

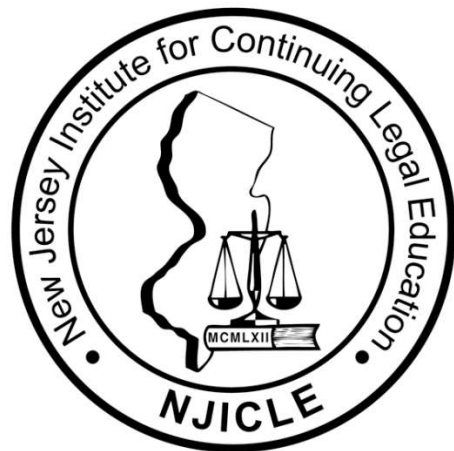
JUDICIAL ACCOUNTINGS IN THE PROBATE PART

2024 Seminar Material

MI1367.24

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JUDICIAL ACCOUNTINGS IN THE PROBATE PART

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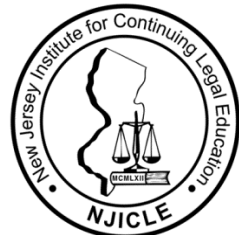
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JUDICIAL ACCOUNTINGS IN THE PROBATE PART

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Program Description

Introduction to Judicial Accounting's aim is to cover topics on New Jersey judicial accounting procedure, Court Rules, statutes, and case law that are essential to an attorney's probate practice.

This program is for attorneys advising clients on estate administration and settlement. It aims to explain the terms, concepts, and procedures involved in fiduciary accounting and estate administration to help you establish the valuations and allocations of assets, make the correct distributions, and prepare and file a judicial accounting with the proper schedules.

A fiduciary's accounting is meant to present a report of material information detailing all the transactions undertaken by an estate within a particular reporting period. It requires a sufficient level of detailed record-keeping. It reveals whether the fiduciary (an executor, administrator, trustee, conservator, or guardian) has properly administered the estate, trust, conservatorship, or guardianship or mismanaged or mishandled estate assets.

In presenting an account to the court, a fiduciary's objective is to be discharged from liability for the events disclosed. It requires that the account be complete and understandable to the parties in interest, the Surrogate staff, and the court. Rule 4:87 is the touchstone for presenting an understandable account along with the pertinent Will or trust provisions, any court orders issued, and Title 3B govern accountings.

The presentation is supplemented by appendices that include guidelines for preparing an account, a checklist of review questions, and sample fiduciary accounts.

The presentation's three primary groupings are:

Background: Fiduciary Duties, Accounting Terms and Terminology, Related Accounting Statutes, Court Rules, and Case Law, Prudent Investor Act, Principal and Income Act, Informal Accounting (Nonjudicial Settlement) and Formal Accounting (Judicial Settlement), Actions to Compel Accounting (Rule 4:87-1(b)), Insolvent Estates (Rule 4:91) Fiduciary Discharge Accounting Requirements.

Decedent's Estate, Trust, and Guardianship Accounting Procedures: Verified Complaint, Account Format, Guidelines for Preparing a Judicial Account, Account Vouchers, Order to Show Cause, Parties in Interest, Attorney Legal and Professional Agent Compensation, Fiduciary Commissions, Proof of Service.

Judicial Review: Role of Surrogate, Surrogate Audit (Rule 4:87-6), Examination of Account on Behalf of Clients, Exceptions and Objections (Rule 4:87-8), Discovery, Contested and Uncontested Accounting Hearings, Judgment/ Consent Judgment, Post-Trial Practice/ Appeals.

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Background

Fiduciary Duties

A fiduciary is expected to act honestly, fairly, and ethically. A fiduciary must act in good faith and represent the best interests of the heirs, devisees, beneficiaries, or ward during the estate administration. A fiduciary must also keep interested parties informed of the status of the estate. A fiduciary must diligently move the estate through the probate process, and competently manage the estate's assets.

"A fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all the beneficiaries, except to the extent that the terms of the trust or the Will manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries." N.J.S. 3B:19B-3(b).

A fiduciary's responsibilities include:

- ☐ Locate, marshal, and inventory the real and personal assets of the estate;
- ☐ Manage the estate assets including bank accounts, stock, bonds, retirement accounts, and pensions;
- ☐ Maintain continuous, comprehensive, detailed, and accurate records of the management of assets;
- ☐ Pay or decline to pay debts;
- ☐ File and pay taxes that may be due out of estate assets;
- ☐ Prudently manage the investment of assets;
- ☐ Sell or distribute in-kind personal and real property;
- ☐ Manage the testator's business;
- ☐ Communicate with the beneficiaries regularly to keep them informed of important financial matters;
- ☐ Account and wind up and settle the estate.

Accounting Terms and Terminology

Terminology in the probate accounting practice is somewhat unique and practitioners must be familiar with the terms. Appendix B has an explanation of common terms peculiar to judicial accountings.

Accounting Court Rules, Statutes, and Case Law

See Appendix A has a compilation of statutes, court rules, and case law associated with estate administration and estate accountings.

Inventory

N.J.S. 3B:16-2 states that a personal representative may be required by the court to "make and file a true inventory of the real and personal property which has come to his or hands, or into the hands of any other person and cause an appraisal to be performed by two impartial persons".

An inventory identifies the estate's assets and property, as well as determine their value. It defines what makes up the decedent's estate, and the value of the estate. Common types of property that are included in an estate inventory are (1) bank or investment financial accounts, (2) stocks and bonds, (3) vehicles (including cars, boats, or airplanes), (4) business interests, (5) Real estate, (6) other personal property or household items (clothing, jewelry, antiques, collectibles, and other household items of monetary value). Financial market reports or appraisals by professional appraisers may determine value.

An inventory must list all assets with an adequate description so that the asset can be located and identified (addresses of properties, year, make, and model of vehicles, insurance company name and policy number, and so forth). Life insurance policies are listed at cash value.

Prudent Investor Act N.J.S. 3B: 3B:20-11.1 to -12

Historical background. The "prudent man" rule governing trust investment originated in the early 1820s. The seminal case, *Harvard College v. Armory*, 26 Mass. 446, 469 (1830), rejected the legal list approach and held that the trustee must observe how men of prudence, discretion, and intelligence manage their affairs, not with speculation, but regarding the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.

Preserving principal (that benefits remaindermen), to the detriment of income (that negatively impacts income beneficiaries) was the guiding principle for trustees. "The primary purpose of a trustee should be to preserve the trust estate, while receiving a reasonable amount of income, rather than to take risks to increase the principal or income. In other words, a trustee must be not merely careful and skillful but also cautious." *Commercial Trust Co. v. Barnard*, 27 N.J. 332 (1958) (trustee invested in low-yield tax-exempt governmental securities for beneficiaries in high tax brackets.)

The fundamentals of the prudent man rule did not greatly change from its first expression in 1830 until 1990. In 1994, the Uniform Prudent Investor Act (UPIA) was promulgated. Personal trust portfolios would be formulated based on modern portfolio theory, free of any inhibitions previously held concerning the impropriety of particular investments or investment strategies.

Prudent Investor. The key insight of modern portfolio theory is to differentiate between two kinds of investment risk in portfolio construction: market risk and idiosyncratic risk. Market risk is inherent to participating in the market. Generally, to obtain a greater expected return, an investor must take on additional market risk. Idiosyncratic risk is particular to a given investment, reflecting the fact that different investments react differently to changes in circumstances. Each investment must be evaluated considering its contribution to overall portfolio risk and expected return. By diversifying across different investments with imperfectly correlated idiosyncratic risks, an investor can minimize idiosyncratic risk.

The Prudent Investor Act codifies modern portfolio theory. First, "[a] trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust." Second, a trustee must "diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying".

Prudent portfolio construction requires: (1) assessing the individual investor's risk tolerance and investment purposes;

(2) choosing a portfolio with a commensurate level of market risk and expected return; and (3) diversifying away, to the extent feasible, unnecessary idiosyncratic risk. Prudent portfolio management also requires ongoing monitoring and periodic rebalancing in the face of changing circumstances.

Principal and Income Act N.J.S., 3B:19B-1 to -10

Trusts and estates have two classes of beneficiaries, those with an interest in the income and those with an interest in the corpus. There is an inherent conflict between the beneficiaries, because a receipt paid to an income beneficiary will not be paid to a principal beneficiary, and vice versa.

Because of this built-in conflict, it is reasonable for the fiduciary to deal with accusations from the beneficiaries that they are being shortchanged. The Uniform Principal and Income Act provides rules for deciding whether a charge (receipt) or allowance (disbursement) should be charged to income or corpus.

Properly allocating corpus and income charges and allowances are required to accurately calculate fiduciary accounting income and to correctly calculate the taxation of the estate or trust.

Following is a summary listing of principal and income charges and allowances assigned between corpus and income:

Charges (Receipts)

Receipts from Entities. Stock dividends, interest earned on bank accounts or bonds, rents from real estate owned by the trust or estate, and earnings received from a business the trust or estate owns are income of the trust or estate.

Distribution from Entities. Capital gain dividends, a return of capital, or a liquidating distribution, is allocated to the corpus.

Return of Capital. A return of capital is allocated to the corpus. The acquisition cost is reduced by the return on capital.

Extraordinary Dividends. An extraordinary dividend is typically allocated to the corpus because its payment typically causes the share price of the stock, to drop.

Rent Receipts. Property rent payments are allocated to income. However refundable deposits are allocated to corpus. If a

deposit is forfeited, this amount is reclassified as income. Rent amounts reimbursing for capital improvements (depreciation, amortization, or depletion) are transferred from income to corpus.

Receipts from insurance or other Refunds. An insurance payment or other refund for the loss of a corpus asset is assigned to the corpus. If the payment is compensation for lost income, it is assigned to income.

Receipts from asset liquidation. Proceeds received from the sale or exchange of an asset are allocated to the corpus.

Receipts Customarily Apportioned

Deferred Compensation, Annuities, and Similar Payments;

Receipts from Liquidating Assets (an asset whose value diminishes or terminates because the asset is expected to produce receipts for a period of limited duration, such as leaseholds, patents, trademarks, copyrights, royalty rights, and rights to receive payments for more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance);

Minerals, Water, and Other Natural Resources; Timber; Derivatives and Options.

Allowances (Expenses)

Expenses Related to Administration. Expenses for trustee fees, accounting fees, legal fees, or taxes, are charged to income.

Expenses Related to the sale or purchase of corpus assets are charged to corpus.

Expenses Related to Interest. Interest on an estate or trust's debts is charged to income.

Expenses Related to Ordinary Repairs. Ordinary repairs to the property are charged to income.

Interest Related to Capital Improvements. Interest on capital improvements is charged to the corpus.

Expenses Related to Capital Improvements. Enhancement or restoration of the value or usefulness of corpus assets is charged to corpus.

Expenses related to the sale or purchase of corpus assets. Commissions, transfer taxes, title insurance, surveys,

appraisals, or other costs related to the sale or purchase of corpus assets, such as stocks, bonds, real estate, or business interests are charged to corpus.

Expenses related to Litigation: Legal fees, court costs, settlements, or judgments related to litigation involving a corpus asset or claim are charged to the corpus.

Expenses related to the termination of the trust. Fees and costs associated with winding up the trust affairs and distributing the remaining assets to the beneficiaries are charged to the corpus.

Trustee's Power to Adjust N.J.S. 3B:19B-4

A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income. A distribution to the income beneficiary or beneficiaries in any accounting period to an amount not less than three percent nor more than five percent, . . . shall be presumed to be fair and reasonable to all of the beneficiaries.

Informal Accounting (Nonjudicial Settlements) and Formal Accounting (Judicial Settlement)

Most estates are settled by a fiduciary providing the interested parties with an informal account, i.e., non-judicially rather than through a judicial settlement procedure, due to the additional expense, delay, and publicity of judicial accountings.

If all interested parties are satisfied that the account accurately reflects the actions of the fiduciary, Refunding Bond and Releases can be signed which acknowledge that the account is accepted and releases the fiduciary from further liability. It provides a simple and expeditious way for an estate to be settled. Because it is not being presented for formal court approval, the format may vary considerably.

The documents typically associated with an informal accounting are:

- An 'informal account' can run the gamut from full schedules of an account in judicial format to just about anything the interested parties find acceptable, e.g.,

statements of assets on hand at the beginning and end of the accounting period.

☐ A Refunding Bond and Release. N.J.S. 3B:17-1. A Refunding Bond and Release that is associated with an informal accounting should stipulate:

- ☐ Indemnity (refunding) language;
- ☐ Receipt of an informal account;
- ☐ Waiver of a formal judicial accounting;
- ☐ Receipt of a distribution;
- ☐ Discharge the fiduciary and, if applicable, the surety from liability for the transactions identified in the informal account;
- ☐ If applicable, cancel the surety bond.

A "formal" accounting is an accounting filed with a probate court that is subject to court approval. Formal judicial accountings incur additional estate costs to draft a verified complaint, order to show cause, serve the interested parties, and appear on the return date. The Rules of Court control the format.

A "formal" accounting allows the court to review all actions taken by the fiduciary. A "formal" accounting allows interested parties to file 'exceptions' to the fiduciary's administration. When the account is allowed all activity set forth therein is deemed allowed unless noted otherwise.

Often accounting litigation is resolved with a settlement and the filing of a consent judgment. In addition to the settlement terms, a consent judgment should include: approving the account as reported; discharging the fiduciary; and, if applicable, discharging the surety and canceling the surety bond.

Fiduciary Accounting Unavoidable

Where discrepancies or breaches of fiduciary duties are suspected, a formal judicial accounting is unavoidable because the court must be called upon to review the account and any exceptions filed by interested parties and determine appropriate remedies such as surcharging the fiduciary to repay any damages incurred by the estate.

Following are some situations when a formal judicial accounting is preferable or unavoidable.

- ☐ When an interested party petitions the court to compel the fiduciary to provide an accounting, usually because of a disagreement or suspicion about the fiduciary's actions or decisions.
- ☐ Where an interested party is under a disability.
- ☐ Where an estate terminates and an intransigent beneficiary derails closure through an informal accounting by withholding their consent.
- ☐ Where a fiduciary has a conflict of interest.
- ☐ Where a change of fiduciary occurs, for example, a fiduciary for a deceased fiduciary may be required to account.
- ☐ A fiduciary who wishes to resign and be discharged from any potential liability involving matters relating to his or her administration of the estate.
- ☐ Where a fiduciary is discharged with or without cause.
- ☐ Where significant amounts of money are involved, a fiduciary may initiate an accounting because he or she wants to obtain approval from the court for his or her actions or decisions to avoid potential disputes with the parties in interest and the certainty of discharge from liability which is available with a judicial accounting.

Surrogate Certificate/ Surety Bond Cancellation

Upon the filing of the Refunding Bond and Releases from all parties in interest, the Surrogate will issue a 'Certificate of Release' that may be presented to the surety company to cancel the bond.

Action to Compel Accounting (Rule 4:87-1(b))

Any interested party may file a complaint to compel a fiduciary to settle the estate's account and to provide a comprehensive account of the management and administration of an estate or trust. N.J.S. 3B:17-2; Rule 4:87-1(b).

If less than one year, cause for proceeding, such as any misconduct or mismanagement by the fiduciary, must be alleged. After one year cause is not required.

Only a party in interest or judgment creditor (unsatisfied) has the right to demand an accounting. For an estate or trust with a charity as a devisee or beneficiary, the New Jersey Attorney General is an interested party.

Frequently, in addition to seeking the fiduciary to account, an interested party may seek to compel distribution, the removal of the fiduciary, and the appointment of a successor.

Insolvent Estates (Rule 4:91; N.J.S. 3B:22-32 to -38)

A personal representative must file a complaint with a list of creditors, the amount of each claim, whether it has been allowed or rejected, and whether it is entitled to a statutory priority. Rule 4:91. The personal representative must also file an accounting with the complaint. Rule 4:91-1(b). N.J.S. 3B:22-2 establishes priorities for claims against an insolvent estate.

Accounting Pleadings

Verified Complaint

A fiduciary must file a verified complaint, order to show cause, along with an account.

The verified complaint must specify the period covered by the account and contain a top-line summary of the account's corpus and income charges (receipts and capital gains), additions to corpus charges, corpus and income allowances (disbursements, distributions, and capital losses), and the balance on hand at the end of the account, all expressed in dollar values, supported by schedules in the account. Rule 4:87-2.

AS TO CORPUS

Corpus Charges	\$
Additions to Corpus	\$

Corpus Allowances	\$
Balance of Corpus	\$

AS TO INCOME

Income Charges	\$
Income Allowance	\$
Balance of Income	\$
Balance on Hand	\$

The verified complaint must contain the names and addresses of all persons interested in the account, including any surety, and specify if any are minors, mentally incapacitated persons, or developmentally disabled.

The name, address, and interest of the parties in interest in this matter are as follows:

Name	Address	Interest
Susie Surviving Spouse	2024 Chancery Lane, Trenton, NJ	Life Income Beneficiary
Faithful Daughter	1001 Market Street Philadelphia PA	Remaindermen
Spoiled Grandson	1001 Market Street Philadelphia PA	Contingent Remaindermen

All of the above individuals are of full age and not under a disability except: [None] or [Name, [a minor] [an incapacitated person] [a developmentally disabled person]].

The complaint will seek an order from the Superior Court, Chancery Division, Probate Part that (a) approves the fiduciary's account, (b) approves the payment of all professional fees and costs incurred by the estate; (c) approve the fiduciary's compensation (commissions); (d) authorize the fiduciary to pay the Surrogate's audit and page fees, (e) discharge the fiduciary from any further liability to the estate or its beneficiaries and (f) if applicable, discharge the fiduciary's surety bond.

See Appendix I for a sample Administrator's verified complaint.

Order to Show Cause

The order to show cause must comport to the Probate Part form promulgated by the Administrative Office of the Courts (Order to Show Cause Probate Part Action CN: 112150. The proposed order to show cause must include all relief requested in the verified complaint's demand for relief clauses. It will direct service of the pleadings and account on all interested parties.

Accounting Parties in Interest

The complaint must list all persons/parties entitled as beneficiary, devisee, distributee, trustee, or others entitled to a share of the estate with their addresses, the nature of their interest, and whether of full age and whether under a disability.

- ☐ Individuals with legal or beneficial interests (devisees, intestate distributes, guardians, trustees, income beneficiaries, remaindermen; contingent remaindermen et cetera)
- ☐ Surety
- ☐ Non-joining co-fiduciaries
- ☐ Successor fiduciary
- ☐ Attorney General for charities
- ☐ Unclaimed Property Administrator for unknown heirs, or known heirs, devisees, or beneficiaries who cannot be located (service on Attorney General)
- ☐ Fiduciary, heir, or devisee for deceased devisee, heir, or beneficiary
- ☐ Virtual Representative for minors or unborn parties
- ☐ The legal guardian of a minor or adjudicated incapacitated person
- ☐ Guardian ad litem for minors or unadjudicated incapacitated persons without a guardian
- ☐ Fiduciary of deceased fiduciary's estate

Guardian ad Litem and Virtual Representation (Rule 4:26)

A Guardian Ad Litem must be appointed for interested parties under a disability who do not have a legal guardian. Often this involves a parent pursuing judicial settlement of an

account where their issue is a contingent remaindermen and thus a conflict of interest is created.

Virtual representation includes representation by someone with a substantially identical interest. Virtual representation permits non-parties to be bound by a judgment in a prior case if his/her interests are deemed to have been sufficiently aligned with a party in the prior case. Often with trustee accountings, it is necessary to have unknown contingent remaindermen represented. For example, the remaindermen representing their minor or unborn issue who are contingent remaindermen. N.J.S. 3B:31-13 to -17.

Guardian ad litem should be appointed on or before the entry of the order to show cause for persons under disability. A virtual representation order should be issued before the return date of the order to show cause.

Proof of Service

Proof of service of order to show cause must be filed with the Surrogate at least ten days before the return date.

Basic Format of an Account

Rule 4:87-3, Form of Account, stipulates the format of a judicial accounting. An accounting separately assigns charges and allowances to corpus and income. Rule 4:87-3 mandates a set of statements that must be included in the account.

The basic structure of fiduciary accountings is:

The Fiduciary Charges Himself as to Corpus

SCH. A Corpus Charges (Property on hand at the beginning of account)

SCH. B Additions to Corpus

SCH. C Corpus Capital Gain on the Sale or Redemption of Corpus

SCH. D Balance of Corpus

The Fiduciary Seeks Allowances as to Corpus

SCH. E Corpus Allowances (Disbursement, Distributions, and Transfers to Income)
 SCH. F Corpus Capital Losses on the Sale or Redemption of Corpus
 SCH. G BALANCE OF CORPUS

The Fiduciary Charges Himself as to Income

SCH. H Income Charges (including net income from trade or business)

The Fiduciary Seeks Allowances as to Income

SCH. I Income Allowances (Disbursement, Distributions, and Transfer to Corpus); including net loss from trade or business)
 SCH. J BALANCE OF INCOME

Rule 4:87-3 Statements

SCH K. Rule 4:87-3(b) (1) Assets on Hand
 SCH L Rule 4:87-3(b) (2) All changes made in investments and assets
 SCH M Rule 4:87-3(b) (3) Items apportioned between principal and income
 SCH N Rule 4:87-3(b) (4) Transfer Inheritance or Estate tax apportionments
 SCH O Rule 4:87-3(b) (5) Counsel fees, commissions, and administrative expenses paid from corpus, but allocated to income
 SCH P Rule 4:87-3(b) (6) Corpus Commission Computation

Verification. All accountings shall be verified by the fiduciary filing the account.

Vouchers

Substantiating Documents. Unless otherwise ordered by the court, vouchers are not filed with the account. Rule 4:87-5. Upon reasonable written request, the fiduciary shall make the substantiating documents available for examination to persons entitled to receive or inspect the accounting, such as canceled checks, invoices, bank and investment statements, appraisals, et cetera.

The attachment of extraneous documents to an accounting should be used sparingly and, if used, the complaint should identify the document and why it is necessary for the court to consider it. Pleadings and documents that are in the record should not be duplicated. It is acceptable practice to refer to a previously filed document or pleading, or a portion of a document or pleading, in subsequent filings. Note. The Surrogate may charge \$5 per page for extraneous documents that the Surrogate staff and the court likely will not read.

Guidelines for Preparing a Judicial Account

- ☐ Accounts shall be stated in a manner understandable by persons unfamiliar with practices and terminology peculiar to the administration of estates, trusts, guardianships, and conservatorships.¹
- ☐ A fiduciary's account shall contain sufficient information to put parties interested in the account on notice of all significant transactions affecting administration during the accounting period.
- ☐ The caption must identify the court, the attorney's name, bar number, address, telephone number, and the name of the estate or trust,
- ☐ The account caption shall identify the sequence of the account (first, second, et cetera) and identification as an intermediate or final account.
- ☐ Accounts are reported for a specified period, with a stated beginning and closing date.
- ☐ Accounts are reported on a cash basis.
- ☐ Every financial transaction must be recorded under the appropriate account schedule.
- ☐ The first account of a fiduciary shall detail the items received by the fiduciary and for which the fiduciary is responsible. The account shall not simply refer to the total amount of an inventory filed separately or assets described in documents other than the account itself.

¹ NATIONAL FIDUCIARY ACCOUNTING STANDARDS PROJECT, 1983 REPORT OF FIDUCIARY ACCOUNTING STANDARDS COMMITTEE

□ In second and subsequent accounts the opening balance shall list assets separately and not as a total value.

□ Changes that occur to an estate or trust property generally fall into three categories: (1) the absence of an estate asset due to sale, liquidation, transfer, exhaustion, or otherwise); (2) the combination or division of an asset, such as accounts or trusts; and (3) changes in market value for investment accounts.

□ Transactions shall be described in sufficient detail to give parties interested in the account notice of their purpose and effect.

□ Transactions must report charges by source and all allowances by the payee or beneficiary.

□ A Fiduciary account shall include both the carrying (inventory) value and the current market value of an asset at the beginning and close of the accounting period.

□ Carrying (inventory) value (a) for a decedent's estate is the value of the property at the date of death; (b) for a trust the carrying (inventory) value of the prior fiduciary from whom the property was received; and (c) for a guardian or conservator is the value of the property at the date of appointment.

□ value based on the date of death may be adjusted to reflect federal valuation elections or changes on the audit of the estate or inheritance tax returns, upon appropriate application to the Court.

□ A successor or substitute fiduciary may adjust the carrying (inventory) value of assets to reflect values at the start of the administration of, or subsequent receipt of assets by, the successor or substitute fiduciary, upon appropriate Motion to the Court.

□ Assets received in kind by a fiduciary in satisfaction of a devise or distribution shall be carried at the value used for such disbursement.

□ "Cost" shall be the consideration given or paid concerning property initially acquired by the fiduciary.

□ Carrying (inventory) value shall not normally be adjusted for depreciation except upon specific written order of the Court.

□ A fiduciary's final account must establish that there are no unsettled liabilities or the identity of any liabilities that remain as of the date the fiduciary's appointment terminates. A final account should include the proposed distribution of the balance on hand.

CHARGES

A fiduciary 'charges' himself or herself with all assets acquired, all income received, and financial capital gains (realized and unrealized). All charges must be subtotaled by class, with all subtotals added to determine the total corpus and income receipts during the accounting period. The audit standards imposed by the Supreme Court cannot be performed by the Surrogate when a receipt journal is presented.

The rules for allocating corpus and income charges and allowances are laid out in the Uniform Principal and Income Act.

CORPUS CHARGES

□ Corpus charges must be reported by (1) the date of receipt, (2) a description of the property, and (3) the property's value

□ The value of the real estate, a closely held business, or other assets without a ready market should be set by a professional appraiser (may be satisfied by a good faith estimate by the fiduciary).

□ Corpus charges include items such as refund checks, and uncashed checks at the decedent's death, and generally consist of assets that the decedent owned or was entitled to receive as of the date of death, even if not received until after the date of death (such as refunds).

□ Miscellaneous tangible personal property may be stated in appropriate summary form categories (groups). Valuable tangible personal property shall be stated individually.

□ Reporting an asset's liquidation price as the corpus received is improper, e.g., a realty's sales price. The fair market value of an asset should be reported, so interested parties can assess if any subsequent liquidation price is reasonable.

□ All corpus charges must be totaled and shown in the schedule.

INCOME

Income charges are sums of money that are earned on assets belonging to the estate or trust.

INCOME CHARGES

- ☐ Income charges must be reported by category and chronologically within categories. (such as interest received on various bank accounts, dividends, and miscellaneous charges).
- ☐ Income charges must be reported by (1) the date of receipt, (2) the payer, (3) a description by type of receipt (interest income, dividends, social security, and so forth), and other details to identify the income source (such as account numbers), and (4) the amount.
- ☐ The collections or payments received for book accounts, notes, or installment obligations (whether secured or not) must be reported to permit reconciliation of the balances reported on schedules of assets on hand at the beginning and the close of the accounting period.
- ☐ The net income or loss from a trade or business, which is reported on Schedule C or F of the federal income tax return, is reported as an income charge or allowance.
- ☐ All corpus charges must be totaled and shown in the schedule.

