

DOUGLAS COUNTY BAR ASSOCIATION
March 16, 2023

INTRODUCTION
TO
WILLS AND PROBATE

By

Calvin J. Karlin
and
Erin K. Lynch
Barber Emerson, L.C.

WILLS

- I. Introduction
 - A. Name
 - B. Residence
 - C. Revoke prior wills and codicils
 - D. Identify family
 - 1. Non-consenting spouse entitled to augmented share (K.S.A. 59-6a201 et seq.), homestead rights (K.S.A. 59-401), and statutory allowance (K.S.A. 59-403).
 - 2. Can disinherit others (advisable to mention, that doing so intentionally).
 - E. Sample children's trust will attached (Appendix D from KBA Handbook)
 - F. Sample simple will attached (Appendix E from KBA Handbook)
- II. Debt Payment Clause – Don't Do This!!! (See p. 169 Practice Tip from KBA Handbook)
- III. Bequests
 - A. Separate list reference. K.S.A. 59-623. See Exhibits 1, 2 and 3.
- IV. Residue
 - A. Use of "descendants, per stirpes"

- B. Anti-lapse statute. K.S.A. 59-615.
- V. Children's Trust
- A. Separate or pot?
 - B. Division date if pot
 - C. Distribution of income and principal
 - D. Provide for deaths of children
 - E. Insurance letter
 - 1. "Trust under the will of _____"
 - 2. "_____, or its successors as trustee under the will of _____"
- VI. Trust Boilerplate
- A. Continue for others but vest to avoid Rule Against Perpetuities
 - B. Spendthrift clause
 - C. Incorporate powers of Kansas Uniform Trust Code. See K.S.A. 58a-816, Exhibit 4.
- VII. Death Tax Apportionment
- A. Federal estate tax. I.R.C. §§ 2206, 2207. First National Bank of Topeka, Kansas, Admn. (Est. of R.L. Graham) v. U.S., 233 F. Supp. 19, 64-2 USTC ¶ 12261 (1964).
 - B. Kansas has no estate tax or inheritance tax.
- VIII. Guardian of Person. K.S.A. 59-3054.
- IX. Conservator of Estate. K.S.A. 59-3054.
- X. Trustee – try to end up with bank or trust company
- XI. Executor
- A. Try to end up with bank or trust company
 - B. Bond?

- C. Powers of trustee under Kansas Uniform Trust Code, including power to sell without court order.
 - D. Disclosures to client if naming self as Executor. KRPC 1.8 and comments.
- XII. Witnesses
- XIII. Self-Proving Affidavit. K.S.A. 59-606. Swear to it. Star Lumber & Supply Co. v. Capital Construction Co., 238 Kan. 743 (1986).
- XIV. Spousal Consent
- A. Only way to ensure that spouse takes less than statutory share. See Exhibit 5.
 - B. Should specifically waive homestead and statutory allowance if desire.
- XV. Joint, Mutual, and Contractual Wills – Never!
- A. Uncertain tax consequences
 - B. Cannot change
 - C. Frequent litigation
- XVI. Powers of Attorney
- A. Financial - Use and misuse. Durable power recommended. K.S.A. 58-652. Exhibit 6.
 - B. Health – K.S.A. 58-632 has form.
 - C. Homestead – Need joint consent by husband and wife. Title Standard 6.12. Recommend on same document to comply with Kansas Constitution Article 15, Section 9, in case K.S.A. 58-654(f)(10)(C) cannot override Constitution and case law support.
- XVII. Living Wills
- A. Use exact form attached as Exhibit 7. K.S.A. 65-28,103.
- XVIII. Body and Organ Donation
- A. Obtain current forms from donee. (E.g., University of Kansas Department of Anatomy, 3901 Rainbow Blvd., Kansas City, Kansas 66160, for bodies; Saving Sight, 10560 N. Ambassador Drive, Suite 210, Kansas City, Missouri 64153, for eyes; Midwest Transplant Network, 1900 W. 47th Place, Suite 400, Westwood, Kansas 66205, for organs.
 - B. Kansas driver's license. K.S.A. 65-3209 authorizes.

- XIX. Burial or Cremation Instructions
 - A. Do not put in will.
 - B. Give to people who will be immediately involved.

PROBATE

- I. Testate or Intestate?
 - A. Testate – 6 month deadline to file Will. K.S.A. 59-617, 59-618 (liability for withholding), 59-618a (protective filing)
 - B. Intestate – Heirs. K.S.A. 59-501 et seq. See Table of Consanguinity.
- II. Petition for Probate of Will (or Administration). K.S.A. 59-2201, 2202, 2219 & 2220.
- III. Set for Hearing. K.S.A. 59-2204.
- IV. Notice of Hearing. K.S.A. 59-2208 – 2211 and 2222 – 2224. Notice to Creditors. K.S.A. 59-709. Notice to Spouse. K.S.A. 59-2233.
- V. Oath. K.S.A. 59-1702.
- VI. Bond. K.S.A. 59-1101 et seq.
- VII. Letters Testamentary or Letters of Administration. K.S.A. 59-701 et seq.
- VIII. Inventory. K.S.A. 59-1201 et seq.
- IX. Claims. K.S.A. 59-1301 et seq.; K.S.A. 59-2236 – 2241. See Tulsa Professional Collection Services, Inc. v. Pope, 108 S. Ct. 1340 (1988) re self-executing statute of limitations. When contesting, see K.S.A. 59-2201, K.S.A. 53a-516 and p. 170 Practice Pointer from KBA Handbook.
- X. Partial Distributions. K.S.A. 59-2246.
- XI. Final Settlement and Distributions. K.S.A. 59-2247.
- XII. Determination of Descent. K.S.A. 59-2250 – 2251.
- XIII. Small Estate Affidavit. K.S.A. 59-1507b and Kansas Judicial Council Form 41.
- XIV. Transfer on Death (TOD) and Payable on Death (POD) Risk. K.S.A. 59-3501a et seq., K.S.A. 59-17-49a01, et seq.; K.S.A. 9-1215; K.S.A. 17-2263 - 64; K.S.A. 17-5828 – 29. PODs can lead to aberrational and unintended results when a beneficiary dies before the account owner. The account owner may die shortly

thereafter, may be mentally incapacitated or may simply forget that they need to change the beneficiary following an out of order death.

