



Family Trusts and Real Property (CORE)

Utah Code Title 75 Section 7

What to watch for when title is held by a family trust-

1 Hour, RC220746

Tucker Hodgson-

Continuing Education Instructor #6728570-CEI0

Who am I?

Not an attorney

Not an accountant/tax professional

I am licensed in escrow & title

Purpose of the class- The Are Not's

Not providing legal advice

Not providing estate planning or financial advice

Not focusing on tax consequences

Not trying to help create your own family or living trust

There are
several types
& purposes of
trusts!

Types of trusts and their purposes

- Irrevocable Life Insurance Trusts
- Children's Trust
- Charitable Remainder Trusts
- Qualified Personal Residence Trust
- Land Trust
- Medicaid Trust

Purpose of the class-The Are's

- **Focus on Title 75 section 7 of the Uniform Trust Code**
- **Define offices, trustee/successor trustee duties**
- **Talk about beneficiary rights**
- **Focus on the most common type of trust**
 - **Family trust or inter-vivos trust.**

Creating a Trust 75-7-402, 404, 406

75-7-402 Requirements for Creation.

- A trust is created only if: settlor has capacity, indicates intention, the beneficiary is definite (or charity, or animal care), the trustee has duties to perform, and the same person is not the sole trustee or sole beneficiary.

75-7-404. Trust purposes.

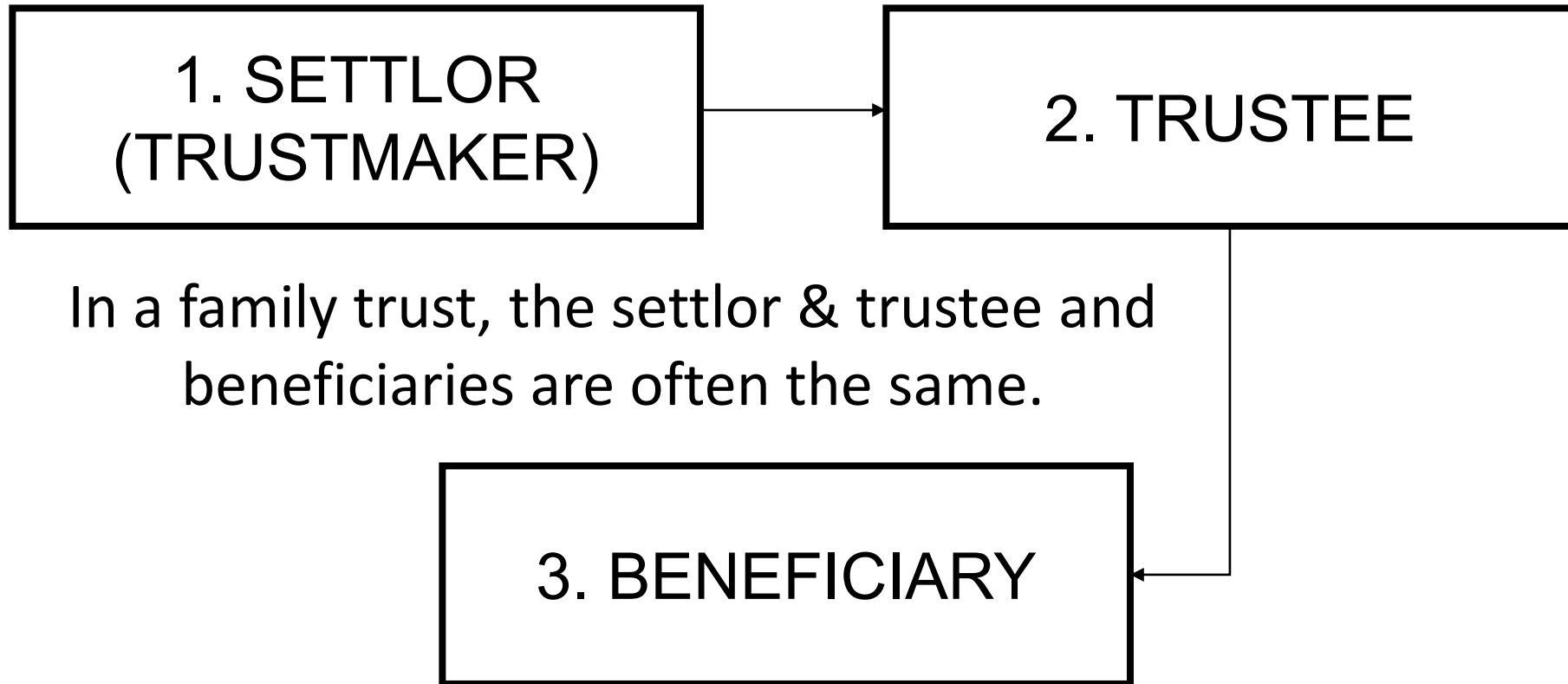
- A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve...

...A trust and its terms must be for the benefit of its beneficiaries.

75-7-406. Creation of trust induced by fraud, duress, or undue influence.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

THREE POSITIONS OF A TRUST



In a family trust, the settlor & trustee and beneficiaries are often the same.

There is a prohibition.

Someone cannot be the only beneficiary and serve as the only trustee.

About a Family Trust

- Revocable Trust*- A trust that can be amended. Property can be added or deleted
 - *Can be revoked by the settlor without consent of the trustee or person holding an adverse interest (75-7-103)

About Family Trusts

- Inter-Vivos trust- a trust made while the settlor is alive.
- Testamentary Trust- a trust made after the death of a testator, specified in his or her will.