ALLOWANCES

A fiduciary seeks 'allowance' (approval) for all expense disbursements paid, distributions made, and financial capital losses (realized and unrealized). All allowances must be subtotaled by class, with all subtotals added to determine the total corpus and income allowances during the accounting period. The audit standards imposed by the Court cannot be performed by the Surrogate when a running checkbook or disbursement journal is presented.

CORPUS ALLOWANCES

- ☐ Allowances are reported by categories and chronologically within categories.
- ☐ Disbursement must report (1) the date of the disbursement; (2) the payee; (3) the purpose of the disbursement (insurance,

real property tax, filing fees, etc.); and (4) the amount of the disbursement. For example, it is not apparent whether "CVS" was a prescription, personal hygiene product, or multivitamin for the fiduciary.

☐ Disbursements shall not be reported as 'estimated' or 'reserved' without explanation.

☐ "Reimbursement" is not an adequate description of an allowance disbursement. The purpose of the expense must be stated.

☐ Categories such as "miscellaneous" and "cash" are not acceptable.

☐ Payments to credit cards and other similar disbursements must report the expenditures made on credit in detail.

☐ Disbursements should be grouped into categories and reported chronologically. For example, all expenses for nursing care must be shown together.

☐ Distribution must report (1) the date of distribution, (2) the distributee, devisee, or beneficiary's name, and (3) the value of the asset distributed at its market value.

☐ All corpus allowances must be totaled and shown in the schedule.

INCOME ALLOWANCES

☐ Income allowances (disbursements or distributions) must report (1) the date of the disbursement; (2) the payee; (3) the purpose of the disbursement; and (4) the amount of the disbursement.

☐ Income disbursements should be grouped into categories and reported chronologically.

☐ Interest and penalties paid in connection with late filing of tax returns, late payment of tax liabilities, of any nature, for late filing, or failure to file reports must be reported separately and explained.

☐ All income allowances must be totaled and shown in the schedule.

CAPITAL GAINS OR LOSSES

☐ Gains or losses on the disposition of property shall identify (1) the date of disposition, (2) description of the property, (3) carrying (inventory) value, (4) liquidation price or disposition value, (5) liquidation costs, and (6) the net proceeds of the disposition.

☐ Gains and losses incurred on the disposition of property during the accounting period shall be shown in separate schedules.

☐ Gains on the disposition of property shall be reported with corpus charges.

☐ Losses on the disposition of property shall be reported with corpus allowances.

☐ Gains or Losses are computed by taking the sale or liquidation price minus the inventory value (carrying value) of the asset and minus transaction fees.

☐ The disposition of real estate shall itemize all transfer costs and adjustments incident to the disposition to permit interested parties to determine how the net sale proceeds received were calculated. Alternately, the costs of sale deducted from the sales price at closing, such as property tax payments, broker's commissions, recording fees, document preparation fees, et cetera, shall be listed in the corpus allowance schedule.

☐ If an asset is sold or liquidated at neither a gain nor a loss, report the transaction and report the gain as zero.

☐ The account shall show significant transactions that do not affect the amount for which the fiduciary is accountable.

☐ Transactions such as the purchase of an investment, receipt of a stock split, or change of a corporate name do not alter the total fund for which a fiduciary is accountable and must be shown to permit analysis and an understanding of the administration of the fund.

☐ Decreases to the estate such as decreases in the values of assets, abandonment, or loss of an asset, and so forth must be reported.

INVESTMENTS

☐ All changes in investments not reflected as gains or losses reported on other schedules of corpus and income charges shall be reported. These would include, but not be limited to, stock dividends, stock splits, changes in name, exchanges, or reorganizations.

☐ An allocation between principal and income authorized by the Principal and Income Act shall be separately stated and explained.

☐ If the fiduciary makes an allocation, such as the computation of a formula marital deduction gift, involving non-probate assets, it shall be explained in detail; provided, however, that the non-probate assets involved in such computation may be stated in summary form.

☐ All new investments made within the accounting period, and in hand at the close thereof, shall be noted on the schedules of assets on hand at the close of the accounting period. New investments, and increased or additional investments in the same investment as reported on the schedules of assets on hand at the beginning of the accounting period of the account, shall be separately designated or annotated.

INFORMATION SCHEDULES

☐ Rule 4:87-3(b)(1). The Balance on Hand schedule shall report and describe all assets that exist at the end of the accounting period. For each asset the (1) property location (e.g., bank name, branch addresses, or tangible or real property location), (2) the nature of the financial account, e.g., checking, savings, CD, money market, IRA, annuity, brokerage, or investment et cetera), and (3) both carrying (inventory) value at the beginning and the actual or estimated current market value and end of the account period.

☐ Rule 4:87-3(b)(2). A statement of all charges made on the investments together with the date the charges were made (for example, fees for investment advice, settlement charges related to certificates of deposit, and fees associated with the estate checking account).

☐ Rule 4:87-3(b)(3). Items apportioned between corpus and income.

☐ Rule 4:87-3(b)(4). A statement of taxes paid and how they are apportioned.

- ☐ Rule 4:87-3(b)(5). A statement regarding counsel fees, commissions, and other administrative expenses that have been paid out of corpus if the deductions' benefits have been allocated in whole or in part to the income beneficiaries for tax purposes.
- ☐ Rule 4:87-3(b)(6). A statement showing the calculation of the requested corpus commissions.
- ☐ An appraisal to adjust an asset's value for an account is not required, however, a significant change in the value of an asset should be mentioned in a note at the bottom of the schedule.
- ☐ Marketable securities are reported at the carrying value and the current market value.
- ☐ Report any transfer of funds in which the original form of the asset is discontinued or a new asset is obtained, for example, a bank account is closed and an estate account is opened or an insurance policy is cashed in or purchased.
- ☐ Report all investments or other changes in the form of assets made during the accounting period. It should include those subsequently sold as well as those still on hand.
- ☐ If a decedent's estate or trust will be distributed to an income beneficiary, the allocation of charges and allowances between principal and income shall be reported.

MISCELLANEOUS SCHEDULES

- ☐ If the fiduciary knows of any real property of the estate located in a foreign jurisdiction, the fiduciary shall include an additional schedule that identifies the real property, provides a good faith estimate of the fair market value of the real property, and states what action, if any, will or has been taken to preserve and protect the real property, including a recommendation whether an ancillary proceeding is necessary to preserve and protect the real property.
- ☐ A statement of proposed distribution may be annexed. If the account contemplates a proposed distribution, a schedule setting forth the proposed distribution, including the allocation of income should be reported. If the distribution requires the valuation of assets as of the date of distribution, the schedule should report the fair market value of those

assets. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets.

Rule 4:87-6: Surrogate's Clerical and Audit Role

Filing. Fiduciaries file accountings with Surrogates as deputy clerk of the Superior Court, Chancery Division, Probate Part. Fees for the filing, audit, and adjudication of fiduciary accounts are fixed by statute, N.J.S. 22A:2-30, and Rule 1:43. Pleading filing and filing fees are payable to the County Surrogate (not the Treasurer State of New Jersey). Fees are ultimately deposited with the county treasurer.

Audit. Surrogates, as deputy clerks of the Superior Court, are responsible for auditing accounts of all fiduciaries unless otherwise ordered by the court according to R. 4:53-7(b). Audit is a misnomer. Surrogates do not independently verify assets, income, and, unless ordered by the court, vouchers (disbursement receipts). Surrogates first verify the format and computations in accounting.

Report. The Surrogate places the audit report on file at least 20 days before its presentation to the court and shall make a report to the court upon the audit not later than the day on which the account is settled. Reporting requires a surrogate to call to the court's attention any inaccuracies or improper or unjustified items or payments appearing on the face of the account or any other discrepancies or derelictions that in the Surrogate's opinion should be brought to the court's attention.

The Surrogate staff confirms:

- ☐ Accounting signed/ verified by all fiduciaries;
- ☐ Proof of mailing to all interested parties is filed before the return date;
- ☐ Confirm that corpus and income charges and allowances are properly reported;
- ☐ Report questionable or unjustified charges or allowances, or commission or legal fee requests.

The audit standards imposed by the Court cannot be performed by Surrogate staff when an aggregate, non-grouped recital of charges and allowances is presented. See Appendix E for the audit standards approved by the Supreme Court.

Commissions

Title 3B:18 sets out the commission rate structure. Article 3 addresses the commissions of personal representatives. Article 4 addresses the commissions of testamentary and non-testamentary trustees and guardians.

Personal Representative Commissions

A personal representative is entitled to receive 6% of all income received. N.J.S. 3B:18-13.

A personal representative is entitled to a percentage-based fee fixed by the corpus value of the estate. Up to \$200K 5%, \$200K to \$1M 3.5%, Greater \$1M 2%. N.J.S. 3B:18-14.

A personal representative may take one-fifth of 1% of the value of the corpus. N.J.S. 3B:18-17. Subject to review. N.J.S. 3B:18-20.

Generally, commissions will be divided equally among the co-fiduciaries. The co-fiduciaries may agree among themselves on a different division.

If a fiduciary employs an attorney or accountant to perform duties that should be performed by the fiduciary, the fees of those persons should be deducted from the commissions due to the fiduciary. This does not apply to reasonable fees paid to attorneys or accountants for tax work or litigation or other legal services reasonably necessary for the orderly administration of the estate.

Trustee and Guardian Commissions

A trustee or guardian is entitled to receive 6% of all income received. N.J.S. 3B:18-24.

A trustee or guardian may take annual commissions of one-fifth of 1% of the value of the corpus. N.J.S. 3B:18-25. Subject to review. N.J.S. 3B:18-27.

A trustee or guardian may annually, without court allowance, take commissions on corpus (including accumulated income which has been invested by the fiduciary) 0.005 of corpus value up to \$400,000.00 and 0.003 over \$400,000.00. N.J.S. 3B:18-25.

Upon termination of the trust or guardianship, or distribution of assets from the trust or guardianship, the fiduciary may take a commission on the corpus distributed, including accumulated income which has been invested by the fiduciary a trustee or guardian may take 2% on distributions less than 5 years, 1.5% between 5 and 10 years, 1% over 10 years. N.J.S. 3B:18-28.

Fiduciary Compensation for Extraordinary Services

An increase in corpus commissions may be requested for unusual or extraordinary services that the fiduciary performs. N.J.S. 3B:18-16; N.J.S. 3B:18-29; Rule 4:88-1.

Rule 4:88-1, if the commissions sought are within the discretion of the court, an affidavit of the services stating in detail the nature of the services rendered in administering the estate and specifying the amount of the commissions requested must be filed with the court at least 20 days prior to the settlement date.

Commissions taken pursuant to the statutory rates prescribed by N.J.S. 3B:18-23, N.J.S. 3B:18-14, N.J.S.3B:18-24 and N.J.S.3B:18-25 are not subject to this rule.

Taking Interim Commissions

Except for annual corpus commissions, the advanced taking of commissions is prohibited. Interim payment of commissions before an accounting is filed may be pursued by an ex-parte motion. Rule 4:88-2. The order is interlocutory until an accounting is filed. The unauthorized advance payment of

commissions can result in a surcharge and/or repayment of unauthorized payments or lost interest resulting therefrom.

Rule 4:88-2-Commission Payments Before Settlement

Whether or not annual commissions are taken pursuant to N.J.S.A. 3B:18-17, a fiduciary may apply to the court to which he or she is accountable for an ex parte order supported by appropriate affidavits for payment to the fiduciary on account of commissions on corpus for services to date. Such order shall not be binding on the beneficiaries, and the payment so ordered shall be subject to approval and allowance or to disallowance by the court upon the settlement of the fiduciary's account.

Attorney as Fiduciary

An attorney acting as a fiduciary who performs professional services, in addition to his fiduciary duties, is allowed a counsel fee. N.J.S. 3:18-6.

Attorney and Professional Agent Compensation

If the estate requires legal services, an attorney affidavit of legal services must be provided for the Court's consideration. The court will assess whether the services were necessary and, if so, the fees charged are reasonable.

The Court has the authority to award counsel fees out of a fund in court, according to R. 4:42-9(a)(2). An application for counsel fees must be supported by an affidavit of services. R.4:42-9(b).

Probate attorney's fees are paid out of the estate funds. An estate attorney's fees must be 'reasonable'. The court will analyze an attorney's certification of services documenting the nature, extent, and difficulty of services rendered, along with the results obtained in association with the factors in *In re Estate of Bloomer*, 37 N.J. Super. 85 (App. Div. 1955; 43 N.J. Super. 414 (App. Div. 1957) and RPC 1.5(a). The court addressing the factors in *Bloomer* and RPC 1.5(a) will establish the factual findings and conclusions of the law to uphold the counsel fee award.

A fiduciary may pay interim attorney fees and costs subject to allowance or disallowance upon settlement of the account.

Rule 4:42-9(a)(2). "Out of a fund in court. The court in its discretion may make an allowance out of such a fund, but no allowance shall be made as to issues triable of right by a jury. A fiduciary may make payments on account of fees for legal services rendered out of a fund entrusted to the fiduciary for administration, subject to approval and allowance or to disallowance by the court upon settlement of the account.

Consequently, fiduciaries making interim payments to their attorney, without court approval, are at risk of surcharge if the court determines that the underlying services do not justify the fees paid. If the court does not approve the payments either the attorney and other professional will be ordered to refund the estate or the fiduciary may be surcharged the portion deemed improper.

Rule 4:88-4 requires that an attorney affidavit of services [filed at least 20 days before the day on which the account is settled] state, the information required by R. 4:42-9(b), i.e., the factors enumerated by RPC 1.5(a), and in addition, whether any part of the requested fee is to be paid to or shared with an attorney or firm of attorneys of another state or jurisdiction and if so its support by an accompanying affidavit of the foreign attorney. Rule 4:80-88.

If an attorney's affidavit or certification sets forth any fiduciary duties, compensation should be paid by the fiduciary who is compensated by statutory commissions for these services.

Fiduciaries are authorized by N.J.S. 3B:19B-25 to pay financial institutions and registered investment advisors for investment advisory or investment management services.

Contested Accountings

Exceptions and Objections to an Account

An objective of accounting is to discharge the fiduciary from liability for his/her/its administration.

Any party in interest who believes that an account is inaccurate or misleading may file 'Exceptions and Objections'.

Exceptions may relate to errors or omissions, e.g., the failure of a fiduciary to include assets in the estate, or for disbursements that are claimed to be improper. Exceptions to accountings may also allege fraud, calculation errors, poor asset management, or other breach of the fiduciary's duties. Objections relate to professional fees and commissions.

Some common reasons for filing Exceptions and Objections to accountings are:

- ☐ The fiduciary has failed to account for all the assets or income of the estate or trust.
- ☐ The fiduciary has made unauthorized or excessive distributions, expenses, commissions, or fees.
- ☐ The fiduciary has engaged in self-dealing, fraud, waste, or misappropriation of funds.
- ☐ The fiduciary has failed to invest or manage the assets prudently.
- ☐ The fiduciary has failed to file tax returns or pay taxes on behalf of the estate or trust.

Each Exception or Objection must raise one issue of law or fact, be specific as to description and amount, and briefly set forth the basis supporting the exception or objection.

Rule 4:87-8. "In all actions for the settlement of accounts, other than plenary actions, any interested person may, at least 5 days before the return of the order to show cause or within such time as the court allows, serve the accountant written exceptions, signed by that person or his or her attorney, to any item in or omission from the account, including any exceptions to the commissions or attorney's fees requested. The exceptions shall state particularly the item or omission excepted to, the

modification sought in the account, and the reasons for the modification. An exception may be stricken because of its insufficiency in law."

For example, a description of an exception:

"Exception No. 1. Exceptant excepts to the failure of the Administrator to include in Schedule A, a corpus charge for The Bank of Trenton a/c #12345 of \$17,500 on the ground that such asset is an asset of the decedent's estate".

Discovery

An individual who excepts or objects to an accounting may pursue discovery to receive and review financial documents. For summary actions, discovery is only available by leave of court. A party must request a discovery order. The typical summary action discovery order sets a short schedule (60 to 90-day period) to propound and answer interrogatories, produce documents, and depose the fiduciary and witnesses.

N.J.S. 3B:14-45. Discovery of assets in action against the fiduciary

The court may if it shall appear that a fiduciary may have wasted, embezzled, or misapplied the estate entrusted to him, compel discovery to be made of the condition of the estate by the production of books, papers, securities and documents relating to the estate, or the examination of the fiduciary and other witnesses.

Discovery Concerning Exceptions

There is no right to conduct discovery where summary proceedings are authorized. A court-issued discovery order is necessary. Typically, a request for a discovery order results in a sixty to ninety-day discover window.

An Exceptant may demand that the fiduciary produce financial records, brokerage statements, bank statements, estate tax returns, expense receipts and bills, invoices, and other records maintained by the fiduciary in connection with the administration of the estate as to whether there are any issues

concerning the accuracy or validity of the account. An exceptant may demand discovery regarding the proper distribution of the decedent's collection of rare books

Typical civil discovery methods are available to an Expectant.

Request for Admissions. An Exceptant may serve on the fiduciary a request to admit the truth of any discoverable matter stated in the request, including the genuineness of any document. The matter must relate to statements or opinions of fact or the application of law to fact.

Request for Production of Documents. An Exceptant may serve on the fiduciary a request to produce discoverable documents, electronically stored information, or tangible things and permit them to be copied. An Exceptant may serve on the fiduciary a request to permit entry upon land.

Interrogatories. An Exceptant may propound interrogatories on the Fiduciary.

Depositions. An Exceptant may depose the fiduciary or a witness, including an expert witness. concerning the accounting and administration of the estate.

Interview. An Exceptant may also interview a witness without deposing them.

The scope of discovery may be limited if:

The discovery demands are not relevant to, or are overbroad to, the filed exceptions.

The exception does not relate to an issue in which the Exceptant has an interest, thus the Exceptant has no standing to file the exception.

Pre-Trial

Motions in Limine. Motions in limine may be used to address broad issues concerning, for example, (1) the receipt or exclusion of evidence, testimony, or arguments of a particular kind or concerning a particular subject matter, (2) challenges to the competence of a particular witness, or (3) challenges to

the qualifications of experts or to the receipt of expert testimony on a particular subject matter.

Pre-Marking of Exhibits. Counsel should consult prior to the pre-trial conference and in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. and pre-mark all exhibits as to which no objection has been made for introduction into evidence.

Counsel should mark all exhibits not consented to for identification only. Counsel asserting objections to the introduction of any proposed exhibit should be prepared to state the objection with specificity at the pre-trial conference or such other time as the court directs. The pre-marked exhibits as to which there is no dispute shall be marked into evidence unless the court directs otherwise. Exhibits not previously identified which are to be used solely for impeachment, credibility, or rebuttal need not be pre-marked.

Identification of Deposition Testimony. Counsel should consult prior to trial and in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection, and to resolve any objections regarding the use of any corresponding video recording of such deposition testimony.

Trial

The Probate Part will schedule a hearing to address the exceptions or objections raised. The exceptions or objections are the issues for the trial. During the hearing, the fiduciary may be examined under oath. Both the fiduciary and the excepting party can present evidence and argue their positions.

The fiduciary has the burden of proving that he or she has fully accounted for all the assets of the estate, and all allowances, and that the accounting itself is complete and accurate. The fiduciary's burden is usually met by simply placing the account into the record.

Once the account is put into the record, burden shifts. The Exceptant has the burden relating to corpus and income charges. The exceptant must show that certain property that was entrusted

to, or should have been marshaled by, the fiduciary has not accounted for and show the amount or value of that property.

An Exceptant bears the burden on the issue concerning the investment practices of a fiduciary. If lost income or profits from the use of the property are sought the Exceptant has the burden of proof to establish the amount of such profits.

Once the account is put into the record, the fiduciary has the burden to establish disbursements, expenses, losses, distributions, or other deductions for which exceptions have been filed. A fiduciary's vouchers (receipts and other financial documents) or equivalent proof must be produced to support allowances for disbursements. If the fiduciary fails to support disbursements and losses claimed with adequate evidence, the exceptant recovers the gross amount proven because the fiduciary has failed to meet his or her burden of proof.

If an account's exception is that the fiduciary has mismanaged the estate or otherwise breached its fiduciary duty, testimony from accountants, forensic accountants, and investment professionals should be introduced.

It will be presumed that funds or property unaccounted for were misappropriated, and expenses unexplained were not incurred, with all inferences resolved against the fiduciary on these issues.

The exceptant may seek a surcharge against the fiduciary for the losses or mismanagement of the estate.

Role of the Judge

The court exercises its equitable powers to ensure that the fiduciary renders a true account of the fiduciary's administration.

The court, in a summary action tried without a jury, "must make findings of fact, either by adopting the uncontested facts in the pleadings after concluding that there are no genuine issues of fact in dispute, or by conducting an evidentiary hearing. Rule 1:7-4(a); R.M. v. Supreme Court of New Jersey, 190 N.J. 1 (2007). A party in a summary action proceeding is not entitled to favorable inferences such as those afforded to the respondent in a summary judgment motion.

The court separately sustains or disallows each exception or objection as the proofs are entered into evidence.

Once the court has reviewed the accounting and addressed the exceptions and objections, it will issue a final judgment. The judgment approves the accounting with any established exceptions or objections, directs that upon fulfilling the court's instructions, the fiduciary is released from further liability, and directs the distribution of the remaining estate assets to the devisees, distributees, or beneficiaries.

Remedies

After reviewing the Surrogate's report, the account, the exceptions and objections, and testimony, the court may make findings that the fiduciary has acted improperly or failed to fulfill their fiduciary obligations. The court may order:

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- ☐ If the account is deemed inaccurate or misleading the court may order the fiduciary to correct any errors or omissions and resubmit the account;
- ☐ Restore any assets or funds misappropriated, improperly distributed, or lost due to mismanagement;
- ☐ Remove the fiduciary for cause and appoint a successor or substitute fiduciary;
- ☐ Surcharge the fiduciary to compensate the estate for its losses;
- ☐ Reduce or eliminate the otherwise allowable fiduciary commissions for neglect, failure to perform duties et cetera (N.J.S. 3B:14-21, N.J.S. 3B:31-51).
- ☐ Void any inappropriate fiduciary's actions (e.g., cancel a deed)
- ☐ Order the payment of the Exceptant's attorney fees and costs by the estate (from a fund in court for the Exceptant preserving and protecting the estate);
- ☐ Order the payment of attorney fees by the fiduciary personally and not from estate funds;
- ☐ If a fiduciary not only breaches their fiduciary duty but also breaks the law, such as embezzling money from the estate, the court must refer the matter to the county prosecutor. *Sheridan v. Sheridan* 247 N.J. Super. 552 (Ch. Div. 1990);

□ If a fiduciary fails to comply with an order to account or satisfy any remedy imposed by the court, a fiduciary may be subject to a Rule 1:10-3 motion to enforce litigants' rights leading to monetary sanctions or a civil arrest warrant.

Appendix A Compilation of Accounting Court Rules and Statutes

RULES

- ☐ Rule 4:87 Accounting Format, schedules, and statements;
- ☐ Rule 4:87-1(b) Compel Accounting
- ☐ Rule 4:88 Attorney Affidavit/Certification of Services (RPC 1.5)
- ☐ Rule 4:42 (fund in court)
- ☐ Rules of Professional Conduct (RPC) 1.5

STATUTES

- ☐ Accounting statutes 3B:17
- ☐ N.J.S. 3B:10-23. Duty of personal representative to settle and distribute estate expeditiously
- ☐ N.J.S. 3B:14-23 Fiduciary Powers
- ☐ N.J.S. 3B:10-24 - Liability for acts of administration or distribution
- ☐ N.J.S. 3B:10-26 - Standards of care to be observed
- ☐ N.J.S. 3B:10-28 - Expeditious settlement and distribution
- ☐ N.J.S. 3B:10-29 - Possession and control of the estate
- ☐ N.J.S. 3B:10-30 - Power over title to property
- ☐ N.J.S. 3B:14-18 Discharge from the office of fiduciary; account; allowances (except accounting and paying over the money and assets)
- ☐ N.J.S. 3B:14-22 Discharge or removal not to release fiduciary or sureties from certain liabilities
- ☐ N.J.S. 3B:14-7 Account of removed or discharged fiduciary (within 60 days after removal or discharge)
- ☐ N.J.S. 3B:14-6 Penalty for failure of removed or discharged fiduciary to account or deliver assets (fine)
- ☐ N.J.S. 3B:17-1. Filing of release or discharge

- ☐ N.J.S. 3B:17-2 Accounts of personal representatives (absent special cause shown not be required to account until the expiration of 1 year after his appointment)
- ☐ N.J.S. 3B:17-3 Accounts of guardians and trustees
- ☐ N.J.S. 3B:17-5. Account by representative of deceased fiduciary
- ☐ N.J.S. 3B:17-2 Accounts of personal representatives (absent special cause shown not be required to account until the expiration of 1 year after his appointment)
- ☐ N.J.S. 3B:17-3 Accounts of guardians and trustees
- ☐ N.J.S. 3B:17-6 Examination of the accountant on exceptions to account (court or exceptant examine the accountant under oath)
- ☐ N.J.S. 3B:17-7 Statements or information regarding assets as part of the account
- ☐ N.J.S. 3B:17-8 Effect of judgment allowing account (res adjudicata as to all exceptions which could or might have been taken; constitute an approval of the correctness and propriety of the account, the legality and propriety of the investments; legality and propriety of the changes in investments and shall exonerate and discharge the fiduciary from all claims of all interested parties)

Personal Representative Commissions

- ☐ N.J.S. 3B:18-13. Income commissions (Personal Representative 6%)
- ☐ N.J.S. 3B:18-14. Corpus commissions (Personal Representative 5%, 3.5%, and 2%)
- ☐ N.J.S. 3B:18-16. Corpus commissions; unusual or extraordinary services (
- ☐ N.J.S. 3B:18-17. Taking annual amounts on account of corpus commissions (one-fifth of 1% of corpus)
- ☐ N.J.S. 3B:18-18. Value of assets for computing commissions taken annually ("presumptive value" or value at end of period)

Trustee or Guardian Commissions

- ☐ N.J.S. 3B:18-24. Income commissions (6%)
- ☐ N.J.S. 3B:18-25. Fiduciaries may take annual commissions on corpus ($0.005 < \$400,000$; $0.003 > \$400,000$)

- ☐ N.J.S. 3B:18-25.2. Powers of a qualified bank; duties of an agent
- ☐ N.J.S. 3B:18-27. Commissions taken annually are subject to review
- ☐ N.J.S. 3B:18-28. Corpus commissions on termination/distribution of a trust or guardianship (< 5 years 2%; 5 to 20 years 1.5%; >10 years 1%)
- ☐ N.J.S. 3B:18-29. Corpus commissions; unusual or extraordinary services
- ☐ N.J.S. 3B:18-30. The burden of proving the value

- ☐ Principal and Income Act, N.J.S. 3B:19B-1 to 3B:19B-10
 - o N.J.S. 3B:19B-5 Determination and distribution of net income
 - o N.J.S. 3B:19B-6 Distribution to residuary and remainder beneficiaries
 - o N.J.S. 3B:19B-7 When right to income begins and ends
 - o N.J.S. 3B:19B-8 Apportionment of receipts and disbursements when a decedent dies or income interest begins
 - o N.J.S. 3B:19B-9 Apportionment when an income interest ends

- ☐ Prudent Investor Act N.J.S. 3B:20-11.1 to 3B:20-11.12
 - o N.J.S 3B:20-11.3. Investments, management of trust assets by fiduciary
 - o N.J.S 3B:20-11.4. Diversification of investments
 - o N.J.S 3B:20-11.5. Assets to be managed in the interest of beneficiaries
 - o N.J.S 3B:20-11.6. Impartiality of fiduciary
 - o N.J.S 3B:20-11.7. Review of trust assets

- ☐ N.J.S. 3B:23-11 Interest on general pecuniary devise
- ☐ N.J.S. 3B:23-33 Action for devise
- ☐ N.J.S. 3B:23-31 Actions for distributive shares
- ☐ N.J.S. 3B:31-1 to 84 Uniform Trust Act

CASE LAW

Informal Estate Closure

In re the Estate of Tuzzolo, Bergen County Superior Court, June 5, 2019

Where "all interested parties agree to an informal accounting and sign a release and refunding bond, none of them can later compel a formal accounting absent a showing of fraud, misrepresentation, mismanagement, undue influence by the fiduciary or substantial misunderstanding by the legatee." Bartel v. Ethel Carnathan Clarenbach, 114 N.J. Super. 79 (Ch. Div. 1971).