Say an owner names a daughter and a son and the daughter dies in a common accident a few minutes before mom. The result depends on each company's/bank's beneficiary forms or underlying contract as to what happens. The daughter's share might go to her estate, her heirs, her spouse, her descendants or her brother. Most people want this to be an intentional decision not the accident of a particular company's/bank's drafting as to its accounts. The result could be very inconsistent with the estate planning the person has done as to other assets. A broker's or bank's advice to account owners to use TOD and POD forms (especially when they don't know what they say as to other entities and perhaps even as to their own) might even subject that broker or bank to liability for practicing law and/or causing an unintended result.

As to Kansas real estate TODS, the designated share lapses (so cycles back through the estate, which is likely not the decedent's intent). There have been Kansas Bar Association proposals to try to clarify what happens if a named TOD beneficiary dies before the real estate owner as to whether the deceased designee owns the subsequent interest as a tenant in common or as a joint tenant. This matter has been subject to litigation, but as of yet there is not a determinative decision by the Kansas Supreme Court. Clarifying legislation is moving along this Legislative Session as House Bill 2152, which would leave pre-deceased beneficiary's share to such beneficiary's then living issue, per stirpes, provided that there is at least one living named beneficiary. (A descent proceeding will still be needed to determine the deceased beneficiary's then living issue, per stirpes – and note that these may not be the same as of the date of the deceased beneficiary's death.)

Appendix D

Sample Will 1

WILL
of
JOHN DOE

I, John Doe, of Lawrence, Kansas, declare this to be my last will, and revoke all other wills and codicils that I may have made.

ARTICLE I

I am married, and my wife is Jane Doe, hereinafter referred to as "my wife." We have two children, Buck Doe, who was born March 25, 2014, and Fawn Doe, who was born September 24, 2015, and who are hereinafter referred to together with any other children hereafter born to, or adopted by, my wife and me, as "my children."

ARTICLE II

I bequeath all of my tangible, nonbusiness personal property, including, but not by limitation, jewelry, clothing, furniture, furnishings, books, pictures, and automobiles, together with any insurance policies and claims under such policies on such property, to my wife, if she survives me. If my wife shall not survive me, I bequeath certain items of tangible personal property in accordance with a written statement or list signed by me, describing such items of tangible personal property and naming the persons to whom such items shall be given, which statement or list

shall be left by me and which shall determine the disposition of such items of tangible personal property. If the named recipient cannot be located within a reasonable time with reasonable effort following my death, the tangible personal property listed for that recipient shall pass as part of the residue. If my wife does not survive me, I bequeath all of my other tangible, nonbusiness personal property to my children who survive me by more than sixty (60) days, in shares of substantially equal value, to be divided among them as they, and such other person as my executor may select to represent any child of mine believed by my executor to be incapable of acting in the child's own best interest, shall agree. In case my children and such other person do not agree within six (6) months after my death as to the division among them, my executor, in the executor's sole discretion, shall make such division. Notwithstanding the foregoing, should my executor, in the executor's sole discretion, determine that it would not be in the best interest of my children to receive possession of any item of such property, such as an automobile, my executor may sell such item and add the proceeds to my residuary estate. If any of my children shall not have attained the age of majority at the time of my death, my executor may, in the executor's sole discretion, deliver any nonbusiness tangible personal property to such child, or to the guardian of such child's person, without further responsibility. To the extent such personal property is neither sold nor delivered by my executor to a child of mine who shall not have attained the age of majority or to such child's guardian, the trustee hereinafter named may receive and hold such child's share of such property for the benefit of such child, and deliver it to

such child either before or after attainment of such child's majority, as the trustee in the trustee's sole discretion shall determine, without further responsibility. All expenses of storage, packing, shipping, delivery and insurance, or of sale of any such item of tangible nonbusiness personal property, shall be paid from my residuary estate as an expense of administration.

ARTICLE III

I devise and bequeath all of the rest, residue, and remainder of my property, real and personal, wherever situated, to my wife, if she survives me.

ARTICLE IV

If I am not survived by my wife and the youngest of my children living at the time of my death shall have attained the age of thirty-five (35) years at such time, or if I am not survived by my wife or any of my children, I devise and bequeath all of the rest, residue, and remainder of my property, real and personal, wherever situated, to my descendants, per stirpes.

ARTICLE V

If I am not survived by my wife, and the youngest of my children living at the time of my death shall not have attained the age of thirty-five (35) years at such time, I devise and bequeath all of the rest, residue, and remainder of my property, real and personal, wherever situated, to my trustee, hereinafter named, in trust, for the following uses and purposes: The trustee shall hold all the trust property as a single trust, and the trustee may in the trustee's discretion pay to or use for the benefit of my children and the descendants of any of my deceased children so much

of the income and principal as the trustee from time to time determines to be required, in addition to their respective income from all other sources known to the trustee, for their reasonable support, maintenance, health, welfare and education, adding any excess income to principal at the discretion of the trustee. The trustee may pay the same to or use it for the benefit of one or all of my children or to the descendants of any of my deceased children to the exclusion of the others, and may completely exhaust the principal, my concern after the death of my wife being primarily for the generous support and the education of my children and the descendants of any of my deceased children. Except to the extent necessary to provide for the reasonable support and education of my descendants and for their support as a result of emergencies due to sickness or accident, and without limiting the authority and discretion hereinbefore granted to the trustee, I desire that each of my children and the collective descendants of any deceased child of mine shall be treated equally by the trustee. When my oldest child, then living, attains the age of eighteen (18) years (subsequently called the division date), the trustee shall divide the principal, and any undistributed income, into as many equal separate trusts as will make one for each child of mine living at the division date and one for the descendants, collectively, of each child of mine who shall have died before the division date leaving descendants living at the division date. Each such trust shall be disposed of as follows:

1. As to each trust created for a child of mine:

(a) The trustee may pay to or apply for the benefit of any one or more of the living members of the group consisting of that child of mine for whom the trust is established, and the descendants of such child, such amounts of income and principal as the trustee may from time to time in the trustee's sole and absolute discretion deem necessary or advisable, in addition to the beneficiaries' other income from all sources known to the trustee, for the reasonable support, maintenance, health, welfare and education of any of such beneficiaries, without the necessity of equalization among them at any time. It is my intention that any trust distributions shall be supplemental to governmental and other resources (including, but not limited to, public assistance, Medicaid, medical assistance or Title XIX of the Social Security Act) and shall not replace such other resources. The trustee shall also consider whether distributions the trustee makes will primarily benefit the intended beneficiary or will instead benefit a creditor of the intended beneficiary with no or little apparent benefit to the beneficiary in determining whether a discretionary distribution is appropriate. The trustee shall pay to my child or on my child's behalf all of the net income of such trust at least annually after such child attains the age of twenty-five (25) years. The trustee may pay to my child or on my child's behalf such amounts as the trustee determines, in the trustee's sole discretion, to be reasonable for a down payment on a principal residence or in commencing a business

venture or career with potential for success. The trustee may also provide assistance to help maximize retirement plan contributions for my child.