Facts About Family Trusts

- Most Trusts are Revocable
 1. Amendable
 2. Replace Trustee
 3. Add/Delete Property
 - Trusts can help avoid probate
 1. Only of assets in the trust
 2. Provides Successor Trustee
-
- Who can sign for the trust?
 1. The Trustee named in the trust.OR
 2. The person named in the declaration of trust.

Why Make a Trust?

Part of Estate Planning

- Makes wishes known

Family Trusts Can Help Avoid Probate

- Only for property in the trust
 - Only for property is transferred to trust
 - Deeds recorded
- Not Recording or Late Recording Consequences
 - Probate/Determination of Heirs
 - Judgments

Funding the Trust

- Recording Deeds
 - Correct Grantor
 - Correct Name of Trust
 - Correct Date of Trust

Use a
Warranty
Deed!

- **Eagle Policy-
Automatic
Trust
Coverage**
- **Beneficial
Interest-
Trust Deed**

Warranty Deed Statutory Covenants

1. **Against Encumbrances-A claim, lien, charge, or liability attached to and binding a real property**
2. **Good Title-The property is clear of all encumbrances.**
3. **Quiet Enjoyment-Covenant to the grantee that they shall enjoy possession of the property without disturbance caused by defective title**
4. **Right to Convey-the grantee has legal right to convey the property.**
5. **Covenant of Fee Simple Title with a right to possession of the property (Seisin)**

Property Vested in a Trust

- Necessary Elements-Deeding out
 - Correct Name of the Trust
 - Date of the trust
 - Date & recording information of the trust took title to the property when deeding from trust

75-7-816 (3) The terms of the trust recited in the deed of transfer, or the instrument recorded under Subsection (1)(b) shall include:

- (a) the name of the trustee;
- (b) the address of the trustee; and
- (c) the name and date of the trust.

Listing and
Selling Trust
Property

Confirm
whether
the trust
holds
title



Before the
listing/offer

Summary of property record problems

- Even though information from county treasurers/assessors and the MLS allow us to compile information with the click of a mouse, it's important to realize that records found through county tax data and the MLS search has limitations
- **1- County Tax information & MLS may be outdated:** Remember that the data from the MLS for taxes and ownership may be more than two years old. Even county tax data can be inconsistent because the ownership shown on their records may be based on who was in title when the taxes were assessed for that year, rather than the current owner of the property.

Summary of property record problems

2- Condensed data: Property ownership data is often condensed or shortened to fit on a computer screen or an envelope. Below is an example of how ownership is shown with the MLS, County Tax Records & how title is held on the deed available through the recorder's office.

- **MLS Tax Data Search:** Ford, Henry W (TE.)
- **Online County Tax Records:** Ford, Henry W. & Wendy L. (TRUST)
- **Vested Owner:** Henry W. Ford and Wendy L. Ford, Trustees of the Henry W. Ford and Wendy L. Ford Revocable Trust, dated March 2, 2001 as to an undivided 40% interest and to Larry T. Ford and Sydney C. Ford, Trustees of the Larry T. Ford and Sydney C. Ford Revocable Trust, dated March 3, 2000, an undivided 60% interest.

This example demonstrates that MLS & county tax data can be limited when it comes to accurately reflecting real property ownership

Who owns the property?

The MLS-

UtahRealEstate.com - Tax Data	
PARCEL # 01-023-0014	
NAME:	OLNEY, WALLACE L & LARAE - TRUSTEES
ADDRESS:	334 W 3200 SOUTH
LEGAL DESCRIPTION:	ALL OF LOT 10, BLK 8, WOODLAND SUB NO 2. CONT. 0.24 ACRES.
PARCEL SPECIFIC INFO:	Total Acres: .24 • Tax Class ID: UT- • General Prop. Type: 111- Single Family Residence - One or more residences per parcel; a home that was originally constructed as a residence but now may have more than one unit. • Specific Prop. Type: 111- Single Family Residence • Tax District: 5 • Update Year: 2009
VALUATION SPECIFIC INFO:	Land Value: \$80,800 • Building Value: \$139,200 • Final Value: \$220,000 • Prior Land Value: \$81,600 • Prior Bldg Value: \$131,675

The Treasurer

Tax Information	
Estimated Delinquency Payoff Amount (for specified Payoff Date):	No delinquencies were found for this serial number at this time.
2012 Tax Statement Recipient:	OLNEY, WALLACE L & LARAE - TRUSTEES 334 WEST 3200 SOUTH BOUNTIFUL, UT 84010
2012 Total Market Value:	\$211,200.00

FastWeb

Property Information			
Owner(s)	Olney Wallace L (te) / Olney Larae (te)	Parcel #	01-023-0014
Property	334 W 3200 S Bountiful, UT 84010	Map Coord	01-023; 01-023
Mailing Addr	334 W 3200 S Bountiful , UT 84010	Census Tract	1264.06
		County	Davis
		Owner Phone	
Legal	ALL OF LOT 10, BLK 8, WOODLAND SUB NO 2. CONT. 0.24 ACRES..		
Lot Number	10	Tract Number	
Block	8	Subdivision	Woodland

When taking a
listing what
documentation
should you ask
for?

