, as joint tenants with right of survivorship and not as tenants in common

Life estate (using life of grantee for measuring):

to PETER ROE, Grantee for the term of Peter Roe's life

Life estate (using life of grantor as measuring):

JOHN DOE, Grantor, conveys to PETER ROE, Grantee, for the term of John Doe's life

Life estate (using life of third person for measuring):

JOHN DOE, Grantor, conveys to PETER ROE, Grantee, for the term of Mary Smith's life

Life estate (created by reservation):

JOHN DOE, Grantor, conveys to PETER ROE, Grantee, all that real property situated in Washington County, State of Oregon, described as follows: RESERVING unto John Doe, the Grantor, a life estate in said property

Life estate (created by reservation for husband and wife):

. . . RESERVING to the grantors a life estate for the life of the grantors and for the life of the survivor of them

§ 16.54/Conveyances

COMMENT: If husband and wife do not hold as tenants by the entirety, this estate should first be created. Then the life estate can be created by reservation when they convey the fee.

Partnerships:

to JOHN SMITH and HENRY JONES, partners doing business under the partnership name of Smith and Jones, Grantees

or

to JOHN SMITH and HENRY JONES, partners doing business under the assumed business name of Smith Stove Works, Grantees

or

to SMITH STOVE WORKS, a partnership consisting of John Smith and Henry Jones, Grantees

C. (§16.54) Acknowledgment to Notary Public

By individuals:

STATE OF OREGON)
) ss
County of _____) _____ A.D. 19____

Personally appeared the above named _____ and acknowledged the foregoing instrument to be _____ voluntary act and deed.

Before me:

Notary Public for Oregon
My commission expires:

(OFFICIAL SEAL)

By a corporation:

STATE OF OREGON)
) ss
County of _____) _____ A.D. 19____

Personally appeared _____ who, being duly sworn (or affirmed), did say that he is the president (or other officer) of _____ (naming the corporation) and that said instrument was signed in behalf of said