Bartel v. Clarenbach, 114 N.J. Super. 79, 86 (App. Div. 1971)]

The general rule is that when all of the interested parties agree to an informal accounting and sign release and refunding bonds . . . , none of them can later compel the fiduciary to account formally. . . . This rule is limited in its application to those instances where fraud, misrepresentation, mismanagement, undue influence of the fiduciary, or a substantial misunderstanding by the legatee are not shown."

Under the terms of a refunding bond and release, the beneficiary is acknowledging the distribution from the estate and acknowledging their obligation to return assets to the estate should there arise legitimate liabilities of the estate for which the assets remaining in the estate are insufficient. In such circumstances, the beneficiary has promised to return a pro-rata share of their partial distribution such that it will be enough to cover their pro-rata share of the liabilities owed.

Exception Particularity

Pass v. Kirschner (App. Div. 2011) Unpub. LEXIS 570.

"Rule 4:87-8 provides that any interested person may file exceptions to the accounting, but must state with particularity which item or omission is being excepted and what modification is sought. Exceptions must be adjudicated in an evidentiary hearing unless there is no factual dispute."

Interim Corpus Commissions

In re Bessemer Trust Company's Interim Accounting, 147 N.J. Super. 331 (Chan Div. 1976), aff'd per curium, 165 N.J. Super. 76.

"For convenience, the court repeats the factors emphasized by the Supreme Court to be considered on an interim accounting for the allowance of corpus commissions:

* * * such allowances are only some on account compensation to be conservatively allowed for services during the particular limited accounting period. * * * The court has to judge the probable total length of administration, the general nature, and extent of the services rendered and expected to be rendered, and whether it is likely maximum commissions or nearly so will be allowed on final accounting. * * * [In re Moore, 50 N.J. at 147-148]

Appendix B Relevant Probate Definitions and Terms

"Corpus" Corpus is Latin for "body". Principal is another word for corpus. The "corpus" of an estate refers to assets or funds of an estate, tangible and intangible personal property, and real property. The corpus is the property that is being held for distribution to a devisee, heir-distributee, or lifetime or remainder beneficiary.

"Income" Income is money, interest, dividends, or rental income that a fiduciary receives as a current return on an asset.

"Charge" A fiduciary 'charges' him/herself with the receipt of corpus (principal), income, and financial capital gains (realized and unrealized). Charges include (1) money, stocks, bonds, real estate, jewelry, et cetera; (2) income receipts received by the fiduciary; (3) gains on the sale of assets; and (4) any other property obtained by the fiduciary.

Charges are subtotaled by class, with all subtotals added to determine the total corpus and income receipts.

"Allowance" A fiduciary seeks 'allowance' (credit) against corpus or income charges for (1) disbursements, (2) distributions of corpus or income (payments to the devisees, distributees, or beneficiaries), and (3) losses on the sale of capital assets.

"Capital Gains and Losses" The inventory value (acquisition value/ carrying charge) of real estate, stocks, bonds, and other investment assets is not static. The sale, liquidation, or redemption of these assets will normally result in a capital gain or capital loss that must be reported.

"Capital Gain" Capital gain is the difference between the increase in value of an asset relative to its original price; and a profit from the sale of property or an investment. A capital gain is the increase in a capital asset's value and is realized when the asset is sold.

"Capital Loss" Capital loss is the difference between a lower selling price and a higher purchase price or cost price of an eligible Capital asset, which typically represents a financial loss for the seller.[1][2] This is

distinct from losses from selling goods below cost, which is typically considered a loss in business income.

"Disbursement" Money expended by a fiduciary for the benefit of the estate or in connection with its administration.

"Distribution" The apportionment and division of the remainder of the estate after payment of the debts and expenses, among those who are legally entitled to share in the same.

"Fiduciary" Personal representatives (Executor, Administrator C.T.A., Administrator), guardians, conservators, and trustees are probate-associated fiduciaries. It also includes attorneys-in-fact under powers of attorney.

"Guardian ad Litem" A guardian ad litem may be appointed to act on behalf of an interested party who is under a disability, a minor or incapacitated person, who does not have a legal guardian. Rule 4:26-2(b).

"Interested Person" Interested persons include heirs, devisees, beneficiaries, and any others having a property right in or claim against an estate that may be affected by the proceeding. It does not include creditors unless the creditor's claim has been reduced to a judgment in the Law Division Civil Part or Special Civil Part (typically not in the probate Part).

"Probate Assets" Probate assets are any property owned by an individual at the time of their death. Property with valid beneficiary designations with a failed designation, e.g., prior death of the beneficiary. These assets pass through probate.

"Non-probate Assets" Non-probate assets are any property, account, or insurance policies that are either held by a trust, or joint owners, or a beneficiary designation that passes by operation of law outside of the decedent and their estate. For example, property with valid beneficiary designations (failed designation. i.e., prior death of beneficiary), multiparty bank accounts, retirement/pension accounts, jointly owned with rights of survivorship.

"Surcharge" Where a fiduciary's account omits assets that came into his hands or disbursements or distributions that are improper, he/she is surcharged the full amount of such assets, disbursements, or distributions.

"Surety Bond" A surety bond guarantees that a fiduciary will fulfill their duties and obligations. In the event the fiduciary fails to fulfill part or all of his or her duties, the surety will indemnify the estate or third party up to the bond amount. A surety paying a claim may pursue the fiduciary to pay back all the money that the surety has paid to the claimant.

"Unrealized Gain or Loss" reflects an increase or decrease in an investment's value that is not yet realized by the liquidation of the investment asset.

"Virtual Representation" If claims will affect a future interest of persons in being or unborn that has or may have a future interest (e.g., contingent remaindermen), an existing party with identical or nonconflicting interests may serve or be appointed as a virtual representative of such future interest without needing a guardian ad litem. R. 4:26-3. Utilization of virtual representation enables the court to act upon the interests of unascertainable contingent remaindermen to the same effect as if they all had been sui juris and parties to the action without any infringement of their right to due process. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317-318, 70 S. Ct. 652, 94 L. Ed. 865, 875 (1950). [In re Estate of Lange, 75 N.J. 464 (1978)]; *Matter of Will of Maxwell*, 306 N.J. Super. 563 (App. Div. 1997)

Appendix C - Uniform Principal and Income Act of 2001

N.J.S. 3B:19B-1. Short title

This act shall be known and may be cited as the "Uniform Principal and Income Act of 2001."

N.J.S. 3B:19B-2. Definitions

As used in this act:

"Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee, and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

"Income" means money or property that a fiduciary receives as a current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 10 through 23 of this act.

"Income beneficiary" means a person to whom the net income of a trust is or may be payable.

"Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed at the trustee's discretion.

"Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

"Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

"Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

"Terms of a trust" means the manifestation of the intent of a settlor or decedent concerning the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

N.J.S. 3B:19B-3. Fiduciary duties; general principles

a. In allocating receipts and disbursements to or between principal and income, and concerning any matter within the scope of sections 5 through 9 of this act, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this act;

(3) shall administer a trust or estate in accordance with this act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to the principal to the extent that the terms of the trust and this act do not provide a rule for allocating the receipt or disbursement to or between the principal and income.

b. A fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries.

N.J.S. 3B:19B-4. Trustee's power to adjust

a. A trustee may adjust between principal and income if the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in subsection a. of section 3 [C.3B:19B-3] of this act, that the trustee is unable to comply with subsection b. of section 3 of

this act. A decision by a trustee to adjust the distribution to the income beneficiary or beneficiaries in any accounting period to an amount not less than three percent nor more than five percent, or in accordance with such other percentages as may be approved for trust distribution adjustment purposes from time to time by the United States Department of the Treasury or the Internal Revenue Service, of the net fair market value of the trust assets on the first business day of that accounting period shall be presumed to be fair and reasonable to all of the beneficiaries. Any adjustment by a trustee between income and principal with respect to any accounting period shall be made during that accounting period or within 65 days after the end of that period.

This subsection shall apply to a trust that is administered in New Jersey under New Jersey law unless contrary to the provisions of the governing instrument.

b. In deciding whether and to what extent to exercise the power conferred by subsection a. of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1) the nature, purpose and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

- (9) the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from elections and decisions regarding tax matters, the imposition of an income or other tax on the fiduciary or a beneficiary as a result of a transaction involving a distribution from the estate or trust, or the ownership of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary; and
- (10) the anticipated tax consequences of an adjustment.

c. A trustee shall not make an adjustment:

- (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- (4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
- (5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
- (6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;
- (7) if the trustee is a beneficiary of the trust; or
- (8) that satisfies the trustee's obligation of support or other legal obligation.

d. If paragraph (5), (6), (7) or (8) of subsection c. of this section applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

e. A trustee may release the entire power conferred by subsection a. of this section or may release only the power to

adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) through (6) or (8) of subsection c. of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection c. of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

f. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection a. of this section.

N.J.S. 3B:19B-5. Determination and distribution of net income

After a decedent dies, in the case of an estate or after an income interest in a trust ends, the following rules apply:

a. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically devised to a beneficiary under the rules in sections 7 through 28 of this act which apply to trustees and the rules in subsection e. of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

b. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in sections 7 through 28 of this act which apply to trustees and by:

(1) including in net income all income from property used to discharge liabilities; and

(2) paying from principal all disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, expenses of administration, including fees of attorneys, accountants and fiduciaries, court costs, debts, funeral expenses, disposition of remains, family allowances and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

c. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law

from net income determined under subsection b. of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

d. A fiduciary shall distribute the net income remaining after distributions required by subsection c. of this section in the manner described in section 6 of this act to all other beneficiaries, excluding a beneficiary who receives a pecuniary amount outright or in trust.

e. A fiduciary shall not reduce principal or income receipts from property described in subsection a. of this section because of a payment described in section 24 or 25 of this act to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

N.J.S. 3B:19B-6. Distribution to residuary and remainder beneficiaries

a. Each beneficiary described in subsection d. of section 5 of this act is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

b. In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

c. If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

d. A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

N.J.S. 3B:19B-7. When right to income begins and ends

a. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

b. An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

c. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection d. of this section, even if there is an intervening period of administration to wind up the preceding income interest.

d. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

N.J.S. 3B:19B-8. Apportionment of receipts and disbursements when decedent dies or income interest begins

a. A trustee shall allocate an income receipt or disbursement, other than one to which subsection a. of section 5 of this act applies, to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

b. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

c. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this act. Distributions to shareholders or other owners from an entity to which section 10 of this act applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that are to be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

N.J.S. 3B:19B-9. Apportionment when income interest ends

a. As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

b. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

c. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

N.J.S. 3B:19B-10. Character of receipts

a. As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 11 of this act applies, a business or activity to which section 12 of this act applies or an asset-backed security to which section 23 of this act applies.

b. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

c. A trustee shall allocate the following receipts from an entity to principal:

- (1) property other than money;
- (2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (3) money received in total or partial liquidation of the entity; and
- (4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

d. Money is received in partial liquidation:

- (1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

e. Money is not received in partial liquidation, nor may it be taken into account under paragraph (2) of subsection d. of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

f. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

N.J.S. 3B:19B-11. Distribution from trust or estate

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 10 or 23 of this act applies to a receipt from the trust.

N.J.S. 3B:19B-12. Business and other activities conducted by trustee

a. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

b. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts are to be retained for working capital, the acquisition or replacement of fixed assets and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee

sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

c. Activities for which a trustee may maintain separate accounting records include:

- (1) retail, manufacturing, service and other traditional business activities;
- (2) farming;
- (3) raising and selling livestock and other animals;
- (4) management of rental properties;
- (5) extraction of minerals and other natural resources;
- (6) timber operations; and
- (7) activities to which section 22 of this act applies.

N.J.S. 3B:19B-13. Principal receipts

A trustee shall allocate to principal:

- a. To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payer under a contract naming the trust or its trustee as beneficiary;
- b. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to sections 10 through 23 of this act;
- c. Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (9) of subsection a. of section 25 of this act or for other reasons to the extent not based on the loss of income;
- d. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- e. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and
- f. Other receipts as provided in sections 17 through 23 of this act.

N.J.S. 3B:19B-14. Rental property

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to

income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

N.J.S. 3B:19B-15. Obligation to pay money

- a. An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.
- b. A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.
- c. This section does not apply to an obligation to which section 17, 18, 19, 20, 22 or 23 of this act applies.

N.J.S. 3B:19B-16. Insurance policies and similar contracts

- a. Except as otherwise provided in subsection b. of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.
- b. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 12 of this act, loss of profits from a business.
- c. This section does not apply to a contract to which section 17 of this act applies.

N.J.S. 3B:19B-17. Deferred compensation, retirement benefits, annuities, and similar payments

a. As used in this section, "payment" means a payment that a trustee may receive over a fixed period of time or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer or by another, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

b. To the extent that a trustee can readily ascertain the part of a payment from a separate fund held for the benefit of the trust that represents the then undistributed net income of the fund realized since the trust acquired its interest in the fund, a trustee shall allocate that part to income. The trustee shall allocate to principal the balance of the payment.

c. If no part of a payment is allocated to income under subsection b. of this section, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

d. If, to obtain an estate tax or gift tax marital deduction for a trust, the trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

e. This section does not apply to payments to which section 18 of this act applies.

N.J.S. 3B:19B-18. Liquidating asset

a. As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 17 of this act, resources subject to

section 19 of this act, timber subject to section 20 of this act, an activity subject to section 22 of this act, an asset subject to section 23 of this act, or any asset for which the trustee establishes a reserve for depreciation under section 26 of this act.

b. A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

N.J.S. 3B:19B-19. Minerals, water and other natural resources

a. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) if received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income;

(2) if received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal;

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income;

(4) if an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3) of this subsection a., 90 percent of the net amount received shall be allocated to principal and the balance to income.

b. An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90 percent of the amount shall be allocated to principal and the balance to income.

c. This act applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

d. If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

N.J.S. 3B:19B-20. Timber

a. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2) of this subsection a.; or

(4) to principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (1), (2) or (3) of this subsection a.

b. In determining net receipts to be allocated pursuant to subsection a. of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

c. This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

d. If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

N.J.S. 3B:19B-21. Property not productive of income

a. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 4 of this act and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power

conferred by subsection a. of section 4 of this act. The trustee may decide which action or combination of actions to take.

b. In cases not governed by subsection a. of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

N.J.S. 3B:19B-22. Derivatives and options

a. As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

b. To the extent that a trustee does not account under section 12 of this act for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

c. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

N.J.S. 3B:19B-23. Asset-backed securities

a. As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 10 or 17 of this act applies.

b. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial

assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

c. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

N.J.S. 3B:19B-24. Disbursements from income

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (1) or (2) of subsection b. of section 5 of this act applies:

- a. commissions allowed by law to a trustee on income receipts, if properly chargeable to the trust;
- b. one-half of the fees paid to banks and other financial institutions for custodial services to the fiduciary if properly chargeable to the trust;
- c. all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest paid by the trustee, including interest on death taxes, regularly recurring taxes assessed against any portion of the principal, water rates, bond premiums, and the expenses, including court costs, attorneys' fees, and accountants' fees, of an accounting, judicial proceeding or other matter that concerns primarily the income interest, unless the court directs otherwise; and
- d. recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

N.J.S. 3B:19B-25. Disbursements from principal

a. A trustee shall make the following disbursements from principal:

- (1) commissions allowed by law to a trustee on principal receipts or distributions or on termination of the trust estate;
- (2) the remaining one-half of the fees paid to banks and other financial institutions for custodial services, if properly chargeable to the trust;
- (3) fees paid to banks and other financial institutions and registered investment advisors for investment advisory or

investment management services, if properly chargeable to the trust;

(4) costs of investing and reinvesting principal and payments on the principal of an indebtedness, including a mortgage or security interest amortized by periodic payments of principal;

(5) extraordinary repairs or expenses incurred in making a capital improvement, including special assessments, and disbursements made to prepare property for sale;

(6) court costs, attorneys' fees, accountants' fees and other fees, incurred on an accounting or judicial proceeding or in maintaining or defending any action to construe a will or a trust, protect it or the trust estate, or assure the title of any property, unless properly chargeable to income under subsection c. of section 24 of this act or the court otherwise directs;

(7) premiums paid on an insurance policy not described in subsection d. of section 24 of this act of which the trust is the owner and beneficiary;

(8) estate, inheritance and other transfer taxes, including penalties apportioned to the trust;

(9) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the cost of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties and defending claims based on environmental matters; and

(10) if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and remainderman have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

b. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

N.J.S. 3B:19B-26. Transfers from income to principal for depreciation

a. As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

b. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under section 12 of this act for the business or activity in which the asset is used.

c. An amount transferred to principal need not be held as a separate fund.

N.J.S. 3B:19B-27. Transfer from income to reimburse principal

a. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

b. Principal disbursements to which subsection a. of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions; and

(3) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

c. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection a. of this section.

N.J.S. 3B:19B-28. Income taxes

- a. A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.
- b. A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.
- c. A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:
 - (1) from income to the extent that receipts from the entity are allocated to income; and
 - (2) from principal to the extent that:
 - (a) receipts from the entity are allocated to principal; and
 - (b) the trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (a) of this paragraph (2).
- d. For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

N.J.S. 3B:19B-29. Uniformity of application and construction

In applying and construing this act, consideration shall be given to the fact that this is a uniform act, and there is a need to promote uniformity of the act with respect to its subject matter among states that enact it.

N.J.S. 3B:19B-30. Application of act to existing and future trusts and estates

This act applies to every trust or decedent's estate existing on or after the effective date of this act, except as otherwise expressly provided in the will or terms of the trust or in this act.

N.J.S. 3B:19B-31. Judicial control of discretionary powers

- a. A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.
- b. The decisions to which subsection a. of this section applies include:

(1) A determination under subsection a. of section 4 of this act of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors in deciding whether and to what extent to exercise the powers conferred by subsection a. of section 4 of this act.

c. If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the position they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his appropriate position.

(2) To the extent that an abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate position by requiring the fiduciary to withhold an amount from one or more of future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying paragraphs (1) and (2) of this subsection to restore the beneficiaries, the trust, or both, to the position they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

d. Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or

nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

Appendix D - Prudent Investor Act (N.J.S. 3B:20-11.1 to -11.12)

N.J.S. 3B:20-11.1. Short title

Sections 1 through 12 of this 1997 amendatory and supplementary act shall be known and may be cited as the "Prudent Investor Act."

N.J.S. 3B:20-11.2. Compliance by fiduciary with prudent investor rule

a. Except as provided in subsection b. of this section, a fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as set forth in this act.

b. The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on those express provisions. Nothing herein shall affect the jurisdiction of the Superior Court to order or authorize a fiduciary to deviate from the express terms or provisions of a trust instrument for the causes, in the manner, and to the extent otherwise provided by law.

N.J.S. 3B:20-11.3. Investments, management of trust assets by fiduciary

a. A fiduciary shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution.

b. A fiduciary's investment and management decisions respecting individual assets shall not be evaluated in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

c. Subject to the standards established in this act, a fiduciary may invest in any kind of property or type of investment. No specific investment or course of action is inherently imprudent.

d. Among the circumstances that the fiduciary shall consider in investing and managing trust assets are those of the following as are relevant to the trust and its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) the need for liquidity, for regularity of income, and for preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries as, for example, an interest in a closely-held enterprise, tangible and intangible personalty, or real estate.

e. The fiduciary shall take reasonable steps to verify facts relevant to the investment and management of trust assets and may rely and be fully protected in relying upon statistical, financial, corporate or other information as to a particular investment, and upon ratings or other opinion as to the financial or other status thereof, contained in or offered by any financial, statistical, investment, rating or other publication or service published for the use of and accepted as reliable by investors in like investments or upon a copy of the prospectus prepared and filed with the Securities and Exchange Commission in connection with a new issue.

f. A fiduciary who has special skills or expertise, or is named fiduciary in reliance upon representations of special skills or expertise, has a duty to use those special skills or expertise.

N.J.S. 3B:20-11.4. Diversification of investments

A fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

N.J.S. 3B:20-11.5. Assets to be managed in interest of beneficiaries

A fiduciary shall invest and manage the trust assets solely in the interest of the beneficiaries.

N.J.S. 3B:20-11.6. Impartiality of fiduciary

If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

N.J.S. 3B:20-11.7. Review of trust assets

Within six months after accepting trust assets, the fiduciary shall review the trust assets and shall make and implement decisions concerning the retention and disposition of assets received at the inception of the trust, in order to bring the trust portfolio into compliance with the provisions of the trust instrument or with the requirements of this act.

N.J.S. 3B:20-11.8. Incurrence of costs by fiduciary

In investing and managing trust assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the fiduciary. A fiduciary who delegates investment and management functions pursuant to section 10 of P.L.1997, c.26 (C.3B:20-11.10) shall control the overall costs of the delegation, including making a reduction in the amount of corpus commissions otherwise allowable to the fiduciary with respect to the trust assets for which investment responsibility has been delegated, which reduction shall take account of the duties and responsibilities retained by the fiduciary with respect to such assets.

N.J.S. 3B:20-11.9. Rule expresses standard of conduct

The prudent investor rule expresses a standard of conduct, not outcome. Compliance with the rule is determined in light of the facts and circumstances existing at the time of the fiduciary's decision or action.

N.J.S. 3B:20-11.10. Delegation of investment, management functions by fiduciary

a. A fiduciary may delegate investment and management functions that a prudent fiduciary of comparable skills could properly

delegate under the circumstances. The fiduciary shall exercise reasonable care, skill, and caution in:

(1) selecting an agent with special investment skills and expertise and of sound financial standing;

(2) establishing the scope and terms of the delegation consistent with the purpose and terms of the trust instrument; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

b. In performing a delegated function, the agent shall owe to the trustee and the beneficiaries the same duties as the fiduciary and shall be held to the same standards as the fiduciary.

c. The fiduciary who complies with the requirements of subsection a. of this section shall not be liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

d. By accepting the delegation of a trust function from the fiduciary of a trust that is subject to the law of New Jersey, the agent submits to the jurisdiction of the courts of New Jersey, even if the delegation agreement provides otherwise.

e. If there are two or more fiduciaries serving, only one of whom has special investment and management skills or expertise or has been named in reliance upon representations of such special skills or expertise, then the fiduciary or fiduciaries not possessed of such special skills or expertise may, pursuant to this section, delegate investment and management functions to the other fiduciary as if such other fiduciary were an agent selected in accordance with this section and subject to the provisions of this section.

f. A fiduciary shall provide reasonable advance written notice on each occasion upon which the fiduciary intends to delegate investment and management functions pursuant to this section, including the identity of the agent, to the beneficiary or beneficiaries eligible to receive income from the trust on the date of the intended delegation. Upon providing such notice, the fiduciary shall be authorized to delegate investment and management functions pursuant to this section.

N.J.S. 3B:20-11.11. Construction of terms

The following terms or comparable language in a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as authorizing any investment or strategy permitted under this act: "investments permissible by law for investment of trust funds," "legal investment," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

N.J.S. 3B:20-11.12. Applicability of act

This act shall apply to and govern trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only actions or omissions occurring after that date.

Appendix E - Supreme Court Surrogate Audit Standards

Surrogate audit standards were developed by the Judiciary Surrogates Liaison Committee chaired by Judge Edward Beglin (Union AJ) and were approved at the March 27, 2000, Supreme Court Administrative Conference.

Audit Standards

1. A comparison of assets listed on the attachment to the Verified Complaint or inventory filed by the fiduciary against those listed in the accounting.

2. A verification that the balance of the last filed accounting equals the opening balance for the current account period.

3. An independent checking of the arithmetic and preparation and attachment of a calculator sheet.

4. A review of all charges [and allowances] for possible double entries.

5. An examination of changes in assets to ascertain whether the assets on hand at the end of the accounting period are correct.

6. A review of income listed to ensure that all interest is listed for bank accounts and certificates of deposit, dividends listed for all stocks and bonds, rents included for all rental real estate, revenue included from any business or partnership, and income shown as earned from all trusts.

7. A confirmation that all sales of assets, including real property are listed and the proceeds are shown as having been deposited into the fiduciary bank account or invested.

8. A review of commissions to see that they comply with the rates outlined in the pertinent statutes.

9. An evaluation of the attorney's fees and affidavit of services to see that they are consistent with orders previously entered in the case, if applicable, and that the services being charged for are legal in nature. Charges for any extraordinary services should be detailed by affidavit.

10. An analysis of disbursements for identification of any questionable or "suspicious" expenditures, e.g., charges for

support of non-dependent third parties or checks payable to individuals without reasonable explanation.

11. A highlighting of any unusual investments for court, e.g., the sale of assets to purchase modern art.

12. The report, per Court Rule 4:87-6, should specify any derelictions and any other matters that in the Surrogate's opinion should be brought to the court's attention.

Appendix F - Illustration Surrogate's Trustee Audit Report

K M Wolfe
January 22, 2024

IMO Article ____ Trust UWO _____, deceased

I/M/O Article ____ GST Trust UWO of _____, deceased

I/M/O Article ____ Non-GST Exempt Trust UWO _____, deceased

I/M/O _____ Inter Vivos Trust

DOCKET NO.