1. Copy of Trust

OR

2. Certification of Trust

Certification of Trust § 75- 7-1013

Requirements

1. Statement that identifies the trust exists & has not been revoked
 - Date the trust instrument was created
2. Identity of Settlor
3. Identity and Address of the acting trustee(s)
4. Powers of the trustee
 - How these powers relate to current transaction
5. Revocable vs. Irrevocable trust “and the identity of any person holding a power to revoke the trust”
6. The name in which title to the trust may be taken

Certification of Trust § 75- 7-1013

- (6) **A person who acts in reliance upon a certification of trust without knowledge that the representations contained in it are incorrect is not liable to any person for acting and may assume without inquiry the existence of the facts contained in the certification.** Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
- (7) **A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.**
- (8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in demanding the trust instrument.
- (9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

CERTIFICATION OF TRUST
(U.C.A. §75-7-1013)

File No.

Dated:

I/We, _____,
Trustee(s), certify the existence of the following described Trust and state that he/she/they are all of the
current Trustees and confirm the following facts:

Name of Trust: _____

Date of Trust: _____

Trustor(s)/Settlor(s): _____

The currently acting trustee(s) of the Trust is (are): _____

Trust Identification#/Social Security Number/Tax ID#: _____

Declarant(s) state(s) that the Trust is in full force and effect and has not been revoked, terminated, or
otherwise amended in any manner which would cause the representations in this Certification to be
incorrect. The name(s) and address(es) of all persons who have any power to revoke the Trust are:

The trust is [] Revocable [] Irrevocable (check one) and the following party/parties, if any, is/are
identified as having the power to revoke the trust:

Declarant(s) state that the Trustee(s) have the following powers which may be exercised by the
Trustee(s) by initialing the appropriate line:

_____	_____	Power to acquire additional property?
_____	_____	Power to sell, convey, and exchange property?
_____	_____	Power to borrow money and encumber the trust property and execute
		Mortgages or Trust Deeds?
_____	_____	Power to lease property?

Declarant(s) state that the currently acting trustee has the power to enter into the pending transaction
for which the Certification of Trust is given.

Trusts (what we
need when title
is vested in a
Trust and typical
issues involving a
trust)

- a. Delegation of Authority of Trustee
 - i. Reference UCA §75-7-814/Trustee
 - ii. Reference UCA §75-7-703/Co-Trustees
- b. Certification of Trust (Reference UCA §75-7-1013)
- c. Co-Trustees
- d. Death / Incapacity / Resignation of Trustee

Incapacity of a Trustee or Successor Trustee

- What does the trust say?
- What happens if a trustee is alive, but incapacitated?
- Who is qualified to determine capacity?
 - Doctors – Qualified medical opinion
 - Court Order – Guardianship/Conservatorship?
- "Incapacitated" or "incapacity" is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:
 - (a) receive and evaluate information;
 - (b) make and communicate decisions; or
 - (c) provide for necessities such as food, shelter, clothing, health care, or safety.

Incapacity Affidavit (TRUST)

When recorded mail to:
Affiant Name
Address

AFFIDAVIT OF SUCCESSOR TRUSTEE
UPON TRUSTEE'S INCAPACITY

STATE OF UTAH)
 :ss.
COUNTY OF)

(Affiant Name), being of legal age and being first duly sworn, deposes and states as follows:

1. This Affidavit is given to evidence the incapacity of (Incapacitated Trustee Name), currently serving Trustee of the _____ Trust, under Trust Agreement dated _____, 2___ and to establish (Name(s) of Successor Trustee(s)) as Successor Trustee(s) of said Trust.

2. Affiant hereby certifies that the (Name of current Trustee) listed as Trustee of the (Name of Trust) is one and the same person as (Name of current Trustee), who is named in that/those certain Physician's/s' letter/s, a copy/copies of which is/are attached hereto and by this reference made a part hereof, declaring (Name of current Trustee) to be incapacitated and, in accordance with the terms of the above Trust Agreement, unable to continue serving as Trustee.

3. By virtue of said Physician letters and the above-referenced Trust Agreement, Affiant does hereby declare that the conditions for the appointment of Successor Trustee have been met and that, pursuant to said Trust Agreement, the Affiant is now authorized as Successor Trustee to sell, convey, or otherwise distribute, encumber or manage the Trust assets. This

affidavit is given with specific reference to the sale, conveyance, or other distribution from the Trust Estate of that certain real property located in _____ County, State of Utah and more particularly described as follows:

(Property description)

Tax Parcel Number:

Property Address:

DATED this ____ day of _____, 20 ____.

Name
Successor Trustee

STATE OF UTAH)
 :ss
COUNTY OF)

On the ____ day of _____, 20____ personally appeared before me (Name/s), Successor Trustee/s of the _____ Trust, a Trust Agreement dated _____, the signer/s of the above instrument, who duly acknowledged to me that he/she/they executed the same in accordance with the authority granted by said Trust Agreement.

Notary Public
Residing at _____, Utah

My Commission Expires: _____

AFFIDAVIT OF SUCCESSOR TRUSTEE
UPON TRUSTEE'S INCAPACITY

STATE OF UTAH)
 :ss.
COUNTY OF)

(Affiant Name), being of legal age and being first duly sworn, deposes and states as follows:

1. This Affidavit is given to evidence the incapacity of (Incapacitated Trustee Name), currently serving Trustee of the _____ Trust, under Trust Agreement dated _____, 2___ and to establish (Name(s) of Successor Trustee(s)) as Successor Trustee(s) of said Trust.