(b) When such child attains the age of twenty-five (25) years (or upon the creation of this trust or at the division date if such child shall then have reached that age), the trustee shall distribute to such child one-third (1/3) of the remaining principal of such child's trust at such time thereafter that such child so requests in writing.

(c) When such child attains the age of thirty (30) years (or upon the creation of this trust or at the division date if such child shall then have reached that age), the trustee shall distribute to such child one-half (1/2) of the remaining principal of such child's trust at such time thereafter that such child so requests in writing.

(d) When such child attains the age of thirty-five (35) years (or upon the creation of this trust or at the division date if such child shall then have reached that age), the trustee shall distribute to such child the entire balance of such child's trust at such time thereafter that such child so requests in writing, but if such child dies after attaining such age, then the entire balance shall be paid to such child's estate.

(e) If such child shall die before attaining the age of thirty-five (35) years, such child's trust shall be distributed to such child's then living descendants, per stirpes, or if none, to my then living descendants, per stirpes (and subject to the terms of any trust being held under this Article for

such descendant), but if neither such child nor I shall have then living descendants, then as follows:

(i) One-half (1/2) thereof as follows:

(A) One-fourth (1/4) to my brother, Dennis Doe, if he is then living, or if he is not then living, to his then living descendants, per stirpes.

(B) One-fourth (1/4) to my sister Dorothy Doe, if she is then living, or if she is not then living, to her then living descendants, per stirpes.

In the event either of the said Dennis Doe or Dorothy Doe shall not then be living, and shall not leave then living descendants, the share such person would have taken if living shall be added to, and become a part of, the share of the then living survivor or his or her then living descendants.

(ii) One-half (1/2) thereof to the Lawrence Humane Society, Inc., Lawrence, Kansas.

2. The trustee shall distribute each trust created for the descendants of a deceased child of mine outright to such descendants, per stirpes, subject to paragraph 5 of Article VII.

ARTICLE VI

If neither my wife nor any of my descendants survive me, I devise and bequeath all of the rest, residue and remainder of my property, real and personal, wherever situated, as follows:

1. One-half (1/2) thereof as follows:
 - (a) One-fourth (1/4) to my brother, Dennis Doe, if he is then living, or if he is not then living, to his then living descendants, per stirpes.
 - (b) One-fourth (1/4) to my sister Dorothy Doe, if she is then living, or if she is not then living, to her then living descendants, per stirpes.

In the event either of the said Dennis Doe or Dorothy Doe shall not then be living, and shall not leave then living descendants, the share such person would have taken if living shall be added to, and become a part of, the share of the then living survivor or his or her then living descendants.

2. One-half (1/2) thereof to the Lawrence Humane Society, Inc., Lawrence, Kansas.

ARTICLE VII

1. The trustee may either expend directly any income or principal which the trustee is authorized to use for the benefit of any person, or pay it over to the beneficiary or to the beneficiary's parent, conservator, guardian, custodian under

any Uniform Transfers to Minors Act, to any person with whom the beneficiary is residing, or to any other person for the beneficiary's use and benefit without the intervention of a legal guardian or conservator, without responsibility for its expenditure. I request that the trustee in using income or principal for the benefit of my children shall, to the extent thereof, avoid my children ever becoming an economic burden upon the guardians of their person, and shall pay the guardians, generously, a fair share of common family expenses, while my children, or any of them, shall reside with the guardians.

2. No interest under this instrument shall be transferable or assignable by any beneficiary, or be subject during the beneficiary's life to the claims of the beneficiary's creditors. The Trustee shall also consider whether distributions the Trustee makes will primarily benefit the intended beneficiary or will instead benefit a creditor of the intended beneficiary with no or little apparent benefit to the beneficiary in determining whether a discretionary distribution is appropriate.

3. The trustee shall have all of the powers conferred by the Kansas Uniform Trust Code which may be exercised at any time and from time to time. In addition to the powers provided for in the previous sentence, but not in limitation thereof, the trustee shall have the power to retain any property or undivided interests in property received from my estate, including residential property and tangible personal property, regardless of lack of diversification, risk, or nonproductivity. The trustee may permit my children and their dependents to occupy such real estate. The trustee may purchase or otherwise acquire tangible

nonbusiness personal property and may permit my children to have the specific use thereof as well as of such property received from my estate. The trustee shall not be liable for any consumption, damage to, or loss of any property so used.

4. To the extent permitted by United States statutes or regulations, the trustee shall have the power to apply for, receive, expend, account for, invest, and distribute Social Security or similar federal payments or benefits to which my children, their descendants, or their dependents shall be entitled as a result of my death.

5. If any person who becomes entitled to distribution of any share of my estate or of trust principal is under the age of twenty-five (25) years when the distribution is to be made, his or her share shall vest in interest indefeasibly, but the executor with respect to my estate, or the trustee with respect to any trust, may in the executor's or trustee's respective discretion distribute such share to a custodian under the Uniform Transfers to Minors Act or cause it to be held as a separate trust by the trustee then acting under a trust created by this Will, or if none is then acting, by the trustee named herein, as trustee, for the use of such person for such time as the trustee deems advisable, but not after the time such person reaches the age of twenty-five (25) years. If the trustee holds such share as a separate trust, the trustee may use for the benefit of the beneficiary so much of the income and principal as the trustee determines to be required for the beneficiary's support, maintenance, health, welfare and education, adding any excess income to principal. The remaining principal of the trust and all

accumulated income shall be paid over to the beneficiary when the beneficiary attains the age of twenty-five (25) years or to the estate of the beneficiary if the beneficiary dies before attaining the age of twenty-five (25) years. If the beneficiary was not alive at the time of my death then twenty-one (21) years shall be substituted for twenty-five (25) years throughout this paragraph to comply with the Rule Against Perpetuities.

6. To the extent that any such requirements can legally be waived, no corporate trustee serving hereunder shall be required to give any bond as trustee, and no trustee serving hereunder shall be required to qualify before, be appointed by, or, in the absence of breach of trust, account to or file inventories in any court, or to obtain the order or approval of any court in the exercise of any power or discretion hereunder. Any trustee, nevertheless, may file accountings and inventories voluntarily.