Return Date: Order to Show Cause TBD

I. Nature of the Current Probate Part Matter:

Approval of (1) trustee account as presented; (2) approve trustee corpus commissions of \$_____; (3) approve trustee income commissions of \$_____; (4) approve trustee termination commissions of \$_____; (5) approve legal fees and costs; (6) approve uneconomical trust termination (N.J.S. 3B:31-30); (7) approve Surrogate audit and page fees (not demanded in the complaint & OSC, but required by statute (N.J.S. 22A:2-30); (8) approval of the distribution of the trust remainder after payment of costs, commissions, and Surrogate audit and page fees.

Trustee's Name: _____

Accounting Period _____ to _____

☐ [First Intermediate] [and Final] Accounting

☐ Proof of Service on File [Pending]

☐ Attorney Affidavit of Services [**NOT**] Filed

☐ Rule 4:87 Schedules are [attached] [missing]

Audit Report Prepared on _____ 2023

Pursuant to Rule 4:87-6, I, Diane Gerofsky, the Surrogate of Mercer County, report that I have caused to be audited the account of the above-named Trustee; the account as presented is correct with the exceptions herein set out, placed the same on

file, and I hereby report the same to the court for the court's consideration.

Audit Report Summary:

- ☐ Accounting stated for hearing and approval without detected discrepancies.
 - ☐ No Procedural or Reporting Deficiencies
 - ☐ Some Procedural or Reporting Deficiencies. No points of concern, all amounts appear proper and the account is appropriate for the Court's approval.
- ☒ Accounting stated for hearing and approval with Procedural or Reporting discrepancies noted:
 - ☐ Some Procedural or Reporting Deficiencies are noted. See Summary of Discrepancies.
 - ☐ Some matters need clarification, but no financial practice appears to significantly impair estate beneficiaries and the account is appropriate for the Court's approval.
 - ☒ Several points of concern are noted and additional scrutiny is needed (e.g., verification of disbursements et cetera) before the account may be approved. See Summary of Discrepancies.
- ☐ Accounting stated for hearing and approval on exceptions and objections by parties in interest.

Illustration Summary of Discrepancies:

Accounting Statements

The statements required by Rule 4:87 are missing, so it is not apparent that the stocks, bank accounts, realty, and automobile were liquidated and if liquidated, where funds were deposited.

Corpus

The account reports publicly traded stocks, BUT stock dividends/income is not reported. Have the stocks been liquidated? If so, was a capital gain or loss incurred?

Income Distributions & Disbursements

Although stock dividends/ income is reported, the account does not show that state and federal fiduciary income taxes were paid.

Legal Fees

To the extent the Trustee seeks allowance for attorney fees, the same must be supported by an Attorney's Affidavit/Certification of Services. Rule 4:88-4. The same has not been provided. An affidavit/certification of legal services, in sufficient detail, as required by R. 4:42-9(b), must be filed setting out the nature of legal services rendered, the responsibility assumed, the results obtained, any novelty or difficulty or other detail required by RPC 1.5 along with a statement of the attorney's hourly rate.

Surrogate Audit and Page Fees

The complaint and order to show cause fail to request an allowance for the Surrogate's statutory audit and page fees.

Commissions

Annual Corpus Commissions. Trustee requests approval of annual corpus commissions of \$____. The Trustee applied its corporate fee structure (Exhibit 1). The annual rate is twice the basic statutory rate. The trust documents do not appear to include a commission provision overriding the statutory compensation specified for trustees by N.J.S. 3B:18-25(a); however, N.J.S. 3B:18-25(b) allows the court to award a bank a commission "as may be reasonable".

COMPUTATION OF COMMISSIONS

I do further report that the whole amount of corpus, which came into the hands of the Trustee and upon which corpus commissions are computed is \$ _____ and that the allowable annual corpus commission is as follows:

TRUSTEE ANNUAL CORPUS COMMISSIONS (N.J.S. 3B:18-25)

ANNUAL CORPUS COMMISSION REQUESTED	\$
ANNUAL CORPUS COMMISSION TAKEN	\$
ANNUAL CORPUS COMMISSION PER SURROGATE COMPUTATION	\$
ANNUAL CORPUS COMMISSION BALANCE DUE/ REFUND	\$

The fiduciary may choose the use of presumptive value (the value of corpus when received) or value at the end of each period.

0.005 first \$400,000
 0.003 amounts over \$400,000

☐ PRESUMPTIVE VALUE

0.005 X \$ _____ (< \$400,000) X _____ NUMBER OF YEAR = \$ _____

0.003 X \$ _____ (> \$400,000) X _____ NUMBER OF YEAR = \$ _____

TOTAL ANNUAL COMMISSIONS \$ _____

☐ VALUE OF THE ITEM AT THE END OF THE PERIOD (NJS 3B18-18)

YEAR ONE END OF PERIOD VALUE \$ _____

0.005 X \$ _____ (< \$400,000) = \$ _____

0.003 X \$ _____ (> \$400,000) = \$ _____

YEAR TWO END OF PERIOD VALUE \$ _____

0.005 X \$ _____ (< \$400,000) = \$ _____

0.003 X \$ _____ (> \$400,000) = \$ _____

YEAR THREE END OF PERIOD VALUE \$ _____

0.005 X \$ _____ (< \$400,000) = \$ _____

0.003 X \$ _____ (> \$400,000) = \$ _____

TOTAL ANNUAL COMMISSIONS \$ _____

☐ ONE-FIFTH OF THE TOTAL COMMISSION FOR EACH ADDITIONAL FIDUCIARY (NJS 3B:18-25.1)

COMPUTATION OF INCOME COMMISSIONS: (N.J.S. 3B:18-24)

I do further report that the whole amount of income, which came into the hands of the Trustee and upon which income commissions are computed is \$ _____ and that the allowable income commission is as follows:

INCOME COMMISSION REQUESTED \$ _____

INCOME COMMISSION TAKEN \$ _____

INCOME COMMISSION ALLOWED PER SURROGATE COMPUTATION

INCOME RECEIVED \$ _____ X 0.06 = \$ _____

INCOME COMMISSION BALANCE DUE/ REFUND \$ _____

TRUSTEE TERMINATION/ DISTRIBUTION COMMISSIONS

(N.J.S. 3B:18-28)

I do further report that the whole amount of corpus, which came into the hands of the Trustee and upon which a termination commission is computed is \$ _____ and that the allowable termination commission is as follows:

< 5 YEARS \$ _____ @ 2% (0.02) = \$

>5 YEARS <10 YEARS \$ _____ @ 1.5% (0.015)= \$

> 10 YEARS \$ _____ @ 1% (0.01) = \$

The termination commission is calculated on the corpus, valued at the time of creation of the estate. See In re Reutlinger 140 N.J. 231 (1994). It does not include income distributions.

The basis for calculating termination commissions under N.J.S. 3B:18-28 is the value of the estate at the time of the trust's termination, including real estate and other property, whether liquidated or unliquidated, on termination of the trust. In re Reutlinger, 140 N.J. 231 (1995). N.J.S. 3B:18-28 states that either the presumptive value or value at the time of Distribution may be used. INCOME IS NOT INCLUDED IF THE INCOME IS NOT INVESTED. N.J.S. 3B:18-28.

LEGAL FEES**LEGAL FEES**

LEGAL FEE REQUESTED \$

LEGAL FEE TAKEN \$

LEGAL FEE ALLOWED \$ SUBJECT TO COURT APPROVAL

LEGAL FEE BALANCE DUE/ REFUND \$

LEGAL COSTS REQUESTED \$

LEGAL COSTS TAKEN \$

LEGAL COSTS ALLOWED \$ SUBJECT TO COURT APPROVAL

LEGAL FEE BALANCE DUE/ REFUND \$

SURROGATE AUDIT & PAGE FEE (N.J.S. 22A:2-30; Rule 4:87-1, Rule 4:87-2, Rule 4:87-3)

Audit Fee: \$ _____ X [0.003] [0.004] = \$

Accounting Page Fee: ___ pages @ \$5 per page \$

Total Audit and Page Fee

\$

Audit Fee:

Estates \$10,001.00 to \$30,000.00

\$125.00.

Estate \$30,001.00 to \$65,000.00,

\$150.00.

Estates \$65,001.00 to \$200,000.00
\$300.00.

3/10 of 1% but not less than

Estates exceeding \$200,000.00
\$400.00.

4/10 of 1%, but not less than

In computing the amount of an estate for the purpose of fixing the fees of a surrogate for auditing and reporting the account, the balance from the prior account shall be excluded.

Respectfully Submitted,

By: /s/ Diane Gerofsky, Surrogate

Dated: _____, 2023

Appendix G - Explanation of Account Schedules

AS TO CORPUS

THE EXECUTOR CHARGES HIMSELF AS TO CORPUS AS FOLLOWS:

SCH. A INITIAL CORPUS (INVENTORY) CHARGES

Schedule A is a statement of the corpus (principal) assets, that is, money and other personal property and real property of the estate or trust received by the personal representative, guardian, or trustees from the beginning of the estate or trust to the date of the account for which the personal representative, guardian or trustee is charged. The schedule includes the date of receipt or acquisition of each item and a brief description of each item along with its value.

The New Jersey Principal and Income Act, N.J.S.A. 3B:19B-1 et seq., should be consulted for the classification of assets as principal or income.

SCH. A-1 ADDITIONAL CORPUS CHARGES (RECEIPTS (Optional Schedule))

Schedule A-1 is an optional schedule. Occasionally, after an inventory or first accounting is filed, additional corpus property is discovered and received. The additional property may be added to Schedule A. The inclusion of this optional sub-schedule A-1 highlights late additions to the corpus inventory and may be beneficial where a fiduciary wants to explain why an asset was not timely marshaled and, therefore, has not generated income that should otherwise have been expected.

SCH. A-2 TRANSFER OF INCOME TO CORPUS (Optional Schedule)

Schedule A-2 is an optional schedule that normally does not appear in an accounting. It is here included to illustrate how income that is not required to be currently distributed and is added to the corpus or when income is allocated to the corpus under the Principal and Income Act is reported. A corresponding transaction is reflected in Schedule H-1.

SCH. B GAINS ON SALE OR REDEMPTION OF CORPUS

Schedule B contains an itemized statement of all realized increases over inventory value derived from principal assets, whether due to sale, liquidation redemption, or any other

reason. The schedule includes the date of realization of the increase and the property from which said increase was derived. It includes stock distributions and rights received.

Entries should show the inventory values, costs or expenses of the sale, the net proceeds received, and the net gain.

Increases realized on new investments or exchanges are reported in this schedule.

THE EXECUTOR PRAYS CORPUS ALLOWANCES AS FOLLOWS:

SCH. C LOSS ON SALE OR REDEMPTION OF ASSETS

Schedule C contains an itemized statement of all realized decreases from inventory value derived from principal assets whether due to sale, liquidation, redemption, or any other reason. Decreases realized on new investments or exchanges are reported. The schedule includes the date of realization of the decreases and the property from which said increase was derived.

Entries should show the inventory values, costs or expenses of the sale, the net proceeds received, and the net loss.

This schedule should also report any principal asset that the fiduciary intends to abandon as worthless, together with a brief explanation of the reason for abandoning it.

SCH. D CORPUS ALLOWANCES (DISBURSEMENTS)

Schedule D contains an itemized statement of corpus assets disbursed by the fiduciary from the beginning of the estate or trust to the date of the account. It itemizes all claims against the estate that were paid by the fiduciary and all money paid for the funeral, administration, and other necessary expenses. For each item, the date, a brief description of each expenditure, and the amount is set forth. Where the last will and testament directs that all inheritance, estate, or death taxes are to be paid out of the estate, the same should be set forth in this schedule.

SCH. E CORPUS DISTRIBUTIONS

Schedule E contains an itemized statement of all money paid and all corpus distributed in-kind to testamentary devisees (including testamentary trustees), intestate heirs or trust beneficiaries. The property is shown at its inventory value. The date of payment or delivery thereof, the name of the person or

entity to whom payment or delivery was made, and the amount is set forth. The New Jersey Principal and Income Act, N.J.S.A. 3B:19B-1 et seq., should be consulted for the classification of assets as principal or income.

When inheritance or estate taxes are required to be apportioned and payments have been made on account of said taxes, the apportionment, as shown in Rule 4:87- 3(b)(4) statement, is inserted in this schedule. The apportionment should itemize the date, individual, and the amount against the respective individual's share.

SCH. E-1 CORPUS TRANSFERS TO INCOME: (Optional Schedule)

Schedule E-1 is an optional schedule that normally does not appear in an accounting. It is here included to illustrate how the transfer of corpus (principal) should be consulted for the allocation of principal and income between the income beneficiaries and remainder beneficiaries. Where investment income is insufficient to satisfy the income beneficiary's needs, part of the corpus (typically capital gains) may be transferred to income. A corresponding transaction is reflected in Schedule F-1.

AS TO INCOME

THE EXECUTOR CHARGES HIMSELF AS TO INCOME AS FOLLOWS:

SCH. F INCOME CHARGES:

Schedule F contains a statement of all income collected by the personal representative, guardian, or trustees from the beginning of the estate or trust to the date of the account. Income consists of interest, stock dividends, rents collected from tenants from the estate's real estate, and other income received. For each receipt itemized the date and a brief description of each receipt and the amount must be separately identified.

The New Jersey Principal and Income Act, N.J.S.A. 3B:19B-1 et seq., should be consulted for the classification of assets as principal or income.

SCH. F-1 TRANSFERS OF CORPUS TO INCOME: (Optional Schedule)

Schedule F-1 is an optional schedule that normally does not appear in an accounting. It is here included to illustrate how the transfer of corpus (principal) to income. The New Jersey Principal and Income Act, N.J.S.A. 3B:19B-1 et seq., should be

consulted for the allocation of principal and income between the income beneficiaries and remainder beneficiaries. Where investment income is insufficient to satisfy the income beneficiary's needs, part of the corpus (typically capital gains) may be transferred to income. A corresponding transaction is reflected in Schedule E-1.

THE EXECUTOR PRAYS INCOME ALLOWANCES AS FOLLOWS:

SCH. G INCOME ALLOWANCES (DISBURSEMENTS)

Schedule G contains a statement of income disbursed by the personal representative, guardian, or trustee from the beginning of the estate or trust to the date of the account.

Federal and state fiduciary income taxes paid are set forth. Where income taxes are required to be apportioned and payments have been made on account of said taxes, the amounts apportioned against each beneficiary of the estate or trust are charged in this schedule against the respective individual's share.

SCH. H INCOME ALLOWANCES (DISTRIBUTIONS)

Schedule H contains a statement of income distributed by the personal representative, guardian, or trustee from the beginning of the estate or trust to the date of the account.

The New Jersey Principal and Income Act, N.J.S.A. 3B:19B-1 et seq. should be consulted for the classification of assets as principal or income.

SCH. H-1 INCOME TRANSFERS TO CORPUS (Optional Schedule)

Schedule H-1 is an optional schedule that normally does not appear in an accounting. It is here included to illustrate how income that is not required to be currently distributed and was added to the corpus. Where income is transferred to the corpus, the same should be reported in this schedule. This schedule may be used to allocate principal and income between the income beneficiaries and remainder beneficiaries under the Principal and Income Act. A corresponding transaction is reflected in Schedule A-2.

RULE 4:87-3(B) STATEMENTS

SCH. I STATEMENT OF ASSETS ON HAND

Schedule I sets out an itemized statement of all real and personal property composing the balance of the estate in the accountant's hands remaining on hand, including a statement of all uncollected receivables and property rights due to the estate. The inventory value and the fair market value as of the date of the accounting, and the place where the same are deposited should be set forth.

SCH. J STATEMENT OF CHANGES IN INVESTMENTS

Schedule J contains an itemized statement of changes made in the investments and assets since they were acquired all purchase, exchange, or transfers of principal assets from the beginning of the estate or trust to the date of the account.

The schedule includes the date of acquisition and costs or expenses of all such property that was acquired by purchase, exchange, or transfer. It specifies where funds are deposited or the assets are located.

Entries reflecting adjustments in corpus asset values should explain the change, e.g., a stock split.

SCHEDULE K PROPERTY APPORTIONED BETWEEN PRINCIPAL AND INCOME

Statement K contains an itemization of property that has been apportioned between principal and income during the period covered by this account, the respective values, and the beneficiaries of the apportionment. See the section discussing the Principal and Income Act, N.J.S.A. 3B:19B-1 to -31.

SCHEDULE L APPORTIONMENTS MADE FOR TRANSFER INHERITANCE OR ESTATE TAXES

Statement L enumerates the estate and inheritance tax apportionment. Under the New Jersey Tax Apportionment Statute, N.J.S.A. 3B:24-1et. seq. the estate tax will be apportioned under the terms of the Will, or if a Will is silent on tax apportionment or if there is no Will, the tax will be apportioned under N.J.S.A. 3B:24-2, among the beneficiaries of the probate estate and the transferees under any "non-testamentary instrument" (e.g., accounts like IRA's, 401K's etc. that pass outside the Will by operation of law).

SCHEDULE M Counsel fees, commissions, and other administration expenses that were paid out of corpus, but the benefits of the

deduction have been allocated in part or in whole to income beneficiaries for tax purposes.

Statement L contains any allocation of fees, commissions, and other administration expenses paid out of corpus, but the benefits have been allocated to income beneficiaries for tax purposes.

SCHEDULE N Assets not appearing in the account, but upon which commissions are calculated are as follows:

Statement N contains an itemization of non-probate property, its value, and the taker by operation of law that the fiduciary is including in gross corpus and which the fiduciary alleges should be used in the corpus commission computation.

SCHEDULE O Corpus Commission Calculations

Statement O contains a computation of the corpus commissions claimed by the personal representative, guardian, or trustee. The computation sets out the gross corpus, applicable rates, and, if appropriate, the periods that the rates apply. If annual corpus commissions have been taken, then the amounts and dates of each annual corpus commission should be shown (reference to allowances sought in Schedule D.

Appendix H - Illustration Personal Representative Account

Firm Name:
 Attorney:
 Bar Number:
 Address:
 Telephone No.:
 Fax No.:
 E-Mail:
 Attorney for Plaintiff

Superior Court of New Jersey
 Chancery Division - _____ County
 Probate Part

Docket No.:

In the Matter of the Estate of

_____, deceased

CIVIL ACTION
 ADMINISTRATOR'S FIRST AND FINAL
 ACCOUNT

The Administrator does hereby submit the account of the administration of the decedent's estate for the period February 23, 2021 to November 30, 2021

AS TO CORPUS

THE EXECUTOR CHARGES HIM/HERSELF AS TO CORPUS AS FOLLOWS:

SCH. A. CORPUS (PRINCIPAL) RECEIVED

Date	Asset Description	Inventory Value
CASH AND CASH EQUIVALENTS (Cash, Bank Accounts & Money Market Funds)		
2/23/21	Currency (home safe)	\$1,000.00
2/23/21	First State Bank Checking Account n/o Decedent Account No. 01120-000949	\$20,000.00
2/23/21	Certificate of Deposit n/o decedent Second Bank & Trust Certificate No. 4568	\$25,000.00
9/01/21	Refund of overpayment of 2020 federal income tax	<u>\$127.80</u>
		\$46,127.80

STOCKS, BONDS, AND MUTUAL FUNDS

		\$14,150.00
DECEDENT'S DEBTS AND CLAIMS		
	New Bank 171 Collen HELCO	\$25,600.00
	New Bank Credit Card	\$4,550.00
DECEDENT'S PERSONAL INCOME TAXES		
4/15/2021	United States Treasurer 2022 1040 Taxes	\$37,900.00
4/15/2021	Treasurer, State of NJ 2022 1040 Taxes	<u>\$4,550.00</u>
		\$42,450.00
MISCELLANEOUS ADMINISTRATION EXPENSES		
2/15/21	Surrogates Court (filing Fees)	\$150.00
4/04/21	Mercer Fine Art Associates (Appraisal)	\$200.00
4/10/21	Accurate Realty Appraisers	\$550.00
2/20/21	Home Owner Insurance	\$1650.00
7/20/21	171 Colleen Place Roof Repairs	<u>10,000.00.</u>
		\$12,550.00
171 Colleen Place Seller's Closing Costs		
8/15/21	Realty Transfer Fee	\$1,405.00
8/15/21	Brokers' Commission	\$15,600.00
8/15/21	Seller's Credit to Buyer	\$1,000.00
8/15/21	Repairs	\$450.00
8/15/21	Mortgage/ Tax Lien Cancellation	\$125.00
8/15/21	Buyer's Utility Adjustment Credit	<u>\$215.00</u>
		\$18,795.00
DISTRIBUTIONS TO DEVISEES		
09/01/2021	John Doe (son)	\$50,000.00
09/01/2021	Jane Doe (daughter)	\$50,000.00
09/01/2021	Dr. John H. Watson (Friend)	\$42,000.00
09/01/2021	Red Blood Fund Inc. (Charitable Devise)	<u>\$50,000.00</u>
		\$192,000.00
DEVISEE INHERITANCE TAXES		
07/15/2021	NJ Transfer Inheritance Tax (Watson)	\$8,000.00
CORPUS ALLOWANCES		\$263,795.00
CORPUS RECEIVED		\$1,385,543.30
NET GAIN OR (LOSS)		(\$13,000.00)
CORPUS ALLOWANCES		(\$263,795.00)
BALANCE OF CORPUS		\$1,108,748.30

AS TO INCOME

THE EXECUTOR CHARGES HERSELF AS TO INCOME AS FOLLOWS:

SCH. D INCOME RECEIVED

Date	Income Description	Amount
DIVIDENDS		
03/31/21	PSEG Dividend	\$270.00
06/30/21	PSEG Dividend	\$285.00
03/31/21	Home Internet Corp Dividend	\$2,587.50
06/30/21	Home Internet Corp Dividend	\$2,587.50

09/30/21	Home Internet Corp Dividend	<u>\$2,587.50</u>
	TOTAL DIVIDENDS	\$8,302.50

BANK INTEREST

03/31/21	Second Bank & Trust CD	\$225.00
06/30/21	Second Bank & Trust CD	<u>\$225.00</u>
	TOTAL CD INTEREST	\$450.00

REALTY RENTAL INCOME

7/1/23 TO	4123 HAPPY HILL LANE PRINCETON	
9/5/23		\$12,000.00

OTHER INCOME

10/1/21	New Era Pictures Royalty	
	Death In Trenton Movie	<u>\$45,000.00</u>
	TOTAL INCOME RECEIVED	\$65,752.50

EXECUTOR PRAYS INCOME ALLOWANCES AS FOLLOWS:**SCH. F INCOME ALLOWANCES (DISBURSEMENTS DISTRIBUTIONS AND TRANSFERS TO CORPUS)**

Date	Disbursement Description	Amount
4/15/2022	United States Treasurer Fiduciary 1041	
	Income Tax Return	\$16,221.75
4/15/2022	Treasurer, State of NJ Fiduciary 1041	
	Income Tax Return	\$3,244.00
	Fiduciary Income Commissions	\$3,893.25
	Income Allowances	\$23,359.00
	Income Received	\$65,752.50
	Income Allowances	<u>\$23,359.00</u>
	BALANCE OF INCOME	\$42,393.50

SCH G. Rule 4:87-3(b) (1) STATEMENT OF ASSETS ON HAND

Asset Description	Inventory Value	Market Value
Estate Chking Acct #1234 at Trusted N.B.	\$377,748.30	\$377,748.30
Home Internet Corp 9000 shares	\$531,000.00	\$495,000.00
4123 Happy Hill Lane, Princeton	\$375,000.00	\$375,000.00
Antiques	\$22,000.00	\$22,000.00
Pearl Necklace	\$10,000.00	\$10,000.00
2015 Mercedes Station Wagon	<u>\$38,000.00</u>	<u>\$38,000.00</u>
	\$1,353,748.30	\$1,317,748.30

SCH. H. Rule 4:87-3(b) (2) STATEMENT OF CHANGES IN INVESTMENTS

02/27/21	Close First State Bank Checking	\$20,000.00
02/27/21	Close Second Bank & Trust CD	\$25,000.00
02/27/21	Deposit Currency	\$1,000.00

09/01/21	Deposit 2022 Tax Refund	\$127.80
08/15/21	Sale 171 Colleen Place (Net)	\$241,620.50
04/10/21	Sale PSEG stock	\$90,000.00
	Estate Checking Acct Balance	\$377,748.30

SCH I. RULE 4:87-3(B) (3) ITEMS APPORTIONED BETWEEN THE PRINCIPAL AND INCOME

NONE

SCH. J Rule 4:87-3(b) (4) STATEMENT OF TAXES PAID AND HOW THEY ARE APPORTIONED

NONE

SCH. K Rule 4:87-3(b) (5) COUNSEL FEES, COMMISSIONS, AND OTHER ADMINISTRATIVE EXPENSES PAID FROM CORPUS AND ALLOCATED TO THE INCOME BENEFICIARIES FOR TAX PURPOSES

NONE

SCH. L RULE 4:87-3(B) (6) CALCULATION OF CORPUS REQUESTED

The Executor requests an allowance for corpus commission of \$52,154.56 computed as established by N.J.S. 3B:18-14 as follows:

Total Corpus	\$1,385,543.30	
Computation:		
\$ 200,000 x 0.05 =	\$10,000.00	
\$ 800,000 x 0.035 =	\$28,000.00	
\$ 385,543.30 x 0.02 =	\$7,710.86	\$45,710.86

STATEMENT OF PROPOSED DISTRIBUTIONS TO DEVISEES

Cash on Hand (Chk Acct) Less Corpus	\$273,985.63
Commissions (\$45,710.86) less	
Estimated Surrogate Audit and Page	
Fees (\$58,051.81)	

Jane Doe	Inventory	Mrk. Value
4123 Happy Hill Lane, Princeton, N.J.	\$375,000.	\$375,000.
Antique Highboy, Antique Side Table,	\$22,000.	\$22,000.
Antique Chair		
Pearl necklace	\$10,000.	\$10,000.
Cash Distribution		251,874.15
		658,874.15
John Doe		
2015 Mercedes Benz Station Wagon	\$38,000.	\$38,000.
Home Internet Corp 9000 Shrs. 55.00	\$531,000.	\$495,000.
Cash Distribution		125,874.15
		658,874.15

VERIFICATION OF ACCOUNTANT

I, _____, personal representative of the estate of _____, deceased, declare under oath that this account and the annexed statements are just and true to the best of my knowledge and belief.

sign above print name below

Subscribed and sworn to before me
this ____ day of November 2021

Notary Public of the State of New Jersey
[Seal or Stamp]

Appendix I Illustration of Administrator's Verified Complaint

Firm Name:
 Attorney:
 Bar Number:
 Street Address:
 Telephone No.:
 Fax No.:
 E-Mail:
 Attorney for:

Superior Court of New Jersey
 Chancery Division - Probate Part
 _____ County

In the Matter of the
 Estate of _____,
 deceased

Docket No.:

CIVIL ACTION

Verified Complaint for Settlement
 of Administrator's First and Final
 Account, Approval of Commissions
 and Legal Fees, Approval of Final
 Distribution, Discharge the
 Administrator and Surety, and
 Cancel the Administrator's Surety
 Bond

Plaintiff, _____, residing at _____,
 New Jersey by way of verified complaint says:

1. The decedent, _____, died intestate on
 _____ and was on the date of death a resident of _____
 County, New Jersey.

2. Plaintiff, _____, is the duly appointed, qualified,
 and acting personal representative of the estate of _____,
 deceased.