2. Affiant hereby certifies that the (Name of current Trustee) listed as Trustee of the (Name of Trust) is one and the same person as (Name of current Trustee), who is named in that/those certain Physician's/s' letter/s, a copy/copies of which is/are attached hereto and by this reference made a part hereof, declaring (Name of current Trustee) to be incapacitated and, in accordance with the terms of the above Trust Agreement, unable to continue serving as Trustee.

3. By virtue of said Physician letters and the above-referenced Trust Agreement, Affiant does hereby declare that the conditions for the appointment of Successor Trustee have been met and that, pursuant to said Trust Agreement, the Affiant is now authorized as Successor Trustee to sell, convey, or otherwise distribute, encumber or manage the Trust assets. This

Death of a Trustee or Successor Trustee

- What does the Trust say?
- Although the creator of a trust is typically the trustee while he or she is alive, a successor trustee(s) steps in to manage the trust when capacity, death, or resignation creates a vacancy.

When Recorded, Return to:

Order No.

AFFIDAVIT OF SURVIVING TRUSTEE

STATE OF UTAH)
) SS/
COUNTY OF)

- I, , being first duly sworn, do hereby depose and say:
1. I am over the years of 18 and a resident of County, Utah and I have person knowledge of the facts contained in this Affidavit.

 2. This Affidavit is given to evidence the death of , (“the Trust”, and to establish as the surviving Trustee of the Trust.

 3. I hereby certify that , listed as one of the Trustees of the Trust, is one and the same person as , listed as the decedent on the attached copy of Certificate of Death.

 4. By virtue of the death of , I do hereby declare that the conditions for sole surviving Trustee have been met and that pursuant to Section of the Trust, I am the sole surviving trustee.

 5. I am now authorized, as the sole surviving Trustee of the Trust, to transfer, convey and deal with any assets of the Trust including the property located at and more particularly described in Davis County, Utah, as follows:

Parcel

Further, affiant sayeth naught.

Dated this day of .

The foregoing instrument was acknowledged and sworn and subscribed to before me this day of , by .

My Commission Expires: _____

Notary Public
Residing at: _____

AFFIDAVIT OF SURVIVING TRUSTEE

STATE OF UTAH)
) SS/
COUNTY OF)

I, , being first duly sworn, do hereby depose and say:

1. I am over the years of 18 and a resident of County, Utah and I have person knowledge of the facts contained in this Affidavit.
2. This Affidavit is given to evidence the death of , (“the Trust”, and to establish as the surviving Trustee of the Trust.
3. I hereby certify that , listed as one of the Trustees of the Trust, is one and the same person as , listed as the decedent on the attached copy of Certificate of Death.
4. By virtue of the death of , I do hereby declare that the conditions for sole surviving Trustee have been met and that pursuant to Section of the Trust, I am the sole surviving trustee.
5. I am now authorized, as the sole surviving Trustee of the Trust, to transfer, convey and deal with any assets of the Trust including the property located at [REDACTED] and more particularly described in Davis County, Utah, as follows:

When Recorded, Return to:

AFFIDAVIT OF SUCCESSOR TRUSTEE

I, , being first duly sworn, do hereby depose and say:

- 1. I have personal knowledge of the facts contained in the Affidavit and I am over the age of 18 years.
- 2. This Affidavit is given to evidence the death of and to establish as the Successor Trustee(s) of the Trust (“the Trust”).
- 3. is my .
- 4. The undersigned hereby certifies that , listed as Trustee in that certain Deed recorded as Entry No. , is one and the same person as listed as decedent on the attached certified copy of Certificate of Death.
- 5. By virtue of the death of , I do hereby declare that the conditions for Successor Trustee appointment have been met and that pursuant to Article Section of the Trust, that I am now appointed as Successor Trustee of said Trust and am authorized to convey any assets of the Trust including the property located at [redacted] which Property is more particularly described as follow [redacted]

[redacted]

[redacted]

Parcel No.:

[redacted]

Dated this day of , .

Subscribed and sworn to and acknowledged before me this day of , 20, by .

Notary Public

My Commission Expires: _____ Residing at: _____

AFFIDAVIT OF SUCCESSOR TRUSTEE

I, , being first duly sworn, do hereby depose and say:

1. I have personal knowledge of the facts contained in the Affidavit and I am over the age of 18 years.
2. This Affidavit is given to evidence the death of and to establish as the Successor Trustee(s) of the Trust ("the Trust").
3. is my .
4. The undersigned hereby certifies that , listed as Trustee in that certain Deed recorded as Entry No. , is one and the same person as listed as decedent on the attached certified copy of Certificate of Death.
5. By virtue of the death of , I do hereby declare that the conditions for Successor Trustee appointment have been met and that pursuant to Article Section of the Trust, that I am now appointed as Successor Trustee of said Trust and am authorized to convey any assets of the Trust including the property located at [REDACTED] Drive, North Salt Lake, UT 84054, which Property is more particularly described as follows:|

Duties of a Successor Trustee

Trustees need to be prepared to give an accurate accounting of every action they take.

Documentation/paperwork/note keeping
is very important

1. Cy Pres-As near as possible to the original intentions when instructions can't be precisely followed.
2. Spendthrift Provisions
 1. Spendthrift- Someone who spends money extravagantly
 2. Wasteful, wastrel, squanderer/compulsive spender

Verify who
can sign for
the Trust

- Trustees or Successor Trustees

One Common Trust
Characteristic

- No Power of Attorney!