7. No person paying money or delivering any property to any trustee need see to its application. The trustee shall be entitled to reasonable compensation for services in administering and distributing the trust property, and to reimbursement for expenses. Unless otherwise agreed in writing, a corporate trustee shall be entitled to receive compensation for its services in accordance with its published fee schedule in effect at the time such services are rendered, without regard to any compensation paid to individual trustees. Notwithstanding any contrary provisions in such corporate trustee's fee schedule, any fee charged by a corporate trustee in connection with termination of a trust, distribution of trust assets to a beneficiary,

or transfer of trust assets to a successor trustee, shall be based only on the reasonable value of the services rendered with respect to such termination, distribution, or transfer, and shall not be based on a percentage of the value of the trust assets held, distributed or transferred.

8. To the extent my wife's will shall devise and bequeath property to the trustee named herein to be held, managed, invested, and reinvested for substantially the same uses and purposes as a trust established hereunder, said property so devised and bequeathed may, in the discretion of the trustee, be added to and commingled with the trust created hereunder, and held, or distributed in whole or in part, as if it had been an original part of such trust created hereunder.

9. The trustee shall collect all benefits or assets payable to the trustee by reason of my death, including but not limited to benefits under life insurance policies, employee benefit plans or other contracts, plans or arrangements providing for payment or transfer at my death. Payment to the trustee and the receipt for the payment by the trustee shall constitute a full release and discharge of the liability of a payor, and no payor need inquire into or take notice of my will or see to the application of such payment. The trustee may, and upon being indemnified to the trustee's satisfaction against all costs and expenses shall, litigate to the extent necessary to enforce the payment of any such benefit or asset. Notwithstanding anything in my will to the contrary, any benefits or assets payable by reason of my death which are payable directly to the trustee shall not be subject to the claims

against my estate, nor shall such benefits be subject to the control of my executor nor be included in the property administered as part of my probate estate.

10. The trustee in the trustee's sole and absolute discretion, may distribute a trust in full prior to the time a beneficiary attains the age which would otherwise have determined such distribution, if the trustee considers that the expenses of administration in continuing the trust are greater than the trust assets reasonably justify. If a trust is so terminated, a trust for a child of mine shall be distributed to such child and a trust for a person under the age of twenty-one (21) years shall be distributed to such person or to a custodian under the Uniform Transfers to Minors Act until the beneficiary attains the age of twenty-one (21) years, or such other age as required by the Uniform Transfers to Minors Act controlling such custodian.

11. Any trustee may resign at any time by giving written notice, specifying the effective date of the resignation, to the then current income beneficiaries, or if such beneficiaries are minors, to the guardians of their persons. If any trustee at any time resigns, or is unable or refuses to act, and no successor trustee is named herein, a corporation authorized under the laws of the United States or of any state to administer trusts may be appointed as trustee by the judge of the court in which this will shall be admitted to probate. No successor trustee shall be personally liable for any act or omission of any predecessor trustee. Any successor trustee hereunder shall have all the titles, powers, and discretion of the trustee succeeded, without the necessity of any conveyance or transfer.

ARTICLE VIII

All inheritance, estate, and succession taxes, including interest and penalties thereon, payable by reason of my death (as to probate and non-probate property) shall be paid out of and be charged generally against the principal of my residuary estate without reimbursement from any person. No funds or proceeds payable from any source or to any beneficiary hereunder which qualifies for exemption from federal estate tax under the Internal Revenue Code, as it may be amended from time to time, shall be used for the purpose of paying inheritance, estate, or succession taxes as provided herein.

ARTICLE IX

If my wife shall not survive me:

1. I appoint Wilbur Nether and Nancy Nether, husband and wife, or the survivor of them, as guardians of the person of my children who shall be minors, such guardianship to continue during the respective period of minority of each of such children, and such guardians to serve without being required to give bond. If William Nether and Nancy Nether, or the survivor of them, shall fail to qualify or cease to act, I appoint Lyle Stephenson and Sally Stephenson, husband and wife, or the survivor of them, as such guardians to serve without being required to give bond. If the couple named as guardians are divorced or one of them is deceased at the time of my death, the next guardians that consist of a married couple shall serve as such guardian. If the guardians are divorced after commencing service as guardians, the guardian shall be the person of that couple who is a sibling of my

wife or me (or the person who gets primary custody of their own children if neither person is a sibling of my wife or me). If one of the guardians dies after commencing service, the other spouse shall continue to serve as guardian. I authorize and empower the guardians to determine the place or places at which my children subject to such guardianship shall reside from time to time, and to remove such children from the United States of America in order that such children may reside with the guardians during any periods of residence by the guardians outside the United States of America.

2. If a conservator of the estate of any child of mine who shall be a minor shall be required, I appoint Kristen Cameron as such conservator, to serve without being required to give bond. If Kristen Cameron shall fail to qualify or cease to act, I appoint Katelin May as such conservator, to serve without being required to give bond. If both Kristen Cameron and Katelin May shall fail to qualify or cease to act, I appoint Douglas County Bank, Lawrence, Kansas, as such conservator, to serve without being required to give bond.

ARTICLE X

1. I appoint my wife as executor of this my will, to serve without being required to give bond, with all the powers and discretion with respect to my estate during administration that the trustee hereunder is given with respect to the trust property, including the power to sell real or personal property at public or private sale for any purpose without court order. If my wife shall fail to qualify or cease to act, I appoint the first named of the following, alternatively and consecutively, as

such executor, to serve without being required to give bond, and with all such powers and discretion: Wilbur Nether, Lyle Stephenson, Kristen Cameron, Katelin May or Douglas County Bank, Lawrence, Kansas.

2. I appoint Douglas County Bank, Lawrence, Kansas, as trustee of any trust created herein, to serve without being required to give bond.

ARTICLE XI

Whenever necessary and appropriate in this will and where the context admits, the singular word shall include the plural, the masculine shall include the feminine, the personal the impersonal, and vice-versa. Whenever the words "child," "children," "descendants," and similar words are used in this will, a child who is legally adopted before the age of eighteen (18) years shall be considered a natural child of the adoptive parent. Consequently, any such words shall be construed to include such adopted children or series of adopted children in the line of descent for all purposes.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name this ____ day of _____, 2016.

John Doe

We, the undersigned, hereby certify that the foregoing instrument was signed, acknowledged, declared and published by John Doe, as and for his will in the sight and presence of us, and each of us, who at his request and in his sight and presence, and in the presence of each other, have hereunto subscribed our names as witnesses this ____ day of _____, 2016.