3. Upon filing a surety bond and qualifying according to law, the Surrogate of Mercer County issued Letters of Administration and Plaintiff thereupon entered into the administration of the decedent's estate.

4. The names and addresses of the persons interested in the decedent's estate and this action are as follows:

<u>NAME</u>	<u>ADDRESS</u>
-------------	----------------

All of the above-named persons are of full age and not under a disability, EXCEPT None. OR [name] [a minor] [an incapacitated person] [a developmentally disabled person].

5. Accompanying and annexed to this complaint as Exhibit A is the verified first and final account of the administration of the Estate of _____ for the period from _____ to _____.

6. The summary of the account as reflected in the account's schedules is:

AS TO CORPUS

Corpus Charges (Received)	\$
Additions to Corpus	\$
Corpus Allowances	\$
Balance of Corpus	\$

AS TO INCOME

Income Charges (Received)	\$
Income Allowances	\$
Balance of Income	\$

Total Corpus and Income on Hand	\$
---------------------------------	----

7. Plaintiff is entitled to corpus and income commissions for _____.

8. Estate administration required legal services provided by _____ Esquire that were necessary and reasonable as set forth in the attorney's Affidavit of Services.

9. There are no creditor claims that have not been paid, satisfied, or adequately provided for.

10. No taxes are due or payable by the estate.

WHEREFORE, Plaintiff demands judgment that:

A. The account for the period ____ through ____, be settled, allowed, and approved and all acts and transactions set forth in the account be ratified, confirmed, and approved.

B. Plaintiff be allowed corpus commissions of \$_____ and income commissions of \$_____.

C. Attorney fees and costs in the amount of _____ dollars (\$_____), of which _____ dollars (\$_____) has been paid, and the remainder of which is unpaid, plus such additional fees incurred in the settlement of the Account, be approved for _____, Esquire.

D. Surrogate audit and page fees be approved and paid from the decedent's estate.

E. The balance on hand as reported in the account be distributed to the decedent's heirs at law as shown in Schedule ____ after the payment of commissions and fees approved by the court.

F. The Plaintiff, as Administrator, be discharged and relieved from any further duties, responsibilities, and

liabilities whatsoever after payment of the commissions, fees, and distribution approved herein.

G. The _____ Surety Company be discharged from all liability on the Administrator's bond and the bond be canceled.

H. For such other and further orders as this court may deem proper.

Attorneys for [Name of client]

By: [Name of attorney]
A Member of the Firm

DATED:

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Plaintiff by his/her/its attorneys certify that matter in controversy [is] ² is not the subject of any other action pending in any other Court. There are no pending arbitration proceedings. No other action or arbitration proceedings are contemplated. No non-party is known who would be subject to joinder because of potential liability.

Attorneys for [Name of client]

By: [Name of attorney]
A Member of the Firm

DATED:

CERTIFICATION PURSUANT TO RULES 4:5-1(b)(3) and 1:38-7(c)(2)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be

² If the subject of another action, the certification shall identify such action (court, Docket Number) and all parties thereto.

redacted from all documents submitted in the future following Rule 1:38-7(b).

Name of firm
Attorneys for [Name of client]

By: [Name of attorney]
A Member of the Firm

DATED:

DESIGNATION OF TRIAL COUNSEL ACCORDING TO RULE 4:25-4

Under Rule 4:25-4, _____ [Name of attorney], is hereby designated as trial counsel in the above-captioned litigation on behalf of the firm of _____ [Name of firm].

Name of firm
Attorneys for [Name of client]

By: [Name of attorney]
A Member of the Firm

DATED:

VERIFICATION

_____ [Name of Plaintiff], being duly sworn according to law, upon his/her oath, deposes and says:

1. I am the Plaintiff in the foregoing complaint.
2. The allegations thereof are true to the best of my knowledge and belief.

[Sign above type name below]

Sworn to and subscribed
before me this ____ day
of _____, 2024.

Notary Public of the State of _____

My Commission Expires:

[Seal or Stamp]

Appendix J - Attorney Certification of Services

Firm Name:
 Attorney:
 Bar Number:
 Street Address:
 Telephone No.:
 Fax No.:
 E-Mail:
 Attorney for:

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION - PROBATE PART
 MERCER COUNTY

In the Matter of the Estate
 of _____, Deceased

Docket No:
 CIVIL ACTION
 CERTIFICATION IN SUPPORT OF AN
 AWARD OF LEGAL FEES AND COSTS

_____, Esquire of full age, hereby certifies and
 says:

1. I make this certification in support of my application requesting that the court award me fees for services rendered in connection with the estate and costs advanced.

2. I am an Attorney-at-Law licensed to practice in the State of New Jersey. I was admitted to the New Jersey Bar in ____.

3. My customary rate is \$400 per hour plus expenses. My rate is reasonable and comparable to the rates charged by my colleagues for this type of matter.

4. My experience in the field of Probate Law includes (1) 1986-1993 Mercer County Deputy Surrogate; (2) 1993-2000 Deputy Attorney General, Division of Law handling probate, escheat, unclaimed property and transfer inheritance tax matters; (3) 1993-2004 Adjunct Associate Professor Mercer County Community

College for Wills & Estates; (4) 2000-2011 Chief, AOC Civil Practice Division and staff to the Conference of General Equity Judges, Committee of Probate Part Judges, and the Judiciary Surrogates Liaison Committee; (5) 2011-2017 AOC Assistant Director for Civil Practice where I oversaw staff responsible for probate and guardianship and implementation of the Guardianship Monitoring Program; (6) author of probate, guardianship and accounting training manuals presented at the 2006, 2009, 2010, 2011, and 2012 Judicial Colleges.

5. The handling of the decedent's estate was not routine. The decedent had certain personal property interests in various food establishments and other corporations and partnerships. The business assets were difficult to marshal because of resistance from the decedent's family to the delivery of records concerning the decedent's business interests. Promised information was not forthcoming and requests for business records and information to the decedent's accountants were thwarted.

6. In general, the time expended involved numerous hours: seeking to locate business records for the decedent's various businesses, including serving subpoenas on the accountants for the decedent's businesses and motions to enforce the subpoenas; legal research relating to the interplay and effect of the various business franchise agreements and operating agreements; answering litigation filed against the estate; subpoenas directed at various financial institutions to gather signature exemplars related to the Will contest; an action for instructions on handling demand for payment of a promissory note because the estate's illiquid condition; drafting a complaint (not filed) for the production of the decedent's assets and income.

11. Set forth below are the date, nature of service, and time expended on various services performed during the period

from _____ to the date of this certification and cost advanced on behalf of the Estate of _____, all of which were necessary for the proper for the administration of the decedent's estate.

DATE	SERVICE	TIME
10/29/2023	Review verified complaint; copy of Last Will & Testament;	0.40 hrs.
11/20/2023	Receipt & review _____ notice of cross-motion re: probate Last Will & Testament; Inventory & Accounting	1.0 hrs.
11/23/2023	Draft notice of motion, certification with exhibits re: authority to issue subpoenas; letter brief re: fiduciary application to discovery assets in support; delivery motion to Surrogate	3.00 hrs.
11/25/2023	Receipt & review Certification of Surviving Widow opposing cross-motion to probate Will	0.40 hrs.
11/26/2023	Receipt & review notice of motion, brief, certification filed by Widow's Attorney re: quash financial records subpoena, protective order, oppose plaintiff's cross-motion	1.00 hrs.
12/03/2023	Receipt & review certification of Brother-in-Law's discovery of Last Will & Testament	0.10 hrs.
12/03/2023	Receipt & review Proponent's Attorney notice of cross-motion, attachments; brief re: discovery confidentiality order	0.60 hrs.
12/05/2023	Draft notice of motion, certification re: authority to exchange personal & business records	1.00 hrs.
	Attendance Proponent's Attorney Widow deposition; receipt of various exhibits	4.00 hrs.
12/10/2023	Receipt Proponent's Attorney NOM and brief re: opposing subpoena authority and exchange financial information	1.00 hrs.
12/10/2023	Summons and Complaint served Mortgagee v. Estate re: Brunswick Pike debt service; review	1.20 hrs.
12/13/2023	Draft complaint Produce Assets & Information	1.5 hrs.
12/14/2023	Hearing before Judge XXXXXX re: various motions	3.0 hrs.
12/14/2023	Receipt & review Widow's Attorney letter with Notice in Lieu of Subpoena for Proponent's deposition on _____, 2024	0.10 hrs.
12/14/2023	Appearance before Judge IIIII on motions and cross-motions	2.00 hrs.
12/21/2023	Letter to Mercer County Surrogate with 5-day	0.20 hrs.

	order	
1/03/2024	Draft cover letters and Subpoenas for signature exemplars from various banks	2.0 hrs.
1/09/2024	Prepare Stipulation Extending Time L-YYYY-18; Letter to Walter Hanley	0.90 hrs.
1/10/2024	Receipt & Review of Widow's Attorney motion and certification re: compel discovery	0.20 hrs.
1/16/2024	Draft Complaint for instructions re: Brunswick Pike	3.50 hrs.
1/17/2024	Draft OSC and Certification of Services	0.40 hrs.
	Draft Consent Order; Filing Cover Letter	2.00 hrs.
1/18/2024	File Complaint and OSC with Surrogate	
1/18/2024	Receipt & Review of Proponent's Attorney 5-day letter order motion to compel documents	0.20 hrs.
1/22/2024	Receipt & Review of Proponent's Attorney answer to counterclaim	0.20 hrs.
	Receipt of OSC returnable February 20; deliver	0.10 hrs.
1/30/2024	Certification of Service of OSC; Surrogate filing letter; email counsel	0.60 hrs.
1/31/2024	Receipt and review of Widow's Attorney motion for out-of-state deposition	0.20 hrs.
2/21/2024	Telephone conference call re: Settlement	0.10 hrs.
2/26/2024	Draft Motion, Certification, and Order to Compel Subpoenas	4.0 hrs.
2/26/2024	Receipt of case management order; review	0.20 hrs.
3/28/2024	Draft informal Accounting	4.00 hrs.
The total time dedicated to the Decedent's estate is		vvvv hrs.

Cost & Charges Advanced

11/26/2023	Mercer County Surrogate (Motion)	\$15.00
1/04/2024	USPS Postage 8 CM RRR letters with subpoena for signature exemplars	\$65.07
1/17/2024	Mercer County Surrogate Filing Fee Instructions Complaint	\$175.00
2/04/2024	Harris Investigation LLC Subpoena Service	\$150.00
2/05/2024	EV Auto v. Estate Answer/ Stip. to Extend Time	\$175.00
2/26/2024	Mercer County Surrogate NOM Enforce Subpoena	\$15.00
2/27/2024	USPS Postage NOM Enforce Subpoena + Reject Claims	\$31.30
TBD	Mercer County Surrogate (Motion to fix Fees)	\$15.00
TOTAL		\$

13. I waive an appearance in connection with the compensation requested herein and respectfully request that the

Court award me a fee of \$_____ plus expenses of \$_____ from the Estate of _____, or such amount as the court deems just and reasonable for an appropriate hourly rate and the reasonableness of the time set out, considering the requirements of Rule 4:42-9(a)(7) and (b) (fees allowed by Rule) and the Rule of Professional Conduct 1.5(a) (listing factors in determining the reasonableness of counsel fees).

14. Statement of fees received, according to Rule 4:42-9(c), is: I have not been paid any fees or costs related to this matter.

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____, 20__

Appendix K - Illustration Exceptions and Objections

Firm Name:
 Attorney:
 Bar Number:
 Street Address:
 Telephone No.:
 Fax No.:
 E-Mail:
 Attorney for:

Superior Court of New Jersey
 Chancery Division - Probate Part
 _____ County

I/M/O the Article ____
 Trust U/W/O _____,
 deceased

Docket No.:

CIVIL ACTION

EXCEPTIONS AND OBJECTIONS TO THE
 TRUSTEE'S ACCOUNT

Plaintiff, _____, residing at _____,
 New Jersey by way of Exceptions and Objections to the account of
 _____, Trustee says:

EXCEPTION NO. 1- FAILURE TO MARSHALL AND INVEST DIVIDENDS

The Exceptant excepts to the Trustee's failure, as reflected on page 8 of the Final Account, to charge herself with Campbell Soup dividends for 2019, 2020, 2021, and 2022. On page 16 of the Final Account, the Trustee reports that on August 3, 2023, she deposited the 2019, 2020, 2021, and 2022 Campbell Soup dividend checks of \$_____.

The Trustee is statutorily charged with observing a prudent man standard when dealing with the assets and must use her special skills in administering the estate. N.J.S. 3B:10-26. The Trustee has thus failed to exercise the requisite care, diligence, and skill with the investment of the corpus and

accrued income, and as a result, the estate has suffered a loss of income.

To the extent that the Trustee has allowed assets to remain uninvested, the Trustee must be surcharged for the loss of income caused by failing to invest the dividends in an interest-bearing account.

The Exceptant seeks by this exception to have the Trustee surcharged \$ _____ for the lost dividend income.

EXCEPTION NO. 2 - FAILURE TO DIVERSIFY AND LIQUIDATE STOCK

The trustee acted negligently and failed to fulfill her fiduciary obligations to the remainder beneficiary in that she failed to act as a prudent investor would have acted seeking a reasonable return on the invested principal, to wit:

At the decedent's death, the estate contained 80,000 shares of DeLorean Motor Company common stock valued at \$400,000. This investment constituted 97% of the trust's initial stock portfolio and over 70% of its total assets. The fiduciary sold ten thousand shares during the first year of administration to cover costs. Over the next few years, the price of the stock declined precipitously; however, the fiduciary retained the stock in the hope that it would rebound.

The Trustee failed to exercise reasonable prudence in its management of the trust's DeLorean Motor Company stock, resulting in a loss to the Trust.

The Trustee breached her fiduciary duty by improvidently allowing an unreasonably high portion of the trust holdings to be invested in stock in a single corporation and failed to diversify ownership in a manner expected of a reasonable person investing his or her assets.

The trustee failed to diversify an extremely singularly focused portfolio of stocks in 2019. The Trustee failed to prudently liquidate the Trust's DeLorean Motor Company stock and diversify its portfolio despite extensive knowledge within the financial community of the deterioration of DeLorean Motor Company's financial condition.

As a result of the Trustee's breach of her fiduciary duties, the Trust lost substantial value and was deprived of the opportunity to realize the market appreciation a well-managed, diversified portfolio would have experienced.

As the result of the Trustee's breach of her fiduciary duties and failure to adhere to the Prudent Investor Act, the property available to distribute to the remaindermen on termination of the trust has been irrevocably lost.

As the result of the Trustee's breach of its fiduciary duties and failure to adhere to the Prudent Investor Act, the trust lost substantial income it would have earned on the increased Trust principal.

The Exceptant seeks by this exception to have the Trustee surcharged \$400,000 for the lost DeLorean stock plus lost dividend income to be determined by the court.

EXCEPTION NO. 3 - IDENTIFIED PAYMENT TO THE IRS

The Exceptant excepts to the Trustee's request for an allowance of \$ _____ for the Internal Revenue Service set forth on page 18 of the account.

To the extent that this payment represents interest and penalty for the delinquent filing and/or payment of legitimate estate or fiduciary taxes, the allowance must be denied and the Trustee must be surcharged for any improper tax payment along with any interest.

EXCEPTION NO. 4 - ALLOCATION OF ADMINISTRATION EXPENSES

Exceptant excepts to the allocation to corpus, rather than to income, the amount of \$ _____ of administration expenses, in contradiction to the explicit and express direction of Article ___, of the testamentary trust, which states that the Trustee shall pay "from such income all taxes, charges, and expenses of this Trust."

This incorrect allocation of expenses substantially and improperly diminishes the amount of principal distributable to the remainder beneficiaries.

OBJECTION NO. 5 - OBJECTION TO CORPUS COMMISSIONS.

The Exceptant objects to the Trustee's request for approval of corpus commissions of \$ _____, all of which have been taken. The Exceptant objects to the corpus commissions sought in that:

The rates and total corpus, which form the basis of the calculation, are incorrect. The Exceptant takes exception to said commissions to the extent that said commissions exceed the amounts permitted by N.J.S.A. 3B:18-14.

The corpus commission should be disallowed or greatly reduced because the Trustee did not carry out and fulfill its fiduciary obligations. The misfeasance, malfeasance, and neglect of the Trustee, in part, includes the: (1) failure to marshal estate assets thereby depriving the estate of both principal and the benefit of the proceeds of the investment of said assets might have earned; (2) filing some, but not all, of the necessary fiduciary income tax returns, thereby exposing the estate to penalties and interest; (3) failure to timely deposit dividend checks; and (4) repeated refusal to obey the prior orders of this court to account.

To the extent the Trustee never took custody and responsibility for the two bank accounts of the estate, she did not earn a commission thereon and the same must be removed from the corpus calculations.

The Exceptant seeks by this exception to have the allowance for corpus commission denied and the Trustee surcharged a minimum of \$_____ plus lost interest to the estate by the Trustee's excessive and unauthorized taking of corpus commissions.

OBJECTION NO. 6 - ACCOUNTANT FEES TO COMPILE AND PREPARE ACCOUNT

The Exceptant objects to the Trustee's request for an allowance of \$ _____ for Bean Counters & Associates CPA set forth on page 4 of the Final Account. It appears that this fee was incurred because the Trustee failed to maintain books and records and a reconstruction of all the financial features of the decedent's trust estate was necessary. The Exceptant objects to said allowance in that:

a. The Trustee is responsible for the assets (and income thereon) placed in her care and she has to account for her handling of the estate's assets.

b. Providing an account of her administration for the trust is the duty of the Trustee and is within the skill of the Trustee to perform without professional assistance. The estate should not have required the hiring of a certified public accountant to fulfill this fiduciary duty.

c. To the extent the Trustee seeks allowance of professional fees the same must be supported by an affidavit of services enumerating the nature and necessity of the services provided.

d. To the extent that the certified public accountants prepared compilations or otherwise performed the nondelegable duties of the Trustee, the fee request must be denied, since the same should be paid directly by the Trustee from the commissions she receives for performing this duty.

The Exceptant seeks by this exception to have the Trustee surcharged \$ _____ plus lost interest income from August 18, 2023.

OBJECTION NO. 7 - TRUSTEE'S LEGAL FEE REQUEST.

The Exceptant objects to the Trustee's request for approval of a legal fee of \$ _____, \$ _____ of which has been taken between October 2019 and September 2023 by the estate attorney, as set forth on page 8 of the Final Account. The Exceptant objects to the legal fees sought in that:

Many of the services claimed in the attorney's affidavit of services are non-delegable duties of the Trustee that the Trustee must perform to carry out her fiduciary duties to the trust estate and for which she is compensated by commission.

An allowance of legal fees for trustee duties constitutes an impermissible duplicative payment for the same services. Incurring an additional legal charge, in addition to the Trustee's commissions that compensate the Trustee for the performance of these duties, is inequitable and unfair to the estate beneficiaries.

The payment of additional compensation for services compensated by commissions constitutes exceeding the statutory limits fixed by N.J.S. 3B:18-14.

The affidavit of legal services does not state in sufficient detail, as required by Rule 4:42-9(b), the nature of legal services rendered, the responsibility assumed, the results obtained, or any particular novelty or difficulty or other detail required by RPC 1.5.

The affidavit describes excessive and unnecessary hours was expended with services described as "review of a letter from . . . , " "telephone conferences with . . . " without further description as to need or legal significance or purpose. In addition, the affidavit lists numerous hours addressing the Exceptant's demand that the Trustee settle and distribute the estate.

The claimed legal services provided no benefit to create, preserve, or protect the estate as mandated by Rule 4:42-9(a)(2).

Exceptant seeks by this objection to have the allowance denied and the Trustee surcharged \$_____ plus lost interest income from the various disbursement dates characterized as legal fees.

ADDITIONAL EXCEPTIONS OR OBJECTIONS

Exceptant reserves the right to interpose additional exceptions or objections relating to the Trustee's breach of her fiduciary duties to Exceptant that may be uncovered during discovery.

WHEREFORE, Exceptant demands judgment:

- A. Allowing the foregoing exceptions and objections;
- B. Surcharging the Trustee for the exceptions and objections upheld by the court, together with interest on all amounts disallowed;
- C. Requiring the filing of an account from the commencement of the estate administration to the present in conformance with the Rules of Court and the exceptions and objects upheld by the court;
- D. for such other relief as the court deems just and equitable.

Attorney for Exceptant

Dated:

Appendix L - Review Checklist on behalf of Clients

Documents and Format

- ☐ Review the relevant governing documents (Last Will and Testament, trust instrument, or guardianship judgment) for the relevant authority and powers (e.g., restrictions on types of investments).
- ☐ Has the fiduciary violated any provisions of the governing document?
- ☐ Does the account fail to incorporate all standard schedules: corpus and income charges, corpus and income allowance, capital gains, capital losses, and beginning and ending assets on hand?
- ☐ Does the relief requested in the verified complaint and order to show cause correspond to the facts presented in the account?

Records

- ☐ Does the account reflect expenses incurred to recreate the account because the fiduciary failed to keep accurate records and accounts?
- ☐ Was it necessary to reconcile the account from missing documentation?

Account Detail Review

- ☐ Do the summary corpus and income schedules equal the assets on hand?
- ☐ Do items lack detail - incomplete information, missing assets, or time periods?
- ☐ Does the account reveal incomplete and inaccurate values of assets?
- ☐ Are details/transactions of concern to your client missing?
- ☐ Does the account reveal an absence of investment over a long period?
- ☐ Is the co-mingling of funds estate with personal funds, non-arms-length transactions, and delegation of duties revealed?
- ☐ Does the account reveal a failure to maintain insurance?
- ☐ Does the account reveal liquidation of assets for less than fair value?

- ☐ Does the account reveal a failure to pay creditors in order of priority (Insolvent Estates)
- ☐ Does the account reveal a failure to take advantage of tax elections?
- ☐ Does the account reveal a failure to engage an appraiser to value the decedent's tangible property, such as jewelry, artwork, and collectibles?
- ☐ Does the account reveal a failure to invest within the constraints of the Prudent Investor Act?
- ☐ Does the account reveal a failure to apportion charges (receipts) and allowances (disbursements/expenses) as required by the Principal and Income Act?
- ☐ Does the account reveal mismanagement of assets, e.g., failure to maintain the property's upkeep resulting in loss of the value and the preservation of the property?
- ☐ Asset reconciliation and income collection verification. The accounting should identify and confirm all assets that are held in the trust or estate.
- ☐ For subsequent accountings, the opening balance should match the ending asset values listed on the prior accounting.
- ☐ Assets that have been removed, transferred, or disbursed should be documented. All assets that belong to the trust or estate should be disclosed, even if they are held at outside financial institutions. The income received on investments should be compared with the principal and income investment schedules to verify that all dividends, interest, and other income have been properly collected and documented.
- ☐ Capital changes. All stock dividends, spin-offs, and exchanges should be reviewed to confirm that the inventory values are properly applied, along with details of the assets spun off or exchanged.
- ☐ Balance. The total charges should equal the total credits. To confirm that cash and assets have been reconciled properly, they must also be reconciled separately.
- ☐ Does the account report cash withdrawals? Do the account's exhibits reveal vouchers, receipts, statements, and other supporting documentation to prove the transaction?
- ☐ Does the account report expenses as 'reimbursement' without an adequate description of the disbursements?

- ☐ Does the account report the handling of all assets in the inventory, either through sale, or distribution, or the asset is reported on the Property on Hand Schedule?
- ☐ Check the inventory against the account schedules to verify that all assets listed on the inventory have been accounted for, either through sale, or distribution, or that the asset is listed on the Property on Hand Schedule.
- ☐ Is the account complete and accurate? Are all assets, liabilities, income/deposits, expenditures, changes in property, and property changes reported?
- ☐ Does the account schedules reconciliation?
- ☐ Do the corpus charges report all amounts of money, personal property, and real property constituting principal assets with their date of receipt or acquisition being listed?

CORPUS CHARGES

- ☐ Does the account reveal the omission of property?
- ☐ Does the account reveal differences between the expected value and sale price of estate assets?
- ☐ Are assets incorrectly valued?
- ☐ Are all assets listed? For a subsequent accounting, do the assets carried forward match the previous judgment assets on hand?
- ☐ Are assets missing assets? Is there a failure to identify or collect the entirety of the decedent's assets?
- ☐ Does the account track the sale or disposition of each original asset in corpus charges?
- ☐ Are real estate transactions reported as gross or net values?

INCOME ALLOWANCES

- ☐ Does the account reveal overdraft fees?
- ☐ Does the account reveal that estate income (e.g., rent, interest) is not accounted for?

REALIZED INCREASES

- ☐ Does the account reveal the actual increases due to sales, liquidation, or distribution of principal assets?
- ☐ Are the dates increases were realized listed and the property identified from which the increase was derived?
- ☐ Are capital gains properly recorded?

- ☐ Does the account show security sales as net proceeds less the carrying value of the asset sold?
- ☐ Does the account show sale proceeds less costs of sale and less carrying value?

REALIZED DECREASES

- ☐ Are capital losses properly recorded?
- ☐ Are the losses reasonable?

INCOME CHARGES

- ☐ Has interest and dividends from assets or investments been received in a timely fashion and properly recorded? Has all interest been reported? Have all dividends been reported?
- ☐ Is underproductive property, e.g., unsold real estate generating no rental income, reported?
- ☐ Has all income collected on income-producing assets listed in the corpus charges been included? Have all rents been reported?
- ☐ Is each income charge (receipt) separately accounted for and identified?
- ☐ Has all other income been reported?

UNINVESTED CASH

- ☐ Has cash remained uninvested?

CORPUS DISBURSEMENTS

- ☐ Does the account contain unexplained or inadequate descriptions of expenditures, e.g., "reimbursement" is inadequate for a disbursement?
- ☐ Are personal expenses claimed as estate expenses?
- ☐ Do certain expenses appear too high for services rendered?
- ☐ Are expenses unreasonable?
- ☐ Does the account reveal untimely payment of cash bequests; if not, was interest paid; was the amount of interest fair if interest paid?
- ☐ Does the account reveal that the fiduciary personally benefited from a disbursement?
- ☐ Does the account indicate that penalty and/or interest for failure to timely file a tax return or pay tax?
- ☐ Are unusual expenditures with no explanation included?

- ☐ Are payments to "credit card" without adequate descriptions?
- ☐ Is the payment of cash to heirs, devisees, or beneficiaries timely, and if not, was interest paid? Was the amount of interest fair if interest was paid?
- ☐ Did the fiduciary incur charges for fiduciary services, e.g., bookkeeping?
- ☐ Is there an itemized statement of all sums of money chargeable to income and paid for administration, maintenance, and other expenses, together with the date and reason for each such expenditure?
- ☐ Is an itemized statement of all sums of money chargeable to the principal and paid for funeral, administration, and other necessary expenses, together with the date and reason for each expenditure?
- ☐ Does the account reveal income taxes on capital gains as corpus disbursements?
- ☐ Is reimbursement for expenses paid on behalf of the trust or estate properly documented?