TAXPAYER IDENTIFICATION NUMBER

The Trust uses the Social Security number of the Trustor as its Taxpayer Identification Number. No separate tax identification number is required while this Trust is revocable and the Trustors or either of them is acting as Trustee.

ADDRESS OF THE TRUST

The Trust uses the address of the Trustors/Trustees as its location. This address is currently



TRUSTEE AUTHORITY

(1) Subject to state law, a Trustee may appoint an Attorney-in-Fact ("Power of Attorney") and delegate to such agent the exercise of all or any of the powers conferred upon a Trustee.

(2) No purchaser from or other person dealing with a Trustee shall be responsible for the application of any purchase money or thing of value paid or delivered to such Trustee, but the receipt by a Trustee shall be a full discharge; and no purchaser or other person dealing with a Trustee and no issuer, or transfer agent, or other agent of any issuer of any securities to which any dealings with a Trustee should relate, shall be under any obligation to ascertain or inquire into the power of such Trustee to purchase, sell, exchange, transfer, mortgage, pledge, lease, distribute or otherwise in any manner dispose of or deal with any security or any other property held by such Trustee or comprised in the trust fund.

Situations where a trustee signs

- Listing Agreement
- Signing contracts, addenda & disclosures.
- At settlement
- Instructing escrow/closing-
Following Trust Instructions
- Tax Considerations/Consequences
– IRS (EIN or SSN)
- Disbursing trust property
- Final reporting/documentation

Signing For a Trust

- If the trustee or trustees are signing:
 - John Marino, trustee
- If the signer is a Successor Trustee:
 - John Marino, Successor Trustee
- Notary Acknowledgments must also be modified to include the signer, as trustee, and the name and date of the trust.

Signatures on REPC and disclosures

- 1- The seller of the property is the Tucker Hodgson Family Trust dated the 15th day of March 2014.
- 2- George Costanza is the Successor Trustee of the Tucker Hodgson Family Trust dated the 15th day of March 2014.
- 3- Signatures and initials on any contract, agreement, or disclosure from George Costanza are provided solely in his capacity as Successor Trustee and not individually.
- 4- Seller agrees to provide buyer necessary documentation of the office, capacity and authority of the successor trustee to the settlement agent upon request.

Details from the Utah Code



**75-7-
705. Resignation
of trustee.**

- (1) A trustee may resign:
 - (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
 - (b) with the approval of the court.
- (2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
- (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Trustee Resignation

When recorded mail to:
Affiant Name
Address

AFFIDAVIT OF SUCCESSOR TRUSTEE UPON TRUSTEE'S RESIGNATION

STATE OF UTAH)
 :SS.
COUNTY OF)

(Affiant Name), being of legal age and being first duly sworn, deposes and states as follows:

1. This Affidavit is given to evidence the resignation of (resigned Trustee Name), currently serving Trustee of the _____ Trust, a Trust Agreement dated _____, 2____ and to establish (Affiant/s) as Successor Trustee/s of said Trust.

2. Affiant hereby certifies that the (Name of current Trustee) listed as Trustee of the (Name of Trust) is one and the same person as (Name of current Trustee), who executed that certain notarized Letter of Resignation, a certified copy of which is attached hereto and by this reference made a part hereof, declaring that: (Name of Trustee)is resigning his/her appointment as Trustee of the above Trust; he/she executed such letter freely and without duress or undue influence; and in accordance with the terms of the above Trust Agreement, he/she unwilling to continue serving as Trustee.

3. By virtue of said Letter of Resignation and the above-referenced Trust Agreement, Affiant does hereby declare that the conditions for the appointment of Successor Trustee have been met and that, pursuant to said Trust Agreement, the Affiant is now authorized

as Successor Trustee to sell, convey, or otherwise distribute, encumber or manage the Trust assets. This affidavit is given with specific reference to the sale, conveyance, or other distribution from the Trust Estate of that certain real property located in _____ County, State of Utah and more particularly described as follows:

(Property description)

Tax Parcel Number:

Property Address:

DATED this ____ day of _____, 20____.

Name
Successor Trustee

STATE OF UTAH)
 :SS
COUNTY OF)

On the ____ day of _____, 20____ personally appeared before me (Name/s), Successor Trustee/s of the _____ Trust, a Trust Agreement dated _____, the signer/s of the above instrument, who duly acknowledged to me that he/she/they executed the same in accordance with the authority granted by said Trust Agreement.

Notary Public
Residing at _____, Utah

My Commission Expires: _____

Trustee Resignation

(Affiant Name), being of legal age and being first duly sworn, deposes and states as follows:

1. This Affidavit is given to evidence the resignation of (resigned Trustee Name), currently serving Trustee of the _____ Trust, a Trust Agreement dated _____, 2____ and to establish (Affiant/s) as Successor Trustee/s of said Trust.