Witness 1

Witness 2

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

Before me, the undersigned authority, on this day personally appeared John Doe, Witness 1, and Witness 2, known to me to be the testator, and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of such persons being by me first duly sworn, said John Doe, testator, declared to me and to the witnesses in my presence that such instrument is the testator's last will, and that the testator had willingly made and executed it as the testator's free and voluntary act and deed for the purposes therein expressed. Such witnesses, each on the witness' oath stated to me, in the presence and hearing of the testator, that the testator had declared to them that such instrument is the testator's last will, and that the testator executed same as such and wanted each witness to sign it as a witness. Upon their oaths each witness stated further that they did sign the will as witnesses in the presence of each other and in the presence of the testator and at the testator's request, and that the testator at that time possessed the rights of majority, was of sound mind and under no restraint.

John Doe

Witness 1

Witness 2

Subscribed, acknowledged, and sworn to before me by John Doe, testator, and
Witness 1 and Witness 2, witnesses, this ____ day of _____, 2016.

Notary Public - Nancy Seal

My appointment expires: October 31, 2018.

Appendix E

Sample Will 2

WILL
of
JOHN DOE

I, John Doe, of Lawrence, Kansas, declare this to be my last will, and revoke all other wills and codicils that I may have made.

ARTICLE I

I am married, and my wife is Jane Doe, hereinafter referred to as "my wife." We have two children, Buck Doe and Fawn Doe, who are hereinafter referred to as "my children."

ARTICLE II

I bequeath all of my tangible, nonbusiness personal property, including, but not by limitation, jewelry, clothing, furniture, furnishings, books, pictures, and automobiles, together with any insurance policies and claims under such policies on such property, to my wife, if she survives me. If my wife shall not survive me, I bequeath certain items of tangible personal property in accordance with a written statement or list signed by me, describing such items of tangible personal property and naming the persons to whom such items shall be given, which statement or list shall be left by me and which shall determine the disposition of such items of

tangible personal property. If my wife does not survive me, I bequeath all of my other tangible, nonbusiness personal property to my children who survive me by more than ten (10) days, in shares of substantially equal value, to be divided among them as they shall agree. In case my children do not agree within sixty (60) days after my death as to the division among them, my executor shall sell any such property as to which agreement could not be reached as to its division. All expenses of storage, packing, shipping, delivery and insurance, or of sale of any such item of tangible nonbusiness personal property, shall be paid from my residuary estate as an expense of administration.

ARTICLE III

I devise and bequeath all of the rest, residue, and remainder of my property, real and personal, wherever situated, to my wife, if she survives me. If I am not survived by my wife, I devise and bequeath all of the rest, residue, and remainder of my property, real and personal, wherever situated, to my descendants, per stirpes. If neither my wife nor any of my descendants survive me, I devise and bequeath all of the rest, residue and remainder of my property, real and personal, wherever situated, as follows:

1. One-half ($\frac{1}{2}$) to The United Way, Lawrence, Kansas; and
2. One-half ($\frac{1}{2}$) to the Lawrence Humane Society, Inc., Lawrence, Kansas.

ARTICLE IV

All inheritance, estate, and succession taxes, including interest and penalties thereon, payable by reason of my death (as to probate and non-probate property) shall be paid out of and be charged generally against the principal of my residuary estate without reimbursement from any person.

ARTICLE V

I appoint my wife as executor of this my will, to serve without being required to give bond. If my wife shall fail to qualify or cease to act, I appoint the first named of the following, alternatively and consecutively, as such executor, to serve without being required to give bond, and with all such powers and discretion: Buck Doe or Fawn Doe. My executor shall have all of the powers of a trustee under the Kansas Uniform Trust Code, including the power to sell all or any part of my estate, real or personal, without the necessity of obtaining the order of any court therefor.

ARTICLE VI

Whenever necessary and appropriate in this will and where the context admits, the singular word shall include the plural, the masculine shall include the feminine, the personal the impersonal, and vice-versa. Whenever the words "child," "children," "descendants," and similar words are used in this will, a child who is legally adopted before the age of eighteen (18) years shall be considered a natural child of the adoptive parent. Consequently, any such words shall be construed to include such adopted children or a series of such adopted children in the line of descent for all purposes.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name this
____ day of _____, 2016.

John Doe

We, the undersigned, hereby certify that the foregoing instrument was signed, acknowledged, declared and published by John Doe, as and for his will in the sight and presence of us, and each of us, who at his request and in his sight and presence, and in the presence of each other, have hereunto subscribed our names as witnesses this ____ day of _____, 2016.

Witness 1

Witness 2

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

Before me, the undersigned authority, on this day personally appeared John Doe, Witness 1, and Witness 2, known to me to be the testator, and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of such persons being by me first duly sworn, such John Doe, testator, declared to me and to the witnesses in my presence that such instrument is the testator's last will, and that the testator had willingly made and executed it as the testator's free and voluntary act and deed for the purposes therein expressed. Such witnesses, each on the witness' oath stated to me, in the

presence and hearing of the testator, that the testator had declared to them that such instrument is the testator's last will, and that the testator executed same as such and wanted each witness to sign it as a witness. Upon their oaths, each witness stated further that they did sign the will as witnesses in the presence of each other and in the presence of the testator and at the testator's request, and that the testator at that time possessed the rights of majority, was of sound mind and under no restraint.

John Doe

Witness 1

Witness 2

Subscribed, acknowledged, and sworn to before me by John Doe, testator, and Witness 1 and Witness 2, witnesses, this ____ day of _____, 2016.

Notary Public – Wilbur Nether

My appointment expires: February 29, 2019.

- Payable on death (K.S.A. 9-1215 and 17-49a08, subject only to Kansas medical assistance recovery claims under K.S.A. 39-709(g)).
- Transfer on death (K.S.A. 59-3501, et seq., subject only to Kansas medical assistance recovery claims under K.S.A. 39-709(g)).
- Life insurance (K.S.A. 40-414; *see also* K.S.A. 40-441 (exempting life insurance paid to a testamentary trustee from the deceased policy owner's creditors)).
- Retirement plans (K.S.A. 60-2308(b)).
- Other non-testamentary transfers (K.S.A. 59-3513).

COMMENT: It is ironic that no notice may be constitutional if death is the triggering event, but that publication notice may be constitutionally insufficient for known creditors if there is a full-scale court proceeding. Consequently, no notice may be constitutionally superior to publication notice, depending on the circumstances.