CORPUS DISTRIBUTIONS

- ☐ Do all distributions comply with the terms of the Will, intestate distribution, or trust?
- ☐ Is an itemized list of all sums of money paid and all property delivered from corpus to beneficiaries, devisee, distributees, and trustees, including the date of payment or delivery, and the name of the person to whom payment or delivery was made?

INCOME DISBURSEMENTS

- ☐ Are income distributions mandatory or discretionary?
- ☐ Does the account reveal the payment of the decedent's income taxes or fiduciary income taxes?
- ☐ Does the account reveal the payment of real property taxes, interest expenses, and income commissions?
- ☐ Does the account reveal the payment of interest on fiduciary income, inheritance, or estate taxes?
- ☐ Does the account reveal a transfer from income to principal?

INCOME DISTRIBUTIONS

- ☐ Has an itemized statement of all sums of money paid and of property delivered out of income to the devisees or beneficiaries, the date of payment or delivery, and the name of the person to whom payment or delivery was made been included?
- ☐ Do all distributions of income comply with the terms of the Will or trust?
- ☐ Are unaccounted income withdrawals/disbursements included?

TAXES

- ☐ Does the account reveal a failure to pay the decedent's income taxes, fiduciary income taxes, inheritance taxes, or estate taxes?
- ☐ Does the account show the payment of fiduciary income taxes?
- ☐ Are fiduciary income taxes shown as income allowances?
- ☐ Do the estate and/or inheritance taxes shown in the account agree with any tax return filed?
- ☐ Are the inheritance taxes listed correctly as either a charge against the estate or a distributee (depending on the wording of the will)?
 - o When a Will directs that all inheritance and estate taxes are to be paid out of the general residual estate, is the payment of the same shown as a corpus allowance?
 - o When a Will directs that all inheritance taxes are to be paid by the devisee, is the payment of the same shown as a net corpus distribution to the devisee?
- ☐ Has each party been charged with the correct portion of taxes?
- ☐ Has the allocation of taxes paid and to be paid and the amounts due the estate from each person on whose behalf a tax payment has been made?
- ☐ Is the proportionate amount of the tax paid by each person interested in this estate or charged against their respective interest shown?
- ☐ Has the estate incurred a penalty and/or interest for failure to file a return or pay taxes timely?
- ☐ Has the estate recouped transfer inheritance taxes paid for third-party beneficiary non-probate assets?

PROTECTION OF ASSETS

- ☐ Was insurance on valuable assets allowed to lapse or is not adequate?

COMPENSATION – FIDUCIARY COMMISSIONS

- ☐ Has the commissions been computed pursuant to N.J.S. 3B:18-13 to -17 (personal representative) or N.J.S. 3B:18-24 to -29 (trustee or guardians)?
- ☐ Are the commissions properly calculated on corpus and income under the governing instrument or commission statutes?
- ☐ Does the basis of the calculation of commissions include amounts that should not be included?
- ☐ Have commissions been taken that are not authorized by statute?
- ☐ Are commissions properly allocated between income and corpus?
- ☐ Is any interim commission compensation ("pre-taking") revealed?
- ☐ Have interim commissions been paid without court approval?

COMPENSATION – ATTORNEY FEES

- ☐ Has any advance payment of attorney fees been made without prior court approval?
- ☐ Does the affidavit of legal services set out numerous "file reviews", "reviews of a letter from . . ." or "telephone conferences with . . ." without further description as to need or legal significance or purpose?
- ☐ Does the affidavit of legal services set out numerous "conferences with a firm's associate" without describing the nature, need, or legal significance or purpose?
- ☐ Are the legal fees (whether paid or unpaid) reasonable?
- ☐ Are legal services reported for services for an individual and not the estate or trust?
- ☐ Does the affidavit of legal services set out numerous hours addressing the Exceptant's demand that the fiduciary settle and distribute the estate?

ACCOUNTANT FEES

- ☐ Does the account reveal fees paid to other professionals performing fiduciary duties?

DISTRIBUTION

- ☐ Is a devisee, distributee, or beneficiary's share of the estate properly calculated according to the governing instrument or intestate succession?
- ☐ Are distributions to beneficiaries have been equalized if distributed on different dates?
- ☐ Are payments from individual retirement accounts, annuities, or deferred compensation arrangements properly allocated between income and principal?

INVESTMENTS

- ☐ Are assets that have been sold, redeemed, or transferred easily tracked, i.e., cross-referenced with corpus charges?
- ☐ Has the date and cost of all property acquired by purchase, exchange, or transfers made or received, together with the date of acquisition and cost been shown?
- ☐ Has the estate incurred losses for imprudent, unreasonable investment decisions?
- ☐ Has the fiduciary failed to diversify the assets?
- ☐ Have receipts and expenses been properly allocated between corpus and income as required by the Principal and Income Act or governing instrument?
- ☐ Do the itemized entries confirm that all new investments conform to the types of investments fiduciaries are empowered to make?
- ☐ Have the stock dividends and stock splits been apportioned between principal and income appropriately?
- ☐ Do the itemized new investment entries include the date of acquisition and cost of all property purchased?
- ☐ Has an itemized statement of all exchanges made, specifying dates and items received and items surrendered been included?
- ☐ Do the itemized entries confirm that all stock dividends, stock splits, rights, and warrants received, showing securities that each relates and their allocation as between principal and income been, included?

ASSETS REMAINING ON HAND

- ☐ Do the itemized entries confirm that all property constituting the principal remaining on hand is included?

- ☐ Do the total net amounts of the corpus and income schedules equal the investments and cash on deposit in bank accounts?
- ☐ Does the balance of the assets on hand include the number of shares at the end of the accounting period?
- ☐ Are all unrealized increases and decreases relating to assets on hand reported for securities?
- ☐ Does the mathematical reconciliation for each schedule reconcile with the ending Balance on Hand?

INCOME REMAINING ON HAND

- ☐ If cash is held in a single bank account, has the portion belonging to income been listed?
- ☐ Is there a statement showing all undistributed income?

Appendix M - Illustration Refunding Bond and Release

MERCER COUNTY SURROGATE COURT

I/M/O THE ESTATE OF

_____,
DECEASED

REFUNDING BOND and RELEASE

I/M/O TRUST UWO OF

_____,
DECEASED

Obligor = Heir, Devisee, Beneficiary

Obligee = Executor, Administrator C.T.A., General Administrator, Personal Representative, Trustee, Guardian

Acknowledgment should reflect the state and county of execution.

KNOW ALL MEN BY THESE PRESENTS, THAT I, _____ of the City/Borough/Township of _____ County of _____ State of _____ hereinafter known as the Obligor, am held and firmly bound unto _____ hereinafter known as the Obligee, or to the Obligee's successors in _____ office or assigns, in the sum _____ Dollars (\$ _____) lawful money of the United States of America, to be paid to the Obligee; for which payment well and truly to be made I bind myself, my heirs, executors and administrators firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION is such, that whereas, the Obligor has received from the Obligee the aforementioned sum; and

IN CONSIDERATION THEREOF:

The Obligor has released and forever discharged, and by these presents, does release and forever discharge the Obligee from all claims and demands whatsoever on account of or in respect to the estate [testamentary trust] of the said decedent, and of Obligor's interest therein;

Include the following, if appropriate:

The Obligor does hereby acknowledge receipt of the account by the Obligee [alternative: has been made available for inspection] and acknowledge that it is just and true, including all items of receipts and disbursements, changes in investments, and all other respects. Obligor further acknowledges that his/her approval of the account shall have the same force and effect as if a court of competent jurisdiction of the State of New Jersey has, by judgment, approved the account and therefore waives any formal accounting judicial or otherwise.

Alternative 1: Testamentary Devise

The Obligor is a testamentary devisee and if any part of the whole of such testamentary devise shall at any time hereafter appear to be wanting to discharge any debt or debts, devise or devises, which the said Obligee may not have other assets to pay, Obligor shall return his ratable part of said devise, or such part thereof as may be necessary for the payment of the said debts, or the payment of a proportional part of the said devises.

Alternative 2: Intestate Succession Distributee

The Obligor is an intestate distributee and if any part of the whole of such intestate distribution shall at any time hereafter appear to be wanting to discharge any debt or debts, distribution or distributions, and which the said Obligee may not have other assets to pay, Obligor shall return his ratable part of said distribution or such part thereof as may be necessary for the payment of the said debts, or the payment of a proportional part of the said devises.

Alternative 3: Testamentary Trust Beneficiary

The Obligor is a testamentary trust beneficiary and if any part of the whole of such testamentary trust shall at any time hereafter appear to be wanting to discharge any debt or debts, distributive share or distributive shares, which the said Obligee may not have other assets to pay, Obligor shall return his ratable part of said distributive share or such part thereof as may be necessary for the payment of the said debts, or the payment of a proportional part of the said trust distributive share.

THEN the above obligation to be void, or else to be and remain in full force and virtue.

The words "debt" or "debts" wherever used shall be deemed to include all taxes imposed on or chargeable to the estate or testamentary trust or owed by the deceased, including but not limited to federal, New Jersey, or other state transfer inheritance, estate, death, transfer and income taxes, together with interest, penalties, costs, expenses, and counsel fees, if any.

If more than one person executes the within instruments, then words used in the singular shall be considered to include the plural, and wherever herein any particular gender is used it shall be inclusive of the masculine, feminine, and neuter gender, where the text so requires.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness Sign above Print Name below

Obligor Sign above Print Name below

STATE OF _____, COUNTY OF _____ } SS:

BE IT REMEMBERED, that on this _____ day of _____, 20 __ before me, the subscriber, a Notary Public of the State of _____ personally appeared _____ (Obligor's name) who, I am satisfied, is the person in the foregoing instrument named, and thereupon acknowledged that he/she signed, sealed and delivered the same as his/her act and deed for the uses and purposes therein expressed.

Notary Public of the State of _____
My Commission Expires: _____

[Notary Seal or Stamp]

Appendix N - Motion for Interim Corpus Commissions

Firm Name:
 Attorney:
 Bar Number:
 Address:
 Telephone No.:
 Fax No.:
 E-Mail:
 Attorney for Plaintiff

Superior Court of New Jersey
 Chancery Division - _____ County
 Probate Part

Docket No.:

In the Matter of the Article

___ Trust Under the Will of

_____, deceased

CIVIL ACTION
**CERTIFICATION IN SUPPORT OF EX
 PARTE MOTION FOR INTERIM
 COMMISSIONS**

_____, of full age, hereby certifies and says:

1. I am the Trustee of the _____ Article ___ Trust and I submit this certification in support of my motion for interim corpus commissions.

2. The current value of the trust corpus is \$_____.

3. Following the statutory schedule, I have received aggregate annual corpus commissions of \$_____.

4. It is anticipated that the trust administration will continue for another ___ years before the trust corpus and accrued income will be distributed to the remaindermen and I will be entitled to termination commissions of approximately \$_____.

5. As trustee, I have performed substantial administration services managing the investment portfolio and the trustee duties over the past ____ years and the interim commissions requested are fair and reasonable.

6. No previous application has been made for the relief herein requested.

7. The interim commissions, if approved by the Court, will not exceed ____ percent of the maximum allowable commissions on termination of the trust. The requested interim commissions will not exhaust or consume the maximum commissions permissible.

8. If approved by the court the interim commissions will benefit the trust since the commissions will be claimed as an administrative expense deduction from the trust's income tax return.

9. Based on the facts and reason set forth above, it is respectfully submitted that my motion for interim commissions in the amount of \$_____ be granted, subject to final judicial account approval under R. 4:88-2.

I certify that the statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.

Dated: _____

Appendix O – Pro Forma Accounting Bench Decision

1. _____[Decedent] died on _____, last a resident of _____, Mercer County, New Jersey.

2. On _____ the Surrogate of Mercer County appointed _____ Administrator C.T.A.

3. On January 22, 2024, the Administrator C.T.A. filed a verified complaint and an account dated _____.

4. The Administrator C.T.A. seeks:

A. Approval of the Administrator C.T.A. account for the period from ____ [S] to ____ [E].

The account presents corpus charges of \$_____ and corpus allowances of \$_____ and income charges of \$_____ and income allowances of \$_____.

The balance on hand as of _____ 2024 is \$ _____.

B. The Administrator C.T.A. seeks corpus commission of \$_____ [of which \$_____ has been taken] [all of which have been taken] [none of which has been taken].

C. The Administrator C.T.A. seeks an income commission of \$_____ [of which \$_____ has been taken] [all of which has been taken] [none of which has been taken].

D. The Administrator C.T.A. seeks allowance of \$_____ for legal services and disbursement [of which \$_____ has been paid] [all of which has been paid] [none of which has been paid].

The Administrator C.T.A. has filed with the Court a certification [affidavit] of services from _____ in support of the fee request.

E. Discharging _____ as Administrator C.T.A.

F. Cancelling the Administrator C.T.A. surety bond and discharging the Surety.

5. The Administrator C.T.A. has filed a Proof of Service with the Court documenting the service on the parties-in-interest of the verified complaint, first and final account, certification of services, and order to show cause.

6. _____ has filed Exceptions and Objections that were brought on for hearing on _____ 24.

7. It is ORDERED AND ADJUDGED that:

A. The first and final account for the period from ____ to ____ is hereby judicially approved and allowed as herein adjusted.

B. The following items in the report of the Administrator C.T.A. are disapproved to the extent stated below:

C. Exception #1 that the disbursement of \$____ on____ is improperly taken as an allowance as a debt of the estate is SUSTAINED as it is a personal debt of the Administrator-accountant.

D. Exception #2 that the Administrator-accountant has failed to account for the decedent's IRA funds in the amount of \$____ is DISALLOWED as the decedent's IRA accountant passes outside the decedent's estate to the named IRA beneficiary.

E. Exception #3 that the fees of \$____ paid to the Law firm of XXXX are unreasonable and an allowance for such payment is therefore improper is OVERRULED and DISALLOWED.

F. The Administrator C.T.A. is surcharged for and shall repay to the Estate the following improper disbursements paid to:

AAAAA (Exception #1) \$

BBBB (Exception # 3

G. The following commissions are allowed:

a. Corpus commissions of \$_____ are allowed.

b. Income commissions of \$_____ are allowed.

H. The Administrator C.T.A. shall repay to the Estate all advance commissions that exceed the amount properly payable, with interest at ____ percent per annum.

I. Fees for legal services of \$_____ and disbursements of \$_____ to _____ are allowed all of which have been paid.

J. Fees to the Surrogate for auditing and page filing fees of \$_____ are allowed.

K. The balance remaining on hand in the amount of \$_____ be paid as follows:

c. To [name] \$[amount]

L. Upon payment of the net fees and commissions and distribution of the net estate on hand, the Administrator C.T.A. is discharged and the surety is discharged and the bond canceled.

13. A copy of this Order shall all be served, by the attorney for the plaintiff, on all the interested parties within ____ days of the date hereof.

About the Panelists...

Susan E. Champion is a Partner in Hunziker Jones & Sweeney, P.A. in Wayne, New Jersey. She has been practicing for forty years and concentrates her practice in guardianships and conservatorships; chancery and probate litigation; trusts and estates administration; elder and disability law; and municipal law. She has previously served in the City of Paterson Law Department and was Corporation Counsel to the City of Paterson.

Ms. Champion is admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the Third Circuit of Appeals. Her professional affiliations have included the National Academy of Elder Law, the Institute of Municipal Attorneys, and the New Jersey State and Passaic County Bar Associations. Ms. Champion was appointed to the District XI Ethics Committee by the New Jersey Supreme Court and served as Vice President and Master of the Justice Robert L. Clifford American Inns of Court. She is also a member of the Guardianship Association of New Jersey, Inc. (GANJI).

Ms. Champion received her B.A., *cum laude*, from Muhlenberg College and her J.D., *summa cum laude*, from Boston College Law School.

Christina Hardman-O'Neal is a Partner in the Tax and Estate Planning Department of Davison Eastman Muñoz Paone, P.A. with offices in Freehold and Toms River, New Jersey. She is experienced in estate and trust planning, administration, probate and chancery litigation and taxation, as well as guardianships, zoning and land use, and business organizations.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Ms. Hardman-O'Neal is a member of the New Jersey State Bar Association, where she is a former Trustee, a member of the Real Property and Probate and Elder Law Sections; and Past Chair of the Young Lawyers' Division. She is a member and former Trustee of the Monmouth Bar Association, where she is a member of the Elder Law Committee and has chaired the Probate Committee and Young Lawyers' Division. She is also a member of the National Academy of Elder Lawyers (NAELA), the Central Jersey Estate Planning Council and the Probate and Elder Law Committees of the Ocean County Bar Association. She has been appointed to the Supreme Court Committee on E-Filing.

Ms. Hardman-O'Neal received her B.A. from the College of New Jersey and her J.D. from Rutgers School of Law, where she served as the Managing Articles Editor for the *Rutgers Race and Law Review*, served for two years in Rutgers Special Education Clinic in Newark, and was the recipient of the Jennifer Smaldone award for Outstanding Work in the Field of Disability Law. She served as a law clerk to the Honorable Donald S. Goldman, J.S.C. (Ret.) and Glenn A. Grant, J.A.D., Acting Administrative Director of the New Jersey Courts in the Superior Court of New Jersey, Family and Criminal Divisions, Essex County, and as an intern in the federal courts for the Honorable William H. Walls, United States District Judge for the District of New Jersey.

Anthony R. La Ratta is a Partner in the Litigation Department of Archer & Greiner, P.C., in the firm's Voorhees, New Jersey, office. Also, a member of the firm's Estate and Trust Litigation Group and an Assistant Group Leader of the practice group, he concentrates his practice in trust and estate litigation, with an emphasis in litigation involving probate matters, estates, trusts,

guardianships and fiduciaries. He has represented banks, corporate fiduciaries, executors, trustees, beneficiaries of estates and trusts, incapacitated persons, surviving spouses and intestate heirs, and has handled Will contests, undue influence cases, diminished capacity cases, contested guardianships, breach of fiduciary duty, and accountings of estates and trusts.

Admitted to practice in the state and federal courts of New Jersey and Pennsylvania, and before the Third Circuit Court of Appeals and the United States Supreme Court, Mr. La Ratta has been a member of the American, New Jersey State, Camden County, Cape May County, Burlington County and Gloucester County Bar Associations, and the Justinian Society. He is a member and Past President of the Estate and Financial Planning Council of Southern New Jersey and has served as Chair of the Litigation, Ethics and Malpractice Group of the ABA Section of Real Property, Trust and Estate Law, as Co-Chair of the Camden County Bar Association's Probate and Trust Committee and as a member of the Probate Committees in Burlington, Camden and Gloucester Counties. Mr. La Ratta is a Fellow of the American College of Trust and Estate Counsel (ACTEC), has been Committee Chair of the National Conference of Lawyers and Corporate Fiduciaries and has served on the Equity Jurisprudence Committee of the New Jersey State Bar Association. He has been admitted by the State of New Jersey to the roster of court-appointed mediators for probate cases.

The author of several published articles, Mr. La Ratta has lectured on trust and estate issues on radio programs and for ICLE, the American and New Jersey State Bar Associations, the Pennsylvania Bar Institute and other bar associations and professional organizations. In 2014 he was the recipient of the Excellence in Writing Award bestowed by the ABA Section of Real Property, Trust and Estate Law *Probate & Property* magazine, and in 2017 was the recipient of the Founders' Award from the Estate and Financial Planning Council of Southern New Jersey. In 2019 he was also the recipient of the Excalibur Award, bestowed by his *alma mater*, Bishop Eustace Preparatory School.

Mr. La Ratta received his undergraduate degree, *maxima cum laude*, from La Salle University and his law degree from Villanova University School of Law, where he was a member and editor of the *Villanova Environmental Law Journal*. He was Judicial Law Clerk to the Honorable Joseph C. Visalli (Ret.), New Jersey Superior Court, Law Division, Cape May

Honorable Margaret M. McVeigh, P.J.Ch. (Ret.) is Of Counsel to DeMarco & DeMarco in North Haledon, New Jersey. She formerly served as Presiding Judge, Chancery Division, General Equity Part, Passaic County vicinage, and sat in Paterson, New Jersey, where her responsibilities included the General Equity Part, Probate and Foreclosure. She has also served in Special Civil Part and the Family and Civil Divisions.

Prior to her appointment to the bench, Judge McVeigh had a diverse practice litigating in both state and federal courts. She has been Chair of the Conference of General Equity Judges and of the Special Committee to Study Guardianship Monitoring, and has served on the Judiciary Surrogates Liaison and Civil Practice Committees. Judge McVeigh has also served on the Supreme Court Committees on Alternate Dispute Resolution, Women in the Courts and Special Civil Part. A member of the New Jersey State Bar Association, she is a former Officer and Trustee of the Passaic County Bar Association.

Judge McVeigh is a founding member of the Robert Clifford American Inns of Court and has served on its Board of Directors. She was an Adjunct Professor at Montclair State University and is the recipient of ICLE's Distinguished Service Award.

Judge McVeigh is a graduate of Mary Washington College and Seton Hall Law School.

Kristi Jasberg Robinson serves as Chief, Civil Practice Liaison, Civil Practice Division of the New Jersey Administrative Office of the Courts in Trenton, New Jersey. Her responsibilities include overseeing the New Jersey Judiciary Guardianship Monitoring Program and serving as AOC staff to several statewide Judiciary conferences and committees devoted to probate, chancery and civil litigation issues. Prior to joining the AOC in August 2011, she worked as an attorney in private practice and in her most recent role as a staff attorney at Dechert LLP in Philadelphia, Pennsylvania, she managed large-scale electronic discovery review and production in mass torts and product liability matters.

Admitted to practice in New Jersey and Pennsylvania, Ms. Robinson has been a member of the National and Mid-Atlantic Associations for Court Management. She has served as a panelist for continuing legal education courses on guardianship and other topics, and was a workgroup member and contributor to the National Association for Court Management's *2013-2014 Adult Guardianship Guide*.

Ms. Robinson received her undergraduate degree from Hofstra University and her J.D. from Villanova University's Charles Widger School of Law, where she was a member of the Moot Court Board.

Honorable M. Susan Sheppard, P.J.Ch. is Presiding Judge, General Equity, Atlantic/Cape May Vicinage, and sits in Atlantic City, New Jersey. She has also been Presiding Judge of the Family Division and has served in the Criminal Division. Prior to her judicial appointment Judge Sheppard was Cape May Surrogate Judge, where she was both the Judge and Clerk of that Court and was responsible for the probate of Wills, the appointment of administrators of estates, guardians for minors and incapacitated persons, and adoptions. She has also run her own law firm in Ocean City, New Jersey.

Prior to becoming Surrogate in 2013, Judge Sheppard was Vice-Director of the Cape May County Board of Chosen Freeholders and served as 3rd Ward Councilwoman for the City of Ocean City, where she is also Past Council President. From 2003-2006 she was Assistant City Solicitor in Atlantic City. Appointed by the New Jersey Supreme Court to the Judiciary-Surrogate Liaison Committee, Judge Sheppard has been a member of the Cape May County Bar Association and is a past officer of the American Bar Association's Young Lawyers' Division. A former Trustee of the Ocean City Free Public Library, she served on the State of New Jersey Congressional Redistricting Committee in 2011. From 1991-1993 Judge Sheppard was an associate with Blank, Rome, Comisky & McCauley, where she concentrated in labor and employment law; and from 1993-2003 was an associate with, Managing Attorney for and Of Counsel to the New Jersey offices of McCabe, Weisberg & Conway, where she concentrated in real estate law. She is a frequent lecturer to lawyers and civic organizations.

Judge Sheppard received her B.S. from Villanova University and is a *cum laude* graduate of Widener University School of Law, where she was an editor of the *Law Review* and the recipient of the American Jurisprudence Award for Legal research and Writing as well as Criminal Law.

Kevin M. Wolfe, in private practice in Ewing, New Jersey, was formerly Assistant Director, Civil Practice Division, Administrative Office of the Courts, in Trenton, New Jersey, where he was responsible for probate and guardianship, and the implementation of the Guardianship Monitoring Program. Since 2019 Mercer County has retained him to provide professional advisory services to the Mercer County Surrogates Court.

Admitted to practice in the state and federal courts of New Jersey, Mr. Wolfe formerly served as Chief of the AOC Civil Practice Division and was staff to the Conference of General Equity Judges, the Committee of Probate Part Judges and the Judiciary Surrogates Liaison Committee. Prior to that he was a Deputy Attorney General, where he handled probate and other matters, and Mercer County Deputy Surrogate.

A former Adjunct Associate Professor at Mercer County Community College, Mr. Wolfe has written and lectured on legal topics relating primarily to estate administration and guardianships. He is the primary author of probate, guardianship and accounting training manuals presented at a number of Judicial Colleges.

Mr. Wolfe received his B.S.M.E. from the New Jersey Institute of Technology and his J.D. from Rutgers University School of Law.

Guide to Guardianship Reporting Forms

COMMUNICATE

Duties &
Responsibilities

GUIDE TO GUARDIANSHIP REPORTING FORMS

SUMMARY OF GUARDIAN RESPONSIBILITIES

Initially you must:

- Review the Guardianship Forms materials (written guide and video).
 - If you are required to report, determine what report(s) must be filed and when the report(s) must be filed.
 - Note that you may be directed to file using Judiciary forms, including the Guardianship Inventory, Report of Well-Being, EZ Accounting, or Comprehensive Accounting, or by filing other documents, such as a copy of a Social Security Representative Payee Report or a formal accounting.
-

To fulfill your duties as guardian, you must:

- If ordered to file Judiciary reports, access these at:
WWW.NJCOURTS.GOV (search for Guardian Reporting Forms)
- Always file a Report of Guardian Cover Page.
- Keep as close as possible to the reporting period set by the court's written Judgment.
- When filing the Report of Well-Being, attach a written statement of a professional who has examined the incapacitated person during the reporting period.
- File the type of financial report indicated in the Judgment.
 - o If the Judgment of Incapacity does not specify which report to file regarding the estate, file the EZ Accounting Form.
- Contact the Surrogate's Office with any questions about completing or filing the reporting forms.

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1. INTRODUCTION

Some legal and non-legal language in the realm of guardianships may be new to you. For your reference, a Glossary of Terms is included in this guide. The terms defined in this glossary are in bold font, italicized and marked with a dagger symbol (†) when they first occur in the text.

After viewing the contents of this guide you will be able to:

IT IS EXTREMELY IMPORTANT THAT PROSPECTIVE GUARDIANS BECOME FAMILIAR WITH THE DUTIES OF GUARDIANSHIP, INCLUDING REPORTING, BEFORE ACCEPTING APPOINTMENT.