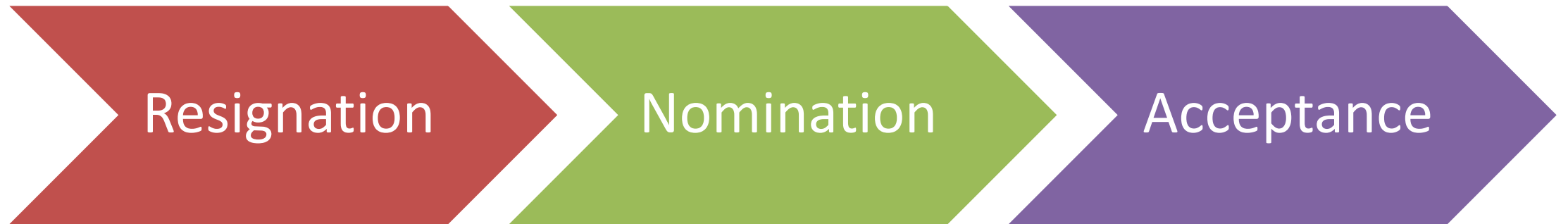
2. Affiant hereby certifies that the (Name of current Trustee) listed as Trustee of the (Name of Trust) is one and the same person as (Name of current Trustee), who executed that certain notarized Letter of Resignation, a certified copy of which is attached hereto and by this reference made a part hereof, declaring that: (Name of Trustee) is resigning his/her appointment as Trustee of the above Trust; he/she executed such letter freely and without duress or undue influence; and in accordance with the terms of the above Trust Agreement, he/she unwilling to continue serving as Trustee.

3. By virtue of said Letter of Resignation and the above-referenced Trust Agreement, Affiant does hereby declare that the conditions for the appointment of Successor Trustee have been met and that, pursuant to said Trust Agreement, the Affiant is now authorized

as Successor Trustee to sell, convey, or otherwise distribute, encumber or manage the Trust assets. This affidavit is given with specific reference to the sale, conveyance, or other distribution from the Trust Estate of that certain real property located in _____ County, State of Utah and more particularly described as follows:

(Property description)

Trustee Resignation



75-7-706. Removal of trustee.

(1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if:

(a) **the trustee has committed a serious breach of trust;**

(b) **lack of cooperation among cotrustees substantially impairs the administration of the trust;**

(c) **because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively,** the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(d) **there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries,** the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

Administering Trust Assets: 75-7-708 & 709

Compensation of Trustee- If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

Reimbursement of expenses- (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(a) expenses that were properly incurred in the administration of the trust; and

(b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Administering Trust Assets: 75-7-801 & 802

Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

Duty of loyalty.

(1) A trustee shall administer the trust solely in the interests of the beneficiaries.

Administering Trust Assets: 75-7-803 to 806

75-7-803. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

75-7-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

75-7-805. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

75-7-806. Trustee's skills.

A trustee who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

Administering Trust Assets: 75-7-803 to 806

75-7-807. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property

75-7-808. Recordkeeping and identification of trust property.

(1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

75-7-809. Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

75-7-810. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee, unless the terms of the trust provide otherwise.

75-7-
811. Duty to
inform and
report.

(1) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, and unless otherwise provided by the terms of the trust a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

75-7-
811. Duty to
inform and
report.

(2) Except to the extent the terms of the trust provide otherwise, a trustee:

(a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

(b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in Subsection (3); and

(d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

75-7-
811. Duty to
inform and
report.

(3) A trustee shall send to the qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the amount of the trustee's compensation or a fee schedule or other writing showing how the trustee's compensation was determined, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee, unless the terms of the trust provide otherwise. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

75-7-
811. Duty to
inform and
report.

(4) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

Duties of a Successor Trustee

- Review Trust Documents
- Gather evidence of authority
 - Death Certificates
 - Declaration of trust
- Coordinate with personal representative
- Keep notes of meetings & conversations

Duties of a Successor Trustee

- Locate trust assets
 - Real Estate
 - Bank accounts
 - Collect death benefits (Social Security)
 - Debts owed to the trust
- Collect life insurance (where trust is named beneficiary)
 - Annuities
 - Retirement
- Obtain date of death values for trust assets

Duties of a Successor Trustee

- Identify trust liabilities
 - What debts are owed
 - Assess tax liabilities
 - Ongoing expenses
- Raise cash necessary to pay debts and ongoing expenses
- File state and federal tax returns

Duties of a Successor Trustee

Locate trust assets-Real Estate

75-7-519. Encumbered assets.

(1) If any assets of the deceased settlor's estate are **encumbered by mortgage**, pledge, lien, or other security interest, **the trustee may pay the encumbrance or any part thereof**, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be in the best interest of the deceased settlor's estate.

(2) Payment of an encumbrance does not increase the share of the beneficiary entitled to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets, provides otherwise.

Duties of a Successor Trustee 75-7- 508

75-7-508. Notice to creditors.

(1) (a) A trustee for an inter-vivos revocable trust, upon the death of the settlor, may publish a notice to creditors:

(i) once a week for **three successive weeks** in a newspaper of general circulation in the county where the settlor resided at the time of death; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (1)(a) must:

(i) provide the trustee's name and address; and

(ii) notify creditors:

(A) of the deceased settlor; and

(B) to present their claims within **three months** after the date of the first publication of the notice or be forever barred from presenting the claim.

www.utahlegals.com

Duties of a Successor Trustee 75-7-508

(2) A trustee shall give written notice by mail or other delivery to any known creditor of the deceased settlor, notifying the creditor to present his claim within 90 days from the published notice if given as provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) or a similar notice.

(3) (a) If the deceased settlor received medical assistance, as defined in Section 26-19-2, at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of Recovery Services, on behalf of the Department of Health, to present any claim under Section 26-19-13.5 within 60 days from the mailing or other delivery of notice, whichever is later, or be forever barred.