Publication notice does not extend other statutes of limitation. For example, if a tort statute of limitations is set to expire the day after death of the tortfeasor, it is not extended for four more months from the publication date. In fact, a statute of limitations on a tort claim is not affected (lengthened or shortened) by the probate non-claims statute. K.S.A. 59-2239(2). A tort claimant's recovery shall not affect distribution of estate assets unless a timely claim (or action under K.S.A. 59-2238(2)) was filed. K.S.A. 59-2239(2). This would not preclude recovery, however, from the decedent's liability insurance.

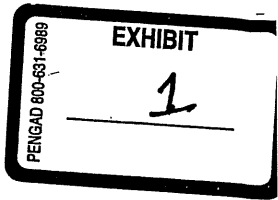
PRACTICE TIP: Do not include a provision in a will requiring payment of "all my just debts." Although this is historical boilerplate in wills, its use should be stopped because it may lead to unanticipated results for the testator, devisees, and legatees. This is because K.S.A. 59-2239(1) states that "the provisions of the testator's will requiring the payment of a demand exhibited later shall control." Although two older Kansas cases (*Collamore v. Wilder*, 19 Kan. 67, 82 (1877); *Jordan v. Young*, 148 Kan. 829, 835, 84 P.2d 970 (1938)), hold that the boilerplate is to be given no real effect, the statutory language was not adopted until 1939, and no case has since interpreted its effect. The risk is that such testamentary language could abrogate the four-month, non-claim period by turning the creditor into a legatee. The Kansas Court of Appeals referenced a direction to pay "all of the just debts and expenses" supported a creditor's right to proceed against a decedent's homestead after his death. *Chaney v. Armitage*, Kan. Ct. App. (May 19, 2017 unpublished).

Another problem could arise from K.S.A. 59-618, making any person who withholds a will liable to innocent beneficiaries for damages and attorney fees. This could be a problem if the plan is to wait out the six-month, self-executing statute of limitations.

Although most people probably prefer to pay their legitimate debts, they probably also want to maximize benefits for their devisees and legatees. Unless the testator consciously wants to forego the six-month, self-executing statute or the four-month, non-claim period, it is advisable not to include such a provision.

Although it may be appropriate to state the source of payment (e.g., the residue) for estate debts, this is certainly not necessary in most cases (and may even cause confusion about the intent if not properly worded). K.S.A. 59-1405 sets forth the priority order absent a contrary will provision.

When a trust is being used as the primary dispositive instrument, it may be appropriate to state the source for payment of debts (as authorized by K.S.A. 58a-505(a)(3)), but such a clause should be carefully drafted to avoid an argument that a creditor is to be treated as a beneficiary. Language restricted to payment of "legally enforceable debts" from a particular portion of the trust should be sufficient to avoid the creditor's transformation to beneficiary status.



ARTICLE III

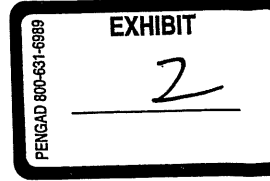
[If my (husband/wife) shall not survive me,] I bequeath certain items of tangible personal property in accordance with a written statement or list signed by me, describing such items of tangible personal property and naming the persons to whom such items shall be given, which statement or list shall be left by me and which shall determine the disposition of such items of tangible personal property.

LAW OFFICES
BARBER, EMERSON, SPRINGER, ZINN & MURRAY
MASSACHUSETTS STREET AT SOUTH PARK
POST OFFICE BOX 666
LAWRENCE, KANSAS 66044

RICHARD A. BARBER
JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
THOMAS V. MURRAY
CALVIN J. KARLIN
H. MARC JOSEPH
TODD N. THOMPSON
MARY B. CLARK

MARTIN B. DICKINSON, JR.
COUNSEL

TELEPHONE
913 843-6600



September 12, 1988

Mr. John Doe
Route 3
Wamego, Kansas 66547

Dear Mr. Doe:

In accordance with our discussion, your will is to provide that a list will be left which disposes of tangible personal property [if you are not survived by your spouse]. If such a list is made, it should be in your own handwriting, and you must sign each page of the list at the bottom of the page. The list should begin with the following statement:

In the event of my death [after that of my spouse], I desire that the following items of personal property be delivered to the person whose name is set opposite each item. This list is prepared by me in accordance with the Kansas Probate Code.

Under the statement set out above, you should have two headings, as follows:

ITEM

RECIPIENT

Under the "item" heading, you should write a reasonably definite description of the item of personal property you wish to leave, and under the "recipient" column, you should write the name of the person you wish to receive it. The list can be changed at any time without changing your will.

If you have questions concerning the format of the separate list, please call me at your convenience.

Very truly yours,

BARBER, EMERSON, SPRINGER, ZINN & MURRAY

CJK:kcn

Calvin J. Karlin

STATEMENT UNDER WILL OF
JOHN DOE

In the event of my death [after that of my spouse], I desire that the following items of personal property be delivered to the person whose name is set opposite each item. This list is prepared by me in accordance with the Kansas Probate Code.

ITEM

RECIPIENT

John Doe

58a-816. Specific powers of trustee. Without limiting the authority conferred by K.S.A. 58a-815, and amendments thereto, a trustee may:

- (1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition, or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial-service institution;
- (5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - (B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
 - (D) deposit the securities with a depository or other regulated financial-service institution;
- (8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements and make or vacate plats and adjust boundaries;
- (9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;
- (10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust and exercise an option so acquired;
- (11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;
- (12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
- (13) with respect to possible liability for violation of environmental law:
 - (A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;
 - (B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;
 - (C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
 - (D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and
 - (E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;
- (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
- (15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust and other expenses incurred in the administration of the trust;
- (16) exercise elections with respect to federal, state, and local taxes;
- (17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

Exhibit 4

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian, attorney-in-fact, custodial trustee or other person with legal authority to receive such funds for the benefit of the beneficiary;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) access digital assets held in trust pursuant to K.S.A. 2022 Supp. 58-4811, 58-4812 and 58-4813, and amendments thereto; and

(27) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

History: L. 2002, ch. 133, § 73; L. 2017, ch. 19, § 21; July 1.

I, the undersigned, [X, (husband/wife) of Y], having read the above and foregoing will of the said _____ (Y) _____, and being well informed of the contents thereof and the provisions made therein for me, and having had fully explained to me my rights under said will and my rights under the laws of descent and distribution of the State of Kansas, and being willing that said will may be thus executed, do hereby consent to the said _____ (Y) _____, making disposition of (his/her) property by will as therein provided, [and do hereby waive any homestead right and any statutory or other allowance to which a surviving spouse may be otherwise entitled.]

Dated at _____, Kansas, this _____ day of _____, 19____.

(name)

On the date last above written, _____ (X) _____ declared to us, the undersigned, that the foregoing was (his/her) full and free consent to the will of _____ (Y) _____, and (he/she) requested us to act as witnesses to same and to (his/her) signature thereon. (He/She) thereupon signed said consent in our presence, we being present at the same time, and we now, at (his/her) request, in (his/her) presence, and in the presence of one another, do hereunto subscribe our names as witnesses; and we declare that we believe that the said _____ (X) _____ is of sound mind and memory and under no constraint.

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, John Doe, do by these presents make, constitute and appoint Jane Doe my general agent and my true and lawful attorney-in-fact, for me and in my name, place and stead to do and perform any and every act which I could do in person, without limitation or restriction of any kind or nature whatsoever, including, but without in any way limiting the general powers hereby granted, the following:

To receive and receipt for all sums of money, debts, and demands whatsoever which shall be due and owing to me, and to take any and all action necessary for the collection and enforcement thereof; to maintain a bank account, or bank accounts, in my name individually and as agent, tenant in common, and joint tenant; to endorse notes, checks, drafts, bills of exchange, or commercial paper which may require my endorsement for deposit or for collection; to deposit in the accounts hereinbefore referred to and in bank accounts established by me alone or with others, all monies, checks, drafts, commercial paper, and credits received by her; to draw checks against any and all of said accounts; to make payment from my funds in her hands or control of any and all of my debts and obligations which she may deem due and owing at any time, including, out of my own funds, debts and obligations created by her for me; to sell, lease, rent, and mortgage, in whole or in part, any and all real or personal property owned or controlled by me, wherever situated, for such price and on such terms as to her shall seem advisable and, in my name, to make, execute, and acknowledge and deliver good and sufficient deeds of conveyance, leases, contracts, bills of sale, assignments, and mortgages for and of the same; to execute documents by signing my name; to exercise rights with respect to corporate securities; to borrow money and to execute promissory notes or other obligations for the amount so borrowed, and to secure the payment of any and all amounts so borrowed by hypothecation, mortgage and pledge of any property, real or personal, which I may at any time own; to purchase personal property

and services; and to pay taxes, assessments, insurance premiums, costs of repairs; and to execute tax returns of all kinds, both state and federal, and declarations of estimated tax and pay any tax which may be due.

To provide for such companionship for me as will meet my needs and preferences at a time when I am disabled or otherwise unable to arrange for such companionship myself; and to employ and discharge medical personnel including physicians, dentists, nurses, and therapists as my agent shall deem necessary for my physical, mental, and emotional well-being.

To give consent for such medical treatment to be performed on me and to authorize, arrange for, consent to, waive and terminate any and all medical and survival procedures on my behalf, including the administration of drugs, or to withhold such consent; to arrange for my entrance to and care at any hospital, nursing home, health center, convalescent home, retirement home, or similar institution; to enter into such agreements with any such hospital, nursing home, health center, convalescent home, retirement home, or similar institution as my agent may deem appropriate; and to pay all bills for my care as my agent has determined in good faith to be necessary for my well-being.

To employ and discharge such domestic and professional personnel, including lawyers, accountants, brokers, servants, and employees as my agent deems appropriate; and to enforce any and all rights and claims which I may have with respect to Social Security, Medicare, and all other social and medical programs.

Jane Doe shall, by virtue of the authority hereby granted, have the right to enter any safe deposit box, of which I may be a lessee, in any bank, when in the presence of an officer of the bank in which the box is located, and remove all or any part of my property therefrom.

I grant and give to Jane Doe full authority to execute the unlimited, unrestricted powers hereby granted, in her absolute discretion and judgment, and to do and perform any and all acts

incident to the execution thereof as fully as to all intents and purposes as I might or could do if personally present, with full power of substitution.

Jane Doe in acting hereunder, shall act only in the capacity of an agent and attorney-in-fact, and shall have no obligation to advance funds.

The powers and authority hereby granted shall continue in full force until terminated by written notice, served by me on the said Jane Doe, stating the time in the future at which such termination shall become effective.

This power of attorney shall not be affected by my subsequent disability or incapacity.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 198__.

John Doe

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this _____ day of _____, 198__, before me, the undersigned, a notary public in and for the county and state aforesaid, came John Doe, who is personally known to me to be the same person who executed the within and foregoing Power of Attorney, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My appointment expires _____.

DECLARATION

Declaration made this _____ day of _____, I, _____, being of sound mind, in order to willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

City, County and State of Residence: _____

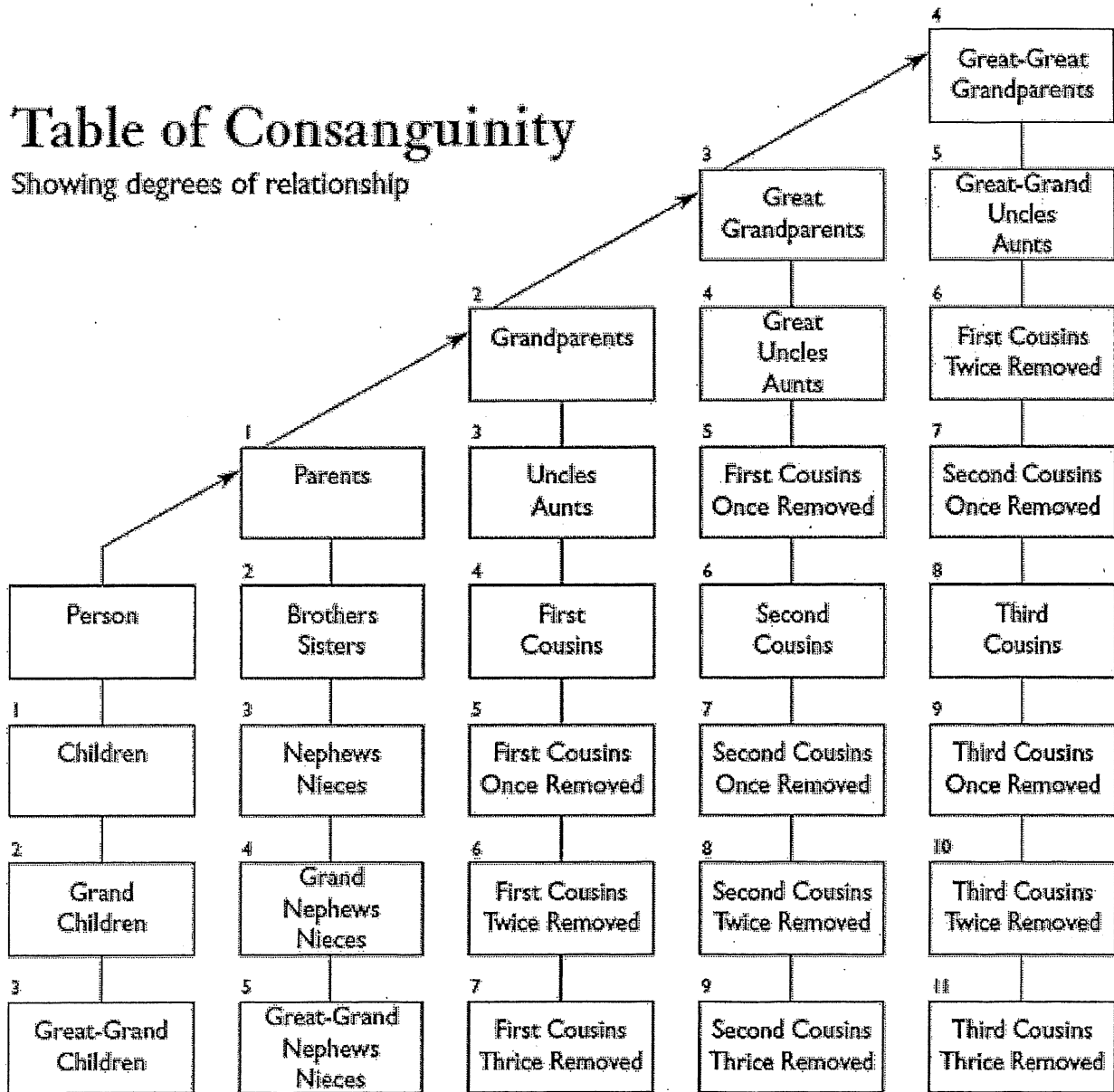
The declarant has been personally known to me, and I believe him or her to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness: _____