- Understand how to determine if you must file guardianship reports
- Be familiar with the types of guardianship reporting forms
- Know how to access guardianship reporting forms online
- Have contact information for any questions about guardianship reporting

Also, as part of the ***qualification***[†] process, you must file an acceptance that includes an acknowledgment that you have received these materials, understand the contents, and knowledgeably agree to take on the duties of guardianship.

For additional information as to the role and responsibilities of those appointed guardian of the person and/or guardian of the estate for an adult incapacitated person, please visit the Judiciary website WWW.NJCOURTS.GOV (search for Guide to Guardianship). This website also features general court information, forms, frequently asked questions, and helpful links.

[†] See Glossary of Terms

2. WHAT FORMS DO I HAVE TO FILE?

The first step for any guardian is to look to the *Judgment*[‡] of Incapacity and Guardian Appointment entered by the Superior Court, along with the *Letters of Guardianship*[‡] issued by the *Surrogate*[‡]. Both the Judgment and the Letters specify the type of your responsibilities as a guardian.

REPORTING DUTIES ARE
STATED IN THE JUDGMENT
OF INCAPACITY.

An individual may be appointed as *guardian of the person*[‡], as *guardian of the estate*[‡] (sometimes referred to as property), or as guardian of the person and estate. In some cases, one person may be appointed as guardian of the person and a different person appointed as guardian of the estate. For purposes of reporting, each guardian must identify the nature of his or her guardianship and file the appropriate report(s).

CO-GUARDIANS MAY FILE
JOINTLY OR SEPARATELY.

If multiple guardians are appointed as to the same area (co-guardians of person, or co-guardians of estate, or co-guardians of person and estate) then all guardians must report. It is acceptable for all co-guardians to file a single report, signed by all, or to file separate reports. Refer to the Judgment as to any requirement for *service*[‡] of a report filed by one guardian on the other co-guardian(s).

After determining whether you are appointed as a guardian of the person, a guardian of the estate, or a guardian of both person and estate, look to the Judgment to see if, what, and when you must report. Guardians are often required to report around the annual anniversary of the date of their appointment, but in some cases the Judgment will set a different period. The date of appointment is the date of entry of the Judgment, not the date when letters were issued by the Surrogate.

2.1 Report of Guardian Cover Page

All guardians required to file periodic reports must complete the *Report of Guardian Cover Page*[‡]. This is a one-page document to which the appropriate report(s) will be attached.

The date of appointment should be filled in prior to the first numbered paragraph, even if the reporting period is not aligned with that date. The start date and end date of the reporting period must be stated in the caption. Make sure to select appropriately as to the nature of your guardianship: Guardian of Person, Guardian of Estate, or Guardian of Both Person and Estate. This selection will guide you in choosing the appropriate reporting form(s) to attach to the Cover Page.

[‡] See Glossary of Terms

You must file the original report with the Surrogate. Check the judgment to see if you need to send copies of the report to anyone else. In most cases, this is not required because other individuals considered interested in the guardianship will be authorized to review the report at the *Surrogate's Court*[†]. Remember that there is a fee of \$5/page for all documents filed with the Surrogate, including the Cover Page.

In a co-guardianship, all co-guardians must report as required by the judgment. Co-guardians may file a single Cover Page with all required information, but if the co-guardians reside in different places, it may be necessary to attach a separate page with the address and contact information for the additional co-guardian(s).

2.2 Guardian of the Person: Report of Well-Being

If you are a guardian of the person, you may be required to file the *Report of Well-Being*[†]. This document includes ten (10) questions and space to provide additional information. For any question that cannot be answered fully in the space provided, you should attach additional sheets, writing or typing on only one side of the page.

- **Item 1** requests a description of the incapacitated person's overall situation. This item should be answered either by describing any significant changes in the incapacitated person's physical health, intellectual functioning, emotional health and/or living conditions, or by stating affirmatively that there has been no substantial change in these areas since the prior reporting period. This item should not be left blank even if there has been no change to the incapacitated person's overall situation since the establishment of the guardianship or the filing of the prior report.
- **Item 2** addresses the incapacitated person's residential setting. If you respond that the current setting is not suitable to the needs of the incapacitated person, then you must explain that response and should specifically state whether the unsuitability is temporary and being addressed (i.e., the incapacitated person's apartment flooded due to a storm, and from _____ to _____ he was placed in alternate housing while the damage was repaired) or an ongoing issue (i.e., the incapacitated person is no longer ambulatory but remains in _____ facility which lacks operational elevators, however, alternate housing has not yet been secured).
- **Item 3** asks whether suitable social activities are available to the incapacitated person and whether he or she partakes in such activities. Both aspects of this question should be answered taking into consideration the abilities and needs of the incapacitated person.

ANSWER ALL QUESTIONS
AND PROVIDE DETAILS
WHERE APPROPRIATE.

- **Item 4** requests information regarding a recent medical evaluation of the incapacitated person. A written statement of an examining professional (i.e., medical doctor (M.D.), doctor of osteopathic medicine (D.O.), etc.) must be attached to the Report of Well-Being. A Certification of Examining Professional (CN 12042) is provided on the last page of the Report of Well-Being. The Certification of Examining Professional is a form certification which should be provided to the professional who has performed a recent medical evaluation of the incapacitated person. Complete the top portion of the form by filling in your name, address, and telephone number. Insert the incapacitated person's name in the blank spot under "In the Matter of". Provide this form to the examining professional to be filled out. Additional pages may be attached if more space is needed. Should the examining professional wish to utilize their own form, make sure that the statement addresses the same information.
- **Item 5** requires a list of other professional medical treatment provided to the incapacitated person. If the reporting period is other than a year, then this question should be answered to address the period covered by this report.
- **Item 6** addresses substantial changes to the incapacitated person's medication. If the incapacitated person is not prescribed any medication, then this should be stated. If there has been no substantial change to the incapacitated person's prescriptions, then you should state "no change to prescriptions." If the incapacitated person is subject to a regimen of over-the-counter medications, then any substantial change in this regard should also be noted.
- **Item 7** provides for a description of the incapacitated person's treatment plan going forward. For any area that does not apply, you should note "N/A" (not applicable). Examples of additional related services include speech therapy, occupational therapy, therapeutic massage, etc.

ATTACH A STATEMENT
FROM A RECENT
EXAMINATION OF THE
INCAPACITATED PERSON.

YOU MAY ALSO SHARE
ADDITIONAL
INFORMATION ABOUT
THE PROTECTED PERSON
OR THE GUARDIANSHIP.

- **Item 8** directs the guardian to assess various areas of the incapacitated person's functioning. Please provide further explanation if you select "Don't Know" for any area.
- **Item 9** asks if you have investigated eligibility for public benefits to which the incapacitated person may be entitled. If you have investigated all listed programs, then you should answer "Yes" even if the incapacitated person has been determined ineligible for some/all benefits.

- **Item 10** allows you as guardian to identify any assistance required from the court or a community agency. Please be as specific as possible in describing any help that you need on behalf of the incapacitated person.

Following these items is an optional section for you to share with the court any other information about the incapacitated person and/or the guardianship.

2.3 Guardian of the Estate Forms: Guardianship Inventory, Periodic EZ Accounting, and Periodic Comprehensive Accounting

If you are a guardian of the estate (sometimes called a guardian of the property) only, then you will generally not file the Report of Well-Being. If you are a guardian of the person and estate, then in addition to the Report of Well-Being, you may be required to report in accordance with the terms of the Judgment as to the financial affairs of the incapacitated person.

Along with the ***Guardianship Inventory***[§] form, two different periodic reporting forms have been prepared for use by guardians of the estate: the ***Periodic EZ Accounting***[§] form (“EZ form”), and the ***Periodic Comprehensive Accounting***[§] form (“Comprehensive form”). The Judgment should specify which form you are required to file, as well as the deadline for filing.[§]

Sometimes, a Judgment may simply direct the filing of an annual report. If the Judgment does not specify a type of accounting and you are unsure which form to utilize, you can file the EZ form and then wait for any further direction.

Note that instead of filing a Judiciary form, it is possible that a Judgment may direct periodic filing of a copy of a Social Security Representative Payee Report for the most recent reporting period, or of a formal accounting.

For further information on financial reporting, see the Frequently Asked Questions (FAQ) section in this guide.

2.4 Guardian Inventory

A Judgment may direct the filing, usually within ninety (90) days, of an inventory of the estate of the incapacitated person. Always check the Judgment to confirm the deadline for filing as well as who must be served with a copy of the inventory.

AN INVENTORY IS A
SNAPSHOT OF THE
GUARDIANSHIP ESTATE.

The Guardian Inventory form is a three-page document to which additional sheets may be attached if necessary. The caption should be completed to reflect the name of the incapacitated person, the county of the guardianship, and the docket number. If you are the only guardian of the estate, then you alone must date and sign below the certification language. If there is more than one guardian of the estate, then all such guardians must date and sign the certification.

Below the lines for signatures is a section for “RECAPITULATION” in which the information set forth in the following schedules is restated to provide an overview of the inventory. As noted at the bottom of page 1, the inventory must list all assets, regardless of whether such assets are located in New Jersey or out-of-state. The

[§] Judgments entered prior to the adoption of the 2014 guardianship reporting forms will not specify which of the current forms should be used but may simply direct the guardian to “report annually as to the well-being of the incapacitated person” or “informally account.”

inventory must be completed as to all schedules, and the proper entry for any schedule without corresponding assets is “NONE”.

IF HANDLING A COMPLEX
OR VALUABLE ESTATE,
CONSIDER PROFESSIONAL
ASSISTANCE.

Specific instructions are provided as to each schedule included in the inventory. You should follow these directions carefully and attach additional pages as needed. If you are handling a complex and/or highly valuable guardianship estate, then you may wish to consult with an attorney or an accountant to assist you in

completing the Inventory Form. Even if you retain a professional for assistance, the inventory must be filed by the guardian(s) personally and not by the attorney or accountant.

Note that Schedule A – Real Property, and Schedule B – Stocks, Bonds, Mutual Funds, Securities and Investment Accounts, include two (2) columns for valuation. For real property, you are asked to provide both the municipal tax assessed value and the market value. For Schedule B, you are asked to provide face value, if applicable, and market value. Some assets, like bonds, will have both a face value and a market value. For those assets, list both the face value and market value. Other assets will only have a market value. To calculate the totals for these schedules, add together the market value amounts. Market value may be estimated rather than based upon a new appraisal. For further information, see the *Frequently Asked Questions* (FAQ) section.

At the bottom of page 3 is a certification of service which must be completed prior to filing. In general, the inventory must be served by the guardian(s) on all interested persons listed in the verified complaint for guardianship, as well as any parties who subsequently entered an appearance in the action. You should check the Judgment to determine if you are required to serve the inventory on anyone else. The Judgment may also specify how service should be effectuated (i.e., certified mail). Remember that when you file the original inventory, you must pay a fee of \$5/page to the Surrogate.

2.5 Periodic EZ Accounting

The EZ form is a three-page document to which additional pages may be attached if necessary.

- **Item A** asks if a *bond*[#] is required, and if so, if one is filed covering the period of this report. If you were appointed as guardian of the estate but the Judgment waived the requirement of bond, then you should select “N/A”. Even if no bond was imposed, if your Judgment requires the filing of a report, then you must file the report by the specified deadline.

- **Item B** inquires if you have identified, traced and collected all of the incapacitated person's assets since your appointment. If you answer "No" to this question, you must provide further explanation. For example, if you are aware of assets belonging to the incapacitated person but in the custody of someone else, you should explain what steps you have taken to retrieve those assets and bring them into the guardianship estate.

IF TAXES ARE NOT FILED
BECAUSE THE INCAPACITATED
PERSON RECEIVES TOO LITTLE
INCOME, STATE THIS ON THE
FORM.

- **Item C** addresses the status of the filing of the incapacitated person's state and federal tax returns due for all calendar years prior to the year in which this report is being filed, as well as any payments due for same. If no tax returns are delinquent as of the filing of your report, then you should answer yes to this question even if tax returns for the most recent year will soon be due.

For example, if your reporting deadline is in February, then in 2014 you may report that you have filed all past tax returns and made all payments due as

REPORT ALL INCOME,
INCLUDING AMOUNTS
RECEIVED MONTHLY,
QUARTERLY, ONLY
ONCE, ETC.

long as all tax returns have been filed, and payments have been made, for past years including tax year 2012 (as the 2012 returns would have been filed by April 15, 2013). This is true even though you will shortly be filing the tax returns for 2013 (which will be due April 15, 2014). If the amount of income received by the protected person is too little to require the filing of taxes, then write this on the form.

Below items A-C is Part I of the form, which covers income and disbursements during the reporting period only. In line 1 of the SUMMARY table, you should report the beginning cash balance of the incapacitated person's estate. In line 2, you should state the amount reflected under SCHEDULE A – EZ: INCOME, which amount is the Total Income Received. Remember to list all sources of income, even if some sources (such as Social Security benefits) may have been excluded for purposes of setting bond. Below is an example showing the aggregate amount received for Social Security Disability for nine (9) months.

#	Source of Income (e.g. employment, social security)	Description (e.g. 12 months times \$ amount, or lump sum of \$ amount, etc.)	Total Income Amount
<i>Sample</i>	<i>Social Security Disability</i>	<i>9 months x \$689.00</i>	<i>\$6201.00</i>

If you are required to report annually, then income will generally cover twelve (12) months. You may wish to add a brief explanation if certain income is received for a shorter period of time (i.e., the incapacitated person participates through school in a structured work program for ten (10) months of the year, earning a stipend of \$100/month for that 10-month period, for a total of \$1000/year, but the protected person has no earned income during the other two (2) months of the year).

In line 3 of the SUMMARY table, you should state the total amount reflected under Schedule B-EZ: DISBURSEMENTS. This schedule lists the payments made from the guardianship estate for the reporting period. Some disbursements, like food and utilities, are for regular, recurring expenses. If food is purchased solely for the protected person, then the amount spent will likely vary from month to month. In this situation, the category of disbursements should be reported on a monthly basis. The following is sufficient:

#	Category	Payment Date / Period	Payee	Amount Spent
1	Monthly Grocery – January	January 2014	ACME / Shoprite	\$293.77
2	Monthly Grocery – February	February 2014	Shoprite	\$301.23
3	Monthly Grocery – March	March 2014	ACME	\$256.85

If the incapacitated person resides with the guardian(s) as part of a family unit, then it is permissible for a set amount of the protected person's funds to be utilized each month to cover his or her share of food purchases. In this case, for SCHEDULE B-EZ, you may report as follows:

IF APPLICABLE, REPORT HOW MUCH THE PROTECTED PERSON CONTRIBUTES TO SHARED EXPENSES.

#	Category	Payment Date / Period	Payee	Amount Spent
1	Grocery (12 months)	January- December 2014	ACME / Shoprite	\$2,700 (12 x \$225/month)

Other recurring monthly expenses, like a cell phone or cable plan, can also be reported in this manner.

#	Category	Payment Date / Period	Payee	Amount Spent
1	Jitterbug Plus (cell phone basic plan 29)	January- December 2014	Sprint	\$359.88 (12 x \$29.99/mo)

Some disbursements will reflect occasional purchases, such as new clothes at the beginning of a season or for special events. For these items, all fields of the SCHEDULE B-EZ: DISBURSEMENTS should be completed, as follows:

#	Category	Payment Date / Period	Payee	Amount Spent
1	Clothing (winter coat, gloves, snow boots)	January 2, 2014	Kohl's	\$304.88
2	Clothing (sister's wedding)	April 2, 2014	David's Bridal	\$126.14

Keep in mind that reports are reviewed through the New Jersey Guardianship Monitoring Program. While the forms are designed for simplicity and ease of use, if the entries are unclear or raise questions in the minds of reviewers, then you may be asked to provide further explanation or substantiation.

Part II of the form covers the assets of the incapacitated person, if any. As guardian, you must report to the court regarding not only income and disbursements but also any assets owned by the incapacitated person, such as a house, car, or stocks. This is required even if the assets are restricted, meaning that you cannot sell or encumber them without court approval. In completing Part II of the EZ form, review the Inventory or prior report(s) to make sure that you cover all assets previously disclosed to the court.

If the incapacitated person has no property within a particular schedule, then select *N/A* (not applicable). For example, if the protected person does not own a house or other real property, then complete Schedule A as follows:

<p>Schedule A – Real Property</p> <p>Has the ownership of the property changed since the inventory or last report? ☐ Yes ☐ No ☒ NA</p> <p>If Yes, list the property and the disposition of same:</p>

If the incapacitated person continues to own property and nothing has changed since the inventory or prior report, select *No* as follows:

Schedule A – Real Property

Has the ownership of the property changed since the inventory or last report? ☐ Yes ☒ No ☐ NA

If Yes, list the property and the disposition of same:

If ownership of the property has changed, then select *Yes* and explain. For example, if the inventory reflects that the incapacitated person owned a house and that house has been sold, the report would be completed in this manner:

Schedule A – Real Property

Has the ownership of the property changed since the inventory or last report? ☒ Yes ☐ No ☐ NA

If Yes, list the property and the disposition of same:

House at 123 Apple Street sold on 3/15/16 for \$110,000. Proceeds deposited into guardianship checking account (# - 9876).

Respond as to all categories – Schedules A through E – by indicating if the incapacitated person has any property, and if so, if the ownership of the property has changed since the inventory or prior report. An explanation is required only if you are reporting that ownership of property has changed. Otherwise, leave the far-right column blank.

The information provided in Part II is separate and apart from the income and disbursements covered in Part I. Do not change the figures in Part I or in the Summary based upon the information reported in Part II.

YOU MAY ALSO SHARE
ADDITIONAL INFORMATION
ABOUT THE PROTECTED
PERSON OR THE
GUARDIANSHIP.

After Part II, you are asked to identify any assistance required from the court or a community agency. Please be as specific as

possible in describing any help that you need on behalf of the incapacitated person.

Following Part II is an optional section for you to share with the court any other information about the incapacitated person and/or the guardianship.

2.6 Periodic Comprehensive Accounting

The Comprehensive form is more detailed than the EZ form and requires more attachments to substantiate the figures reported. If the Judgment directs that this form be filed in lieu of the EZ form, you should consider consulting with an attorney, accountant, or other financial professional for purposes of preparing at least the first report. Reasonable fees for such professional services are allowable from the estate of the incapacitated person, subject to court approval.

IF REPORTING USING THE
COMPREHENSIVE FORM, CONSIDER
CONSULTING WITH A FINANCIAL
PROFESSIONAL FOR HELP.

- **Item A** asks if a bond is required, and if so, if one is filed covering the period of this report. If you were appointed as guardian of the estate but the Judgment waived the requirement of bond, then you should select “N/A”. Even if no bond was imposed, if your Judgment requires the filing of a report, then you must file the report by the specified deadline.
- **Item B** inquires if you have identified, traced and collected all of the protected person’s assets since your appointment. If you answer “No” to this question, you must provide further explanation. For example, if you are aware of assets belonging to the incapacitated person but in the custody of someone else, you should explain what steps you have taken to retrieve those assets and bring them into the guardianship estate.
- **Item C** addresses the status of the filing of the incapacitated person’s past and current state and federal tax returns, as well as tax payments. If no tax returns are delinquent as of the filing of your report, then you should answer yes to this question even if tax returns for a subsequent year will soon be due. For example, if your reporting deadline is in February, then in 2014 you may report that you have filed all past and current returns and made all payments if everything is current through 2013, even though you will shortly be filing the 2014 returns. If the amount of income received by the incapacitated person is too little to require the filing of taxes, then write this on the form.

The next section, SUMMARY, is designed to provide an overview of the guardianship estate. Part I: Cash is divided into two sections, and the figures for both sections are derived from the schedules on the following pages.

Line 1 is used to report income as calculated by SCHEDULE A: INCOME, shown on page 3. All sources of the incapacitated person’s income must be listed, even if a particular source may have been excluded for purposes of setting bond. Note that if the incapacitated person receives more than one type of Social Security income, each type should be specified. In general, income will be received for the full 12-month period covered by a report. If a particular source of income is received for a lesser period of time, then this should be explained (i.e., alimony of \$1250/month received from former spouse through July 1, 2014, then terminated due to death of former

spouse, so seven (7) months reported for this period, 7 months x \$1250/month = \$8,750).

SCHEDULE B addresses disbursements from the guardianship estate. Schedule B-1, shown on page 3, is reserved for attorney's fees and costs directed to be paid from the assets of the protected person by the Judgment or subsequent Court Order. The Judgment typically awards a specific amount to be paid to court-appointed counsel for the incapacitated person. In some cases, an additional counsel fee award is included in the Judgment for a court-appointed guardian ad litem.

SCHEDULE B-1 IS LIMITED TO ATTORNEY FEE AWARDS SET FORTH IN THE JUDGMENT OR COURT ORDER.

If the attorney for the plaintiff in the underlying action sought approval of fees, then that attorney's fee may also be included in the Judgment. If you were the plaintiff in the guardianship action but did not seek or did not obtain court approval of fees paid to your attorney at or after final judgment, then any fee you paid to your attorney should not be listed in Schedule B-1. If the court approved payment from the assets of the protected person for less than the full amount paid to your attorney (i.e., if the Judgment approved fees at \$250/hour, but you agreed to pay your attorney \$325/hour), then only the amount awarded pursuant to the Judgment should be listed in Schedule B-1 as only that amount has been approved for payment from the assets of the incapacitated person. If you have retained an attorney to assist you in preparing this report, then unless that attorney's fee has been approved by Court Order, it should not be included in Schedule B-1. Remember to include the date of the Judgment or Court Order for each entry in Schedule B-1. In SUMMARY line 2, list the total attorney fees and costs reflected in Schedule B-1.

Schedule B-2, on page 3, covers guardian fees and reimbursements approved by the Judgment or subsequent Court Order. Like Schedule B-1, entries for this schedule are limited to fees and costs approved by the court. This may include not only your approved fees and costs, but potentially amounts approved as to a temporary

PAYMENTS SPECIFICALLY APPROVED BY THE COURT ARE REPORTED IN SCHEDULES B-1 THROUGH B-3.

guardian. If you are the guardian of the estate only, then be sure to include any fees and/or costs allowed as to the guardian of the person. The date of the Judgment or Order must be listed for each entry, and the total approved guardian fees and reimbursements should be listed in line 3 of SUMMARY.

Schedule B-3, shown on page 3, should reflect all other fees and costs authorized by the Judgment or subsequent Court Order. Such court-ordered disbursements may include fees allowed to an individual or institution who provided care to the incapacitated person during the pendency of the underlying guardianship action, as well as fees charged by physicians or psychologists who evaluated the protected person as part of the guardianship proceeding.

In some cases, after entry of the initial Judgment, the guardian will be directed or allowed to pursue specific matters such as selling the incapacitated person's former residence because he or she has been relocated to a skilled nursing facility. The Order Authorizing Sale of Real Property might include an award of fees to the realtor retained to list and sell the property, and this court-approved fee would be included in Schedule B-3. Note that if the Order Authorizing Sale of Real Property included an additional counsel fee to an attorney or guardian ad litem appointed for the protected person, then these amounts should be included in Schedule B-1. The total for approved disbursements is then entered at SUMMARY line 4.

Whereas Schedules B-1 through B-3 are limited to payments specifically approved by the court, Schedule B-4, shown on page 4, covers all other disbursements from the guardianship estate. Some disbursements, like food and utilities, are for regular, recurring expenses. If food is purchased solely for the incapacitated person, then the amount spent will likely vary from month to month. In this situation, the category of disbursements may be reported on a monthly basis, but you must list check numbers and the range for dates of purchase. The following is appropriate:

#	Category	Bank Account #	Check #	Payment Date	Payee	Amount
1	Monthly Grocery – January	-6259	101, 105	January-December 2014	ACME / Shoprite	\$293.77
2	Monthly Grocery – February	-6259	121, 124, 125	February 2014	Shoprite	\$301.77

If the protected person resides with the guardian(s) as part of a family unit, then it is permissible for a set amount of the incapacitated person's funds to be utilized each month to cover his or her share of food purchases. In this case, for Schedule B-4, you may report as follows:

#	Category	Bank Account #	Check #	Payment Date	Payee	Amount
1	Grocery (12 months)	-6018		January-December 2014	ACME / Shoprite	\$2,700 (12 x \$225/month)

Other recurring monthly expenses, like a cell phone or cable plan, can also be reported in this manner.

#	Category	Bank Account #	Check #	Payment Date	Payee	Amount
1	Jitterbug Plus (cell phone basic plan 29)	-6259	Auto-debit	January-December 2014	Sprint	\$359.88 (12 x \$29.99/mo)

Some disbursements will reflect occasional purchases, such as new clothes at the beginning of a season or for special events. For these items, all fields of Schedule B-4 should be completed, as follows:

#	Category	Bank Account #	Check #	Payment Date	Payee	Amount
1	Clothing (winter coat, gloves, snow boots)	-6018	103	January 2, 2014	Kohl's	\$304.88
2	Clothing (sister's wedding)	-6018	134	April 2, 2014	David's Bridal	\$126.14

Keep in mind that reports are reviewed through the New Jersey Guardianship Monitoring Program. While the forms are designed for simplicity and ease of use, if the entries are unclear or raise questions in the minds of reviewers, then you may be asked to provide further explanation or substantiation. The B-4 total disbursements should be listed in SUMMARY line 5.

Line 6 of the SUMMARY will state the total disbursements, calculated by adding together the foregoing figures reflected on lines 2, 3, 4 and 5.

SCHEDULE C of the SUMMARY shows cash that has come into the guardianship estate, or cash that has been paid out of the guardianship estate, arising from principal assets. Schedule C-1, provided on page 5, seeks information regarding sales proceeds (cash that has come into the guardianship estate), such as from the sale of a house, car, or shares of stock. The total for C-1 sales proceeds is then given at line 7 of the SUMMARY.

A PURCHASE OF A HOUSE,
CAR, OR SHARES OF STOCK
WOULD BE LISTED IN
SCHEDULE C-2.

Schedule C-2, on page 5, addresses purchases of principal assets from the guardianship estate. Such purchases are different than the disbursements set forth in Schedule B-4. For example, if the incapacitated person owns a home encumbered by a mortgage, monthly mortgage payments would be listed as B-4 disbursements.

If the protected person's existing house is sold during the guardianship, then the proceeds of that sale would be listed in C-1. If a new house is purchased for the incapacitated person, then the purchase price for that house would be stated in C-2. The total for C-2 purchases is inputted in SUMMARY line 8.

Line 9 of the SUMMARY will reflect the overall increase or decrease in cash for the period covered by the accounting, based upon the figures already determined. The entry for line 9 is calculated by adding line 1 (income into the guardianship estate) and line 7 (sales proceeds into the guardianship estate), and subtracting line 6 (disbursements paid out of the guardianship estate) and line 8 (cash paid for purchases of principal assets).

The next entry in SUMMARY, in Section 2, will show total cash at the beginning of the accounting period. This figure is determined by adding together the amounts of cash (and cash equivalents) maintained in banks or other financial institutions as of the beginning of the reporting period. The total cash holdings in the

guardianship estate should be set forth at the bottom of SCHEDULE BC, shown on page 2, in the bold box. The figure from the bold box is restated in the SUMMARY, Section 2, across from the description “Cash at the beginning of the period from Schedule BC”. Note that you must not only provide the information identified in the table (institution name, street address, city, state, zip code, bank account number, and amount) but also attach to the accounting copies of each statement from each depository as of the beginning of the period covered by the accounting report. Submission of this back-up documentation is required in order for the accounting to be complete.