(b) If the trustee does not mail notice to the director of the Office of Recovery Services on behalf of the department in accordance with Subsection (3)(a), the department shall have one year from the death of the settlor to present its claim.

Duties of a Successor Trustee 75-7-508

- (4) The trustee shall not be liable to any creditor or to any successor of the deceased settlor for giving or failing to give notice under this section
- (5) The notice to creditors shall be valid against any creditor of the trust and also against any creditor of the estate of the deceased settlor.

Duties of a Successor Trustee

- Invest and manage trust assets until final distribution
- Distribute assets as directed in the trust
- Make final distributions
- Wrap up trust business
- Provide final report to beneficiaries

Final reporting requirements

- Inventory of trust assets
 - Detailed bank account and asset information
- Investment account information
- Information about debts owed by the trust
 - Including payment history from trust accounts
- Documentation of claims against trust assets
- Evidence of filed tax returns
- Verification of out-of-pocket expenditures
- Details of trustee compensation

Don't for a Successor Trustee

- Don't mix the trust's assets with your own
- Don't use assets from the trust for your own benefit (unless the trust authorizes it)
- Don't play favorites with beneficiaries (unless the trust tells you to)
- Don't hesitate in getting professional advice or help (especially legal or accounting help)

Agent Checklist

Pre-Listing

- ☐ Find out who is the vested owner
 - ☐ From the Recorder's office!
- ☐ What type of trust are you dealing with?
- ☐ Always get help or legal advice if you have concerns
- ☐ Who has authority to sign for the trust?
 - ☐ Family Trust documents
 - ☐ Certification of Trust

Agent Checklist

During the Listing/Offer Period

- ☐ Help trustee's out!
 - ☐ Copies of signed disclosures/offers
 - ☐ Title Reports/Inspections
 - ☐ Remind successor trustees they are acting for the trust (Seller disclosures, 1099 form, et)
- ☐ Address buyer-side concerns
 - ☐ Authority of the signers

Agent Checklist

Settlement/Closing

- ☐ Come with their copies
 - ☐ Combine them with closing package
- ☐ Help them request Settlement Statements & 1099 forms early
- ☐ Remind them about having original Death Certificates ready
- ☐ Help them plan for Seller Proceeds
 - ☐ Opening new account
 - ☐ Don't co-mingle funds
 - ☐ Trustees disburse funds from the sale to beneficiaries

Additional Resources

- Resource information about estate planning, trusts, wills & the probate process
 - Utah State Bar
 - <http://www.utahbar.org>
 - Estate planning & Probate page of the Utah State Court System
 - <http://www.utcourts.gov>
 - Title 75 of the Utah Code
 - <http://le.utah.gov/UtahCode/chapter.jsp?code=75>
 - The Utah Association of Realtors® Legal Hotline
 - <https://utahrealtors.com/contact-us/become-a-member/membership-benefits/>

When recorded, mail to:

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER: You should carefully read all information on the second page of this form. You May Want to Consult a Lawyer Before Using This Form. This form must be recorded before your death, or it will not be effective. The beneficiary must be a named person.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed: [insert owner/owners' name(s)]
Mailing Address: [insert owner/owners' mailing address]
Legal Description: [insert legal description]
Parcel No.: [insert parcel number]

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me:
Name: [insert beneficiary's name]
Mailing Address: [insert mailing address for beneficiary, if available]

ALTERNATE BENEFICIARY (Optional)

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me:
Name: [insert alternate beneficiary's name]
Mailing Address: [insert mailing address for alternate beneficiary, if available]

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above. Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____	_____	_____	_____
[insert name of owner]	date	[insert name of owner]	date
STATE OF UTAH)		
	ss:		
COUNTY OF _____)		

On the ____ day of _____, 20____, personally appeared before me _____ and _____
the signer(s) of the foregoing instrument, who duly acknowledged to me that he/she/they executed the same.

Notary Public
My Commission Expires: _____ Residing at: _____

NOTICE TO OWNER: You should carefully read all information on the second page of this form. You May Want to Consult a Lawyer Before Using This Form. This form must be recorded before your death, or it will not be effective. The beneficiary must be a named person.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed: [insert owner/owners' name(s)]

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I designate the following beneficiary if the beneficiary survives me:

Name: [insert beneficiary's name]

Mailing Address: [insert mailing address for beneficiary, if available]

ALTERNATE BENEFICIARY (Optional)

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me:

Name: [insert alternate beneficiary's name]

Mailing Address: [insert mailing address for alternate beneficiary, if available]

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above. Before my death, I have the right to revoke this deed.

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

Q. What does the Transfer on Death (TOD) deed do?

A. When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

Q. How do I make a TOD deed?

A. Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Q. Is the "legal description" of the property necessary?

A. Yes.

Q. How do I find the "legal description" of the property?

A. This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Q. Can I change my mind before I record the TOD deed?

A. Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

Q. How do I "record" the TOD deed?

A. Take the completed and acknowledged form to the office of the county recorder of the county where the property is located. Follow the instructions given by the county recorder to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Q. Can I later revoke the TOD deed if I change my mind?