Witness: _____

Table of Consanguinity

Showing degrees of relationship



§9.3.1 EXHIBITING CREDITOR CLAIMS

A claim, or “demand” as it is referred to in the probate code, is filed by filing a verified petition for its allowance in the proper district court. K.S.A. 59-2237(a). A copy shall be provided to the personal representative. K.S.A. 59-2237(a). A civil action commenced against the personal representative shall be considered a legally exhibited demand when process is served on the personal representative. K.S.A. 59-2238(2). All probate applications shall be signed and verified. K.S.A. 59-2201. Demands must: (1) identify the petitioner and his or her interest in applying for relief; (2) state the jurisdictional facts; (3) include the facts, in ordinary and concise language, showing that the petitioner is entitled to the relief sought; and (4) include a prayer for relief. K.S.A. 59-2202. See K.S.A. 59-2202 for other petition requirements.

PRACTICE POINTER: On the face of the petition, a creditor must set forth the details of the claim with as much specificity as possible to permit a personal representative to understand clearly what the creditor seeks from the estate. The policy behind the demand statutes and nonclaim provisions is “to protect the executor or executrix from stale claims and to enable him or her to close the estate and distribute the assets without unnecessary delay.” *In Re Estate of Wolf*, 32 Kan. App. 2d 1247, 1252, 96 P.3d 1110 (2004) (citing 3 Bartlett, Kansas Probate Law and Practice § 1316, at 190 (rev. ed. 1953)). In *Wolf*, the Court of Appeals denied, as out of time, a demand for attorney fees to the prevailing party on the basis that the claim made no explicit mention of attorneys’ fees even though the prevailing party provision was part of an agreement that was the subject of the contest and the agreement was an exhibit attached to the original petition. The demand requirement is intended to give the executor “facts and circumstances to understand the exact nature of the claim and to aid in his or her determination as to whether to allow or contest the claim.” *Id.* The *Wolf* decision was affirmed by the Kansas Supreme Court in *In re Estate of Wolf*, 279 Kan. 718, 112 P.3d 94 (2005).

Estate attorneys should scrutinize claims for proper authorization and verification (and if there has been an assignment of the claim, proper evidence thereof). See *In Re Estate of Rickabaugh*, 305 Kan. 921, 390 P.3d 19 (2017) (court’s discretion to allow amendment to correct procedural defects). Although K.S.A. 59-2204 also seems to require a timely setting for hearing, this appears inapplicable to claims (because K.S.A. 59-2237 states that demands are “deemed duly exhibited from the date of the filing of the petition”). *In re Estate of Kruse*, 170 Kan. 429, 434, 226 P.2d 835 (1951), indicated that a claim was not filed too early where an administrator had not yet been appointed or published notice to creditors. It also noted that the probate code did not require a claim to be provided to the personal representative, but that requirement has now been added to K.S.A. 59-2237.

On its own, the court may, or upon request of the creditor or personal representative, the court shall, schedule a hearing on the claim and direct the manner and to whom notice shall be given. K.S.A. 59-2237(a). Any demand not exceeding \$5,000 (other than by the personal representative) that is duly itemized and verified may be paid without petition, notice of hearing, and court allowance. If a written defense is timely filed to a petition for final settlement that takes issue with the claim payment, the burden of proof will be on the personal representative to establish that the debt was due and owing. K.S.A. 59-2237(c). Court supervision is not required for payment of creditors’ claims under the Kansas Simplified Estates Act. K.S.A. 59-3204(b). Verification of a claim may be deemed prima facie evidence of its validity unless a written defense is filed. K.S.A. 59-2237(b). (Generally, proof is required in probate proceedings when there is no verification. K.S.A. 59-2213.)

PRACTICE TAX POINTER: Debt cancellation is generally taxable. The federal government and most financial institutions are required to provide the absolved debtor a Form 1099-C or 1099-A if the cancelled debt exceeds \$600. Whether the 1099 form is received or not, the debtor should report the cancelled debt on Form 1040 or 1041. I.R.C. Sec. 61(a)(12). See I.R.C. Sec. 108 for exceptions. See *E. Bankhead Estate*, 60 T.C. 535 (1973); *M.M. Miller Estate*, 37 T.C.M. 1547 (1978); *Carl T. Miller Trust*, 76 T.C. 191 (1981); Payne, TC Memo 2008-66 (2008).

§9.4 SURVIVAL OF PRE-DEATH CLAIMS

Any action pending against a decedent at death, which by law survives against the personal representative, is considered as exhibited from the time of its revival in the court where it was pending. K.S.A. 59-2238(1). Survival of actions is controlled by K.S.A. 60-1801. Substitution of the personal representative for the decedent is governed by K.S.A. 60-225.