YOU MUST ATTACH COPIES
OF BANK STATEMENTS TO
THE ACCOUNTING, OR IT IS
NOT COMPLETE.

There is no separate schedule that accompanies the next field of Section 2. Rather, the amount in Section 1, line 9, is inputted across from the description “Increase (Decrease) in cash (from line 9)”.

The third and final field of Section 2 reflects the cash and cash equivalents remaining in the guardianship estate at the end of the reporting period. In SCHEDULE D, on page 6, you will list all cash and cash equivalent holdings, in the same format as SCHEDULE BC, but now as of the end of the accounting period. Again, you must attach to the accounting copies of statements from each depository as of the end of the period covered by this accounting. The total cash holdings in the guardianship estate should be set forth at the bottom of SCHEDULE D, in the bold box, and then this figure restated in the last field of SUMMARY, Part I, Section 2.

This concludes SUMMARY, Part I, Cash. Before turning to Part II, however, you must complete SCHEDULE E, on page 5, and SCHEDULE F, on page 6. These schedules are provided as tools to help check the information being reported to the court in this accounting. By completing these schedules, you can confirm the accuracy of your figures or identify any possible math errors or other discrepancies.

SCHEDULE E is designed to show all bank account transfers during the accounting period. If you have moved funds between accounts, such as by transferring small amounts of money held in various depositories into a single guardianship account, then this table will reflect the movement of such funds. Disclosing this information provides transparency and prevents future questions regarding your handling of cash in the guardianship estate.

SCHEDULES E AND F ARE TOOLS TO HELP CHECK THE INFORMATION YOU ARE REPORTING TO THE COURT.

In each row, you must provide the bank account number, date when funds were transferred into the account, transfer in amount, date when funds were transferred out of the account, and the transfer out amount. Any fields that do not apply should be left blank, as shown in the below example.

Bank Account #	Transfer In		Transfer Out	
	Date	Amount	Date	Amount
xxxxxxx-2359			1/31/2014	\$5,221.76
xxxxxxx-6018	1/31/2014	\$5,221.76		
xxxxxxx-1314			2/1/2014	\$1,088.43
xxxxxxx-6018	2/1/2014	\$1,088.43		
	Total Transfer In	\$6,310.19	Total Transfer Out	\$6,310.19

The bolded box at the bottom of the column labeled “Transfer In Amount” should reflect the total funds transferred into accounts. The bolded box at the bottom of the “Transfer Out Amount” column should show the total amount of funds transferred out of accounts. These figures should match if all funds transferred out of accounts have been transferred into other account(s) within the guardianship estate. Any discrepancy should be explained. For example, if you withdrew all funds in one account for the purpose of transferring these funds into a new guardianship account, and the bank at which you opened the new account charged an activation fee that you paid with the cash withdrawn from the prior account, then you should note this fee and also make sure that it is reported as a disbursement in Schedule B-4.

SCHEDULE F provides for reconciliation of each bank account included in the guardianship estate. In each column, you will identify a bank account by number (or last 4 digits of account number), state the beginning balance (as shown on the account statement attached per SCHEDULE BC), plus the transfers into this account (per SCHEDULE E), plus the income (per SCHEDULE A) and sales proceeds (per SCHEDULE C-1) deposited into this account, minus the disbursements (per SCHEDULE B, including all sub-schedules) and purchases (per SCHEDULE C-2), minus the transfers out of this account (per SCHEDULE E), and equaling the ending balance (as shown on the account statement attached per SCHEDULE D). You will repeat this process for each account included in the guardianship estate. Additional pages may be attached if necessary. In the far right column of SCHEDULE F, you should list the totals for each row, starting with beginning balance and continuing through ending balance. If you have attached additional pages showing more accounts, make sure to include the figures from those accounts when calculating the totals column.

Below SCHEDULE F is an optional Account Information Verification Tool that should be used for any account for which there are deposits in transit (not yet credited) and/or outstanding checks (delivered for payment but not cleared). Identifying these pending amounts should clarify any apparent discrepancy as to the ending balance reflected on the most recent bank statement.

You have now completed the portion of the Comprehensive Accounting relating to cash and cash equivalents. In Part II, you will report as to all assets in the guardianship estate other than cash in the bank.

The first field seeks the value of assets, other than cash, as of the beginning of the accounting period. This figure is calculated using SCHEDULE BA, on page 2. SCHEDULE BA is subdivided as to Assets and Liabilities. The top portion, regarding assets, is further divided into categories.

YOU MUST LIST ALL
ASSETS, EVEN RESTRICTED
ASSETS THAT YOU
CANNOT SELL WITHOUT
RETURNING TO COURT.

The first category is real estate (or real property) in which the incapacitated person has an ownership interest. You should list all interests in real property including real property held in common or jointly with another person or persons. If the property is held jointly, include a description of the protected person's interest. In the far right column, for "Beginning Balance / Value", report the value of the real property as of the start of the accounting period. This should be the fair market value of the property, not the municipal tax assessed value. Although the value of real property included in the guardianship estate must be reported, this does not mean that as guardian you must obtain a formal appraisal of the protected person's real estate each year. Rather, in SCHEDULE BA, you should input a reasonable estimate of the fair market value of each real estate asset in which the incapacitated person has an ownership interest. If an appraisal was performed as part of the guardianship proceeding, or for purposes of preparing an initial inventory, then you may utilize that appraisal value. Otherwise, informal resources may be consulted to determine a reasonable estimate of the fair market value. If the incapacitated person has only a partial ownership interest, then be sure to state the value of the incapacitated person's interest rather than the full value of the real property.

The next subsection of SCHEDULE BA seeks a list of the personal property of the incapacitated person, with values as to each item listed. Personal property may include vehicles, household furnishings, jewelry, artwork, etc. You should include a brief description of each item along with an estimated value (i.e., 2004 Subaru legacy sedan in good condition, Kelley Blue Book value \$5,860).

The last subsection of SCHEDULE BA: ASSETS is intended to capture any assets not included in the prior categories. Examples might include a cash reserve not maintained in a bank (i.e., \$200 emergency funds at house, or \$50 emergency cash kept in wallet).

After completing these sections, add together the values for real estate, personal property, and other assets, and insert the total value in the bolded box. This figure should represent the gross value of all assets excluding cash in the bank, as of the beginning of the reporting period.

The final part of SCHEDULE BA requests a report of liabilities. If any asset listed in the accounting has a secured associated debt, such as a mortgage or a car loan, such debts should be set forth in this section. Any other liabilities, such as credit card debt incurred by the incapacitated person prior to establishment of the guardianship, should also be reported here. Total liabilities should be calculated and stated in the bold box.

Once you have determined the Total Assets and Total Liabilities, you will subtract the liabilities from the assets and report the remainder in the bold box at the very bottom of SCHEDULE BA. This figure will be restated in SUMMARY, in the first field for Part II.

The final schedule to be completed is SCHEDULE G, shown on page 6, which follows the same structure as SCHEDULE BA but reflects the balance or value of assets, other than cash in the bank, as of the end of the accounting period. For purposes of valuation, it is not anticipated that you will obtain a formal appraisal of any real property as of the start date and end date of the accounting period. However, it may be appropriate in certain situations to address a substantial change in the value of real estate or other non-cash assets. For example, if funds were expended to renovate the incapacitated person's house by widening doorways and installing a chair lift, then you may wish to indicate the resulting increase or decrease in value. Similarly, you are not expected to calculate annual depreciation of the vehicle used by the incapacitated person, but if the car was totaled in an accident then this should be reflected in SCHEDULE G (note that any insurance proceeds arising from loss of a principal asset should also be reported). In most guardianships, a side-by-side comparison of SCHEDULE BA and SCHEDULE G will show most if not all of the same assets (unless a house or car has been sold during the accounting period), with the same or similar values, and most if not all of the same liabilities, presumably reduced over the accounting period.

Although supporting documentation is not required as to liabilities, you may wish to submit records substantiating any liabilities that may seem questionable to someone reviewing the accounting. For example, it is possible that prior to the institution of the guardianship, the incapacitated person borrowed funds from his roommate at an assisted living facility, gradually incurring a total debt of \$1,000, all of which was spent for trips to Atlantic City. After you qualified as guardian, you confirmed the existence of this debt and negotiated with the creditor to pay back the amount owed at the rate of \$50/month. In this situation, you might attach to the accounting a document reflecting this agreement and signed by the creditor, along with records showing payments of \$600 made during this accounting period, resulting in a remaining debt of \$400.

As with SCHEDULE BA, you will subtract the Total Liabilities from the Total Assets and then input the remainder in the bold box at the bottom of SCHEDULE G. Then, restate this figure in SUMMARY, in the second field for Part II.

To conclude Part II, subtract the Ending Assets (from SCHEDULE G) from the Beginning Assets (from SCHEDULE BA), and input the result in the third field for Increase (Decrease) in assets for accounting period.

On the last page of the form is an optional section for you to share with the court any other information about the incapacitated person and/or the guardianship.

3. ACCESSING GUARDIANSHIP REPORTING FORMS

The approved guardianship reporting forms, listed below, are posted on the Judiciary website WWW.NJCOURTS.GOV (search for Guardian Reporting Forms).

- Report of Guardian Cover Page
- Report of Well-Being Form
- Guardian Inventory Form
- Periodic EZ Accounting Form
- Periodic Comprehensive Accounting Form

All forms can be completed electronically, saved for future reference, and printed for signature and filing. The forms can also be printed in hard copy and then completed by hand. Note that the accounting forms are “dynamic” meaning that as you insert figures, the form will do the math for you. Detailed instructions, similar to those in this guide, are posted online with the forms.

For further information on reporting requirements, see the Frequently Asked Questions (FAQ) section in this guide.

4. GUARDIANSHIP MONITORING PROGRAM (GMP)

The New Jersey Judiciary *Guardianship Monitoring Program (GMP)*^{*} is a statewide court program established in 2013 to monitor and support guardians in their handling of the affairs of incapacitated individuals. The program is committed to helping ensure that these vulnerable members of society are treated with dignity and respect, while also assisting guardians with their challenging role.

Judiciary staff as well as appointed and trained court volunteers review guardianship case information, including inventories and certain periodic reports submitted by guardians. The purpose of this review is to ensure that each guardian is handling the affairs of the incapacitated

individual properly. The review is also intended to detect whether the protected person is subjected to abuse, neglect, financial exploitation or other problems. Cases in which such concerns are revealed are then referred to appropriate court leaders for additional review, as well as follow up as needed. This follow up may include a referral to a Superior Court, Chancery Division, Probate Part Judge when necessary.

THE PURPOSE OF THE GMP IS
TO SAFEGUARD INCAPACITATED
INDIVIDUALS FROM POTENTIAL
ABUSE, NEGLECT, AND
EXPLOITATION BY COURT-
APPOINTED GUARDIANS.

It is important for guardians to know that certain periodic reports submitted to the court will be reviewed through the GMP. In accordance with their appointment, a guardian must cooperate with Probate Part judges, court staff and volunteers who may contact you for additional information or to provide direction regarding your guardianship matter.

For more information about the GMP, go to WWW.NJCOURTS.GOV (search for Guardianship Monitoring Program).

FREQUENTLY ASKED QUESTIONS (FAQ)

Q: Is there a grace period between the end of the reporting period and the date when my report(s) must be filed?

A: Yes. Guardianship reports should be filed within fourteen (14) days of the “due date” which is typically the date of appointment. In the past, guardians were directed to file on or before the anniversary date of appointment, but in practice this deadline proved impractical. As a result, a grace period of fourteen (14) days has been incorporated into the forms and instructions.

Q: What if the form does not cover my situation?

A: The guardianship reporting forms were designed to cover the vast majority of guardianship circumstances. However, there will be certain situations that cannot be easily captured on the forms. If you cannot determine how to report about the guardianship using the approved forms, then you should provide a brief narrative (written) explanation in the section provided at the end of the form or on an extra page.

Examples of situations that might require written explanation include, but are not limited to, the following:

- The Judgment appoints you as guardian of the estate but expressly permits the incapacitated person to manage \$500 per month of her own funds. Although you are able to account for the other assets and income, you do not have detailed records of the incapacitated person’s own purchases because she uses cash.
- You took over as substitute or successor guardian after a prior guardian suddenly died. Although you have some records regarding the well-being and estate of the protected person during the prior guardian’s term, you are unable to answer all questions on the Report of Well-Being or EZ form.

Examples of situations that are covered by the approved forms, but may be less intuitive, include the following:

- The protected person resides in a group home. All of his Social Security income is paid directly to the facility, with a small reserve set aside in a personal needs account. Although you are guardian of the estate, you cannot report how much money is spent on housing versus food versus other expenses.
 - o In this case, you can still complete the EZ form. Simply report the amount of Social Security income received (in Schedule A-EZ) and the amount paid to the group facility (in Schedule B-EZ) and note

that the amount paid to the facility covers all of the incapacitated person's needs.

- The protected person resides in a facility that arranges for medical appointments for all residents. You do not schedule appointments with doctors and do not necessarily accompany the protected person to all appointments. Doctors' reports from the incapacitated person's appointments are maintained at the facility and not automatically forwarded to you.
 - o In this case, you can still complete the Report of Well-Being. You can obtain from the facility a copy of a recent doctor's report (to attach to the Report of Well-Being as required for Item 4). If you prefer, you can attend an appointment with the protected person and/or schedule an evaluation by a doctor for purposes of obtaining a written statement to attach to the Report of Well-Being. However, it should be easier and less expensive to get a copy of a recent report from the facility.
 - o Remember, if you are unclear about how to report information using the guardianship reporting forms, you can always contact your County Surrogate's Office.

A directory of the New Jersey County Surrogates can be found on the Judiciary website www.njcourts.gov (search County Surrogates).

Q: When preparing an inventory, how do I determine the value of assets?

A: The (cash) value of bank accounts, brokerage accounts, annuities and/or life insurance policies will be the value on the date you were appointed. A reliable way to determine the value of an automobile would be to use the Kelley Blue Book valuation.

Determining the value of other assets may be a little more difficult. Appraisals may be obtained for homes, jewelry, artwork or antiques. Appraisals can be very costly. If it is not your intent to liquidate the asset in the very near future, and since the value of such assets can change significantly in a very short period of time, it may be best to provide a reasonable estimate of the asset's value—instead of seeking an appraisal. Be sure to note on the inventory any values that are estimated.

Q: How much detail should I include in the inventory?

A: You should include as much detail as is necessary to reasonably identify the asset. For example, if the incapacitated person has a checking account at Bank of America, you would document it as “Bank of America checking account” and provide the last four digits of the checking account number.

When documenting an automobile, you should include the make, model, year and vehicle identification number (VIN). You should include the address and parcel number for real estate.

Documenting household items on an inventory can be a little more difficult. Some guardians will include a lump sum value of miscellaneous household property and others will include details such as one sofa, one end table and one coffee table. No matter the amount of detail you choose to record, you may want to photograph or video record the personal property. This step protects you in the event that persons interested in the assets of the guardianship estate claim that assets are missing or mischaracterized in the inventory.

Q: How do I know if I am properly completing the report(s)?

A: Especially in the beginning, the process of reporting to the court may be daunting, and it is natural to wonder whether or not you are providing enough – or too much – information. For reference, mock examples of completed forms are posted on the Judiciary website on the Guardian Support / Guardianship Monitoring page at www.njcourts.gov and search for guardianship. These examples illustrate recurrent case situations, such as a guardianship in which the incapacitated person resides in a developmental center, or one in which the protected person lives with the guardian as part of a household unit. These examples will provide you with a general understanding of how much information the court is seeking. Remember that if you are uncertain about how to complete the forms, you can contact your County Surrogate’s Office for procedural guidance.

Q: Can my reporting requirements be changed?

A: Yes. Although the Judgment directs what report(s) must be filed at the time that the guardianship is established, you may ask the court to modify your reporting requirements at any time.

Sometimes, a change in circumstances may make initial reporting requirements inappropriate. For example, at the beginning of a guardianship, the estate may be valued at \$150,000, and the Superior Court Judge may decide to require the guardian to file annually using the EZ Accounting form.

Over time, the guardianship estate may be spent down in providing for the needs of the protected person, and eventually there may be no assets and only Social Security benefits for income. In that situation, the guardian might request that instead of filing the EZ Accounting, the court permit her to file a copy of the Social Security Representative Payee Report.

To request a change in your reporting obligation, you may file a motion prepared by an attorney or using the Guardianship Motion Kit posted on the Guardian Support / Guardianship Monitoring page of the Judiciary website.

Q: What if the Judgment directs me to file something other than a Judiciary guardianship report?

A: Particularly for financial reporting, the Judgment may direct a guardian to file a Judiciary form – the Guardian Inventory, Periodic EZ Accounting, or Periodic Comprehensive Accounting – or another document. If the person subject to guardianship receives Social Security benefits but has no other assets, then the court may direct the guardian to file a copy of the Social Security Representative Payee Report for the most recent reporting period. This form is not posted on the Judiciary website but can be found on the Social Security Administration site, here: www.ssa.gov/forms. It should be filed with a Report of Guardian Cover Page.

In other situations, especially if a guardianship estate is very valuable or complex, or if the guardianship was contested or a financial institution was appointed as guardian of the estate, the court may direct the filing of a formal accounting. Unlike informal guardianship reports, a formal accounting is filed by way of a Verified Complaint and Order to Show Cause, and it is audited by the Surrogate. There is no Judiciary form for a formal accounting. Typically, a formal accounting is prepared by an attorney, often with the assistance of an accountant. A formal accounting should be filed with a Report of Guardian Cover Page, and otherwise in accordance with the New Jersey Rules of Court.

All guardians must report in accordance with the terms of the Judgment. If you are directed to file a Judiciary form, then you must file using that form. Alternatively, if you are directed to file a different type of report, then you must do so.

Q: At the top of the reporting forms is the “Notice to Interested Parties.” What does this mean?

A: An interested party is a person or agency that has an involvement with the incapacitated person who is the subject of the guardianship. The “Notice to Interested Parties” is a reminder that interested parties are also responsible to protect the well-being and/or finances of a protected person, and that court review may be requested to seek review of a guardianship or a guardian’s conduct.

GLOSSARY OF TERMS

Legal and non-legal language in the realm of guardianships is always changing. For reference, a glossary of terms is included in this guide. The terms defined in this glossary are marked with a dagger symbol (†) when they first occur in the text.

<i>Best Interest Standard</i>	Making a decision based on what you believe to be in the best interest of another person; for example, a guardian making a decision based upon what is believed to be in the best interest of an incapacitated person.
<i>Commingle</i>	<p>To combine items and treat them the same way. In the context of guardianship, commingling refers to combining the funds of an incapacitated person with other funds, such as those of the guardian.</p> <p>The assets and income of the guardianship estate <i>must be maintained separately and cannot be commingled</i>.</p>
<i>Commissions</i>	<p>Compensation, set by statute, to which an individual, such as a guardian of the estate of an incapacitated person, is entitled.</p> <p>A guardian of the person is not entitled to commissions.</p>
<i>Comprehensive Accounting</i>	One of two forms approved for guardians of the estate who are required to file periodic reports. The Comprehensive Accounting form is lengthier and more detailed than the EZ Accounting. It is appropriate when a guardian is managing a large and/or complex estate. The Comprehensive Accounting form can be found on the Judiciary website www.njcourts.gov and search for Comprehensive Accounting form.

<i>County Surrogate</i>	<p>An elected Constitutional Officer who serves as judge of the Surrogate's Court for uncontested probate and estate matters.</p> <p>A Surrogate also serves as Deputy Clerk to the Superior Court for the Probate Part, as well as for adoptions in the Family Part.</p>
<i>EZ Accounting</i>	<p>One of two forms approved for guardians of the estate who are required to file periodic reports. The Periodic EZ Accounting form is shorter and much less detailed than the Periodic Comprehensive Accounting. It is appropriate when a guardian is managing a small and simple estate, such as one in which the incapacitated person has no real property and receives monthly income, like a pension. The EZ Accounting form is posted on the Judiciary website www.njcourts.gov and search for EZ Accounting form.</p>
<i>General Guardianship</i>	<p>A "complete in every respect" type of guardianship in which the guardian is able to exercise all rights and powers of the incapacitated person in terms of the area of responsibility he or she is granted.</p> <p>Also known as full or plenary guardianship.</p>
<i>Guardian</i>	<p>An individual appointed by the court with authority over the person and/or the estate of a person who has been legally declared incapacitated.</p> <p>A guardian may have general or limited authority.</p>

<i>Guardian of the Estate</i>	<p>An individual appointed by the court to handle the financial affairs of another person who has been legally declared incapacitated.</p> <p>Unlike a guardian of the person, a guardian of the estate is not responsible for decisions regarding the personal well-being of the protected person. Rather, the guardian of the estate handles assets, income, expenses and liabilities.</p>
<i>Guardian of the Person</i>	<p>An individual appointed by the court to handle the personal affairs of another person who has been legally declared incapacitated.</p> <p>Unlike a guardian of the estate, a guardian of the person does not manage the financial affairs of the incapacitated person, except that a guardian of the person may serve as representative payee for Social Security benefits.</p>
<i>Guardianship Monitoring Program (GMP)</i>	<p>The New Jersey Judiciary Guardianship Monitoring Program is a statewide court program launched in January 2013 to monitor and support guardians in their handling of the affairs of incapacitated individuals. The program was implemented in all 21 counties as of July 2014.</p>
<i>Incapacity</i>	<p>Inability to govern oneself and/or to manage one's affairs.</p> <p>Incapacity may be general (as to all areas) or limited (as to specific areas only).</p>
<i>Incapacitated Person</i>	<p>An individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs.</p> <p>Also known as a protected person. Formerly referred to as an incompetent or a ward.</p>

<i>Interested Parties</i>	<p>A person or agency that has an involvement with the incapacitated person who is the subject of the guardianship.</p> <p>Interested parties (or parties in interest) are typically the same individuals entitled to notice of the initial application for guardianship – i.e., the incapacitated person’s spouse, parent, adult child, etc.</p>
<i>Inventory</i>	<p>A written summary of the assets, income, and liabilities of an individual. In the context of guardianship of the estate, an inventory is a document typically required to be filed within ninety (90) days of a guardian’s appointment. The inventory must be filed on the approved form which is posted on the Judiciary website www.njcourts.gov and search for Guardianship Inventory form.</p>
<i>Judgment</i>	<p>The official decision of a court in a case.</p> <p>For purposes of this guide, Judgment refers to the Judgment of Incapacity and Guardian Appointment, also known as the Judgment of Incapacity and Order Appointing Guardian.</p>
<i>Least Restrictive Alternative</i>	<p>The most minimally restrictive form of intervention appropriate to address a situation, enabling the incapacitated person to maintain as much independence as possible without putting him or her in danger.</p>
<i>Letters of Guardianship</i>	<p>Documents issued by the County Surrogate upon an individual’s qualification as guardian, after the entry of a Judgment by the Superior Court. Proof of a guardian’s authority.</p>

<i>Limited Guardianship</i>	<p>A less intrusive, more individualized, type of guardianship in which a guardian is appointed with authority as to some – but not all – areas.</p> <p>A limited guardianship is established based upon a court’s finding that the person alleged to be incapacitated lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself.</p>
<i>Protected Person</i>	<p>Another term for an incapacitated person, that is, an individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs.</p> <p>Formerly referred to as an incompetent or a ward.</p>
<i>Qualification</i>	<p>A process conducted before the County Surrogate, or Surrogate’s staff, following entry of a Judgment.</p> <p>As part of qualification, the person appointed as guardian affirms his or her willingness to fulfill the duties of a guardian. If a bond is required, the bond must be posted in order for the guardian to qualify and obtain Letters of Guardianship.</p>
<i>Report of Guardian Cover Page</i>	<p>A general information form required to be filed along with any other guardianship reporting form(s). This form may be signed by all co-guardians of the person, or by all co-guardians of the estate. The Report of Guardian Cover page is posted on the Judiciary website www.njcourts.gov and search for Report of Guardian Cover page.</p>
<i>Report of Well-Being</i>	<p>A form developed and approved for use by a guardian of the person required to report as to the well-being of the incapacitated person. The Report of Well-Being is available on the Judiciary website www.njcourts.gov and search for Report of Well-Being.</p>

<i>Restricted Assets</i>	<p>Assets over which a guardian of the estate does not exercise full control.</p> <p>The most common restricted asset is real property. The restriction can be found in the Judgment and sometimes the Letters of Guardianship. It typically provides that the guardian of the estate “cannot sell, transfer, mortgage, or otherwise encumber the real property of the incapacitated person absent court approval.”</p>
<i>Service</i>	<p>Delivery of papers in a legally appropriate way.</p> <p>For example, notice of an application for appointment of a guardian is served upon the alleged incapacitated person by <i>personal service</i>, meaning that copies of the papers are personally delivered. For more information, see New Jersey Rules of Court (Rule 1:5) at www.njcourts.gov and search for rules.</p>
<i>Short Certificates</i>	<p>Short forms of the Letters of Guardianship, stating that by Judgment of a particular date, the guardian was appointed with authority of the person and/or estate of the named incapacitated person.</p> <p>A short certificate will state that as of the date it was issued, the guardianship remains in effect. Additional short certificates may be purchased by a guardian, from the Surrogate, for \$5.00 each as long as the guardianship remains in effect. Unlike the original Letters of Guardianship, short certificates should be provided to banks, service providers and other institutions that require proof of a guardian’s authority.</p>
<i>Substituted Judgment Standard</i>	<p>Making a decision based upon what you believe that the protected person would do if they had the capacity to make the decision.</p>

<i>Superior Court Judge</i>	<p>For purposes of guardianships, the judge of the Superior Court, Probate Part, who decides if the alleged incapacitated person is in fact incapacitated and in need of a guardian.</p> <p>The Superior Court judge makes the substantive decisions about the guardianship, including the determination of capacity and the choice of guardian. The Superior Court judge conducts any hearing(s) and signs the Judgment.</p>
<i>Surety Bond</i>	<p>A contract between at least three parties: the obligee (the party who is the recipient of an obligation), the principal (the primary party who will perform the contractual obligation) and the surety (who assures the obligee that the principal can perform the task).</p> <p>A bond functions much like an insurance policy so that if the guardian of the estate misappropriates (steals) or misuses the money, or makes some other mistake, the incapacitated person will be protected. The price of that insurance policy (the bond premium) can be paid from the guardianship estate.</p>
<i>Surrogate's Court</i>	<p>A county office headed by the County Surrogate that may be in the same location as the Superior Court or may be in a different location.</p> <p>Probate Part actions are filed with the Surrogate's office, including actions to appoint a guardian. It is also where the guardian goes to qualify after entry of the Judgment.</p>

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March 2017