A. Yes. The TOD deed is revocable. No one, including the beneficiaries, can prevent you from revoking the deed.

Q. How do I revoke the TOD deed after it is recorded?

A. There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each county where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

Q. I am being pressured to complete this form. What should I do?

A. Do not complete this form under pressure. Seek help from a trusted family member, a friend, or a lawyer.

Q. Do I need to tell the beneficiaries about the TOD deed?

A. No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

Q. If I sign a TOD deed and designate my two children as beneficiaries, and one of them dies before me, does the interest of my child that dies before me pass to his or her children?

A. No. Everything will go to your surviving child unless you record a new transfer on death deed to state otherwise. If you have questions regarding how to word a new transfer on death deed, you are encouraged to consult a lawyer.

Q. I have other questions about this form. What should I do?

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When recorded, mail to:

FULL REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER: This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners Making This Revocation: [insert owner/owners' name(s)]
Mailing Address: [insert owner/owners' mailing address]
Legal Description: [insert legal description]
Parcel No.: [insert parcel number]

REVOCATION

I revoke all me previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

[insert name of owner] date [insert name of owner] date

STATE OF UTAH)
)
) ss:
COUNTY OF _____)

On the _____ day of _____, 20_____, personally appeared before me _____ and _____, the signer(s) of the foregoing instrument, who duly acknowledged to me that he/she/they executed the same.

Notary Public
My Commission Expires: _____ Residing at: _____

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

Q. How do I use this form to revoke a Transfer on Death (TOD) deed?

A. Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the office of the county recorder of each county where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

Q. How do I find the "legal description" of the property?

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Q. I am being pressured to complete this form. What should I do?

A. Do not complete this form under pressure. Seek help from a trusted family member, a friend, or a lawyer.

Q. Can this form be used for a partial revocation of a previously filed TOD deed?

A. No. This form is to be used for full revocation of a deed. In the case of a partial revocation, a new TOD deed must be filed.

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Mailing Address: [insert owner/owners' mailing address]

Legal Description: [insert legal description]

Parcel No.: [insert parcel number]

REVOCATION

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SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

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Q. I have other questions about this form. What should I do?

A. This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

When recorded mail to:

**Termination of Interest Affidavit
(Transfer on Death Deed)**

State of Utah)
) ss
County of _____)

I, _____ [insert name of affiant], being of legal age and being first
duly sworn, depose and state as follows:

_____ [insert name of the deceased person], the decedent in the
attached certificate of death or other document witnessing death is the same person as
_____ [insert name of the deceased person] named as a party
in the document dated _____ [insert date of document] as Entry No. _____, in Book
_____, at Page _____ in the records of the _____ County Recorder.

This affidavit is given to terminate the decedent's interest in the following described property located in
_____ County, State of Utah:

[insert legal description of the property]

Dated this _____ day of _____, 2018.

[type name of affiant]

Subscribed to and sworn before me this _____ day of _____, 2018.

Notary Public

I, _____[insert name of affiant], being of legal age and being first duly sworn, depose and state as follows:

_____ [insert name of the deceased person], the decedent in the attached certificate of death or other document witnessing death is the same person as _____ [insert name of the deceased person] named as a party in the document dated _____ [insert date of document] as Entry No. _____, in Book _____, at Page _____ in the records of the _____ County Recorder.

This affidavit is given to terminate the decedent's interest in the following described property located in _____ County, State of Utah:

[insert legal description of the property]

Backman File No.

Vesting Instruction / Hold Harmless (Transfer on Death Deed)

Backman Title Services, Ltd (Backman) does not make estate planning recommendations and does not recommend changes to ownership or vesting of real property.

I understand and agree that any decision concerning the use of a *Transfer on Death Deed* and the ownership/vesting of real property involves important legal and tax issues that require the consultation of independent legal and tax experts who are retained solely to represent my interests.

The undersigned hereby acknowledge that he/she was given ample opportunity to consult with independent legal and tax experts of his/her own choosing regarding the use of a *Transfer on Death Deed* and the ownership/vesting of the subject real property.

Based upon consultations with independent legal and tax experts of my own choosing, the undersigned wishes to convey title to the subject real property to certain beneficiaries pursuant to a *Transfer on Death Deed* and hereby instructs Backman to prepare a *Transfer on Death Deed* with the following individuals listed as beneficiaries:

_____	_____
_____	_____

The undersigned hereby agree to hold Backman harmless from any and all loss, costs, damages, claims, demands, and charges whatsoever, including but not limited to attorney's fees and costs, associated with or otherwise relating to, directly or indirectly, the undersigned's decision to utilize or make use of a *Transfer on Death Deed*, or otherwise change ownership/vesting of the real property.

Dated this ____ day of _____, 2018.

Grantor

Grantor

Backman File No.

Vesting Instruction / Hold Harmless (Transfer on Death Deed)

Backman Title Services, Ltd (Backman) does not make estate planning recommendations and does not recommend changes to ownership or vesting of real property.

I understand and agree that any decision concerning the use of a *Transfer on Death Deed* and the ownership/vesting of real property involves important legal and tax issues that require the consultation of independent legal and tax experts who are retained solely to represent my interests.

The undersigned hereby acknowledge that he/she was given ample opportunity to consult with independent legal and tax experts of his/her own choosing regarding the use of a *Transfer on Death Deed* and the ownership/vesting of the subject real property.

Based upon consultations with independent legal and tax experts of my own choosing, the undersigned wishes to convey title to the subject real property to certain beneficiaries pursuant to a *Transfer on Death Deed* and hereby instructs Backman to prepare a *Transfer on Death Deed* with the following individuals listed as beneficiaries: