The Tools of Estate Planning
Part II: Using the Tools[1]

Although it may seem obvious, we seem often to forget that the determination of which tools to use for a job should be based on what we're trying to accomplish. For estate planning this means determining first what the client's goals are, then choosing the estate planning tools that will *best* and *most simply* accomplish the client's needs.

This is actually more difficult than one might think, however. It is very easy to put a client into a more complicated estate plan than is required to do the job. The price of increased complication is often failure of the client to do what is necessary to make the plan work, such as not fully funding a living trust, so that some assets must still be probated. To do a competent job, therefore, you need to be thoroughly familiar with the tools that are available to you, understand their advantages and disadvantages, and be able to assess your client's abilities to carry through with the estate plan.

Avoiding Probate

Probate serves two basic functions: (1) to wind up the legal affairs of a decedent and (2) to place a judicial imprimatur on the passage of property from a decedent to those who are rightfully entitled to receive it. Usually there are no issues about winding up the decedent's legal affairs. Instead, the most common reason for probate is to pass property. If that s the case, then avoiding probate for the majority of individuals consists of insuring that their property is arranged in a manner that will do so. There are a number of tools for this purpose.

Joint Tenancies

In the past one of the more common means of avoiding probate has been the joint tenancy with right of survivorship. For things such as bank accounts or certificates of deposit it will probably work to meet relatively simple needs. For real property, however, the joint tenancy can be a disaster.

First, the creation of a joint tenancy with right of survivorship in real property constitutes a gift for federal gift tax purposes. This is because each joint tenant owns a share of the value of the property and can liquidate that through sale or partition. Second, the creditors of any of the joint tenants can reach the interest of that joint tenant. This means that the real property is now exposed to the risks of all of the joint tenants who have any interest in the property. Third, a sale of the property requires the agreement of all of the joint tenants unless it is being partitioned. This means the person who created the joint tenancy has effectively lost control of the property or a large portion of it. Finally, upon any sale of the property, the proceeds must be divided among the joint tenants in accordance with their ownership interests. Allowing one of the joint tenants to retain all of the sale proceeds will constitute a taxable gift from the other joint tenants.

This is not to say that the use of a tenancy by the entirety should be avoided. This is an entirely different matter, as the liability protection afforded by entireties ownership as well as the survivorship feature make it quite desirable in most cases. There are a few cautions in using tenancy by the entirety, however.

Although a surviving spouse will succeed automatically to ownership of the property, something must be done to insure that there is no probate upon the death of the survivor or in the event both spouses die in a common catastrophe. It is therefore important that the entireties be combined with some form of ultimate probate avoidance, such as a nonprobate transfer or a joint living trust in which the beneficial interests are held by the entireties.

Nonprobate Transfers

Nonprobate transfers can be an ideal tool for probate avoidance so long as the client's needs come within the practical scope of the law. What this means is that the client's estate planning needs should be manageable on the basis of a "simple" will. This is a will which says I give all to my spouse and, if my spouse has predeceased me, to my children per stirpes. A nonprobate transfer can do these things quite effectively.

What nonprobate transfers cannot do is handle complex estate planning needs, at least by themselves. They do not, for example, provide the degree of sophistication necessary for estate tax avoidance planning. Nor will nonprobate transfers permit clients to solve problems in which post-death control may have to be exercised over assets in order to make sure that an estate plan will work. Examples of this would be the passing on of the business assets of a sole proprietorship or providing for the care of a minor or disabled individual. In cases such as this a trust might be a better choice because of its flexibility.

That is not to say, however, that nonprobate transfers cannot be used in conjunction with other tools. For example, a couple with a living trust could make their day-to-day checking account POD to the trust rather than closing it and opening a new account in the name of the trust. It may also be easier to handle titled vehicles similarly, with one or more beneficiaries designated as TOD on the titles, and with a separate agreement by those beneficiaries concerning how the vehicles will be handled. The following is an example of how the nonprobate transfer of a vehicle could be made to the successor trustees of a trust for disposition in accordance with the trust:

ACKNOWLEDGMENT OF TRUSTEES

> The undersigned, as successor trustees under the trust agreement of _____ dated _____ ____, 2007, hereby acknowledge that any vehicles received by them under a nonprobate transfer from _____ will be held by them as assets of the trust, to be disposed of accordingly, and that the nonprobate transfer is intended as a matter of convenience in disposing of the vehicles without subjecting such vehicles to probate.

Nonprobate transfers are also useful for doing the equivalent of the separate written list permitted for wills, except the limitations that would apply if the list were part of a will are not applicable to nonprobate transfers. For example, a list that is done under authority of a right reserved in a will cannot be used to dispose of machinery and equipment, while a nonprobate transfer can dispose of anything that is not subject to a separate title. To be effective, the list must be in writing, expressly state that the transfer is not to take effect until the death of the owner, be executed by the owner, and acknowledged before a notary public. No particular form is required. A sample form used by the author for his clients is at the end of these materials.

The so-called "beneficiary deed" can also be an excellent means of conveying real estate. All that is required is that the property TOD to one or more beneficiaries and that it be expressly indicated that it is not intended to take effect until the death of the owner. A sample beneficiary deed used by the author is also at the end of these materials.

Remember that nonprobate transfers can be made to anyone, including the trustee of a trust. Thus, for example, parents with minor children could create a dry trust for the benefit of their children with funding to be by means of beneficiary designations to the trustee. This would save them the trouble of having to fund the trust presently—which is a hassle many clients would prefer to avoid.

Living Trusts

Undoubtedly the most common reason for using a living trust is probate avoidance. This is accomplished by transferring the remainder interest in the trust to the remainder holders, leaving only a life interest for the settlor. This life interest terminates upon the death of the settlor, at which time the future interest of the re-

mainder holders automatically becomes a present interest, entitling them to beneficial use of the property. Because there is no passage of title from one person to another at the death of the settlor, there is no need for probate, since one of the primary purposes of probate is to establish officially who is entitled to receive property from a decedent. With a living trust, the transfer occurs when the trust is created during the life of the settlor. The fact that it is subject to revocation is irrelevant for probate purposes, although it is important for federal estate and gift tax purposes.

Another reason advanced for avoiding probate through a living trust is probate's lack of privacy. Because probate records are public, anyone can read or copy anything in them. This includes private details of dispositions as well as inventories and values of assets owned by a decedent. Some individuals therefore resort to trusts to preserve the privacy of their estate planning.

Having a trust does not always ensure complete privacy, however. Often banks, stockbrokers and title companies will require copies of a trust or at least of pertinent provisions of the trust dealing with its administration and the powers and duties of the trustee. And, as folks in rural areas will often tell you, giving such a document to a local bank can sometimes be the equivalent of publishing it.

The down side of a trust is that, for it to work, it must be funded. Funding refers to the retitling of assets in the name of the trustee. The failure of clients to fund their trusts properly has been one of the most common reasons that an estate plan does not work properly. For example, if a client sells a piece of real estate that was titled in the trust but fails to title replacement real estate in the trust, the replacement property will be subject to probate at the death of the client unless some other means of keeping it out of probate is used—which is not generally the case.

There are various theories on what is and is not required for purposes of funding a living trust. In fact, if all that is being done is that the grantor is declaring that he or she is now holding assets in trust for another's benefit, there is Missouri case law saying that no actual conveyance is required, since all that is occurring with the declaration of trust is a divestiture of the beneficial interest. It is also not uncommon to use a schedule of assets, sometimes without actually changing title of the assets on the schedule into the name of the trustee, since all that is required is "evidence" that the assets were intended to be held in trust.

Whatever the theories may be, what we are dealing with here is not what the law is; it is what the third party bureaucrats say it's going to be for them to recognize the trust and whether particular assets are assets of the trust.

Some assets present special consideration when funding the trust.

Personal Residence. The personal residence may require special handling for two reasons. First, in those states that permit tenancy by the entirety or otherwise offer some form of homestead protection, transferring the residence to the trust may have the effect of costing the spouses the protection offered the residence under state law. This can occur, for example, when they have to adopt a tenancy in common in order to plan for a credit shelter trust on the death of the first spouse. Unless there is a significant estate tax impact, it might be better from the clients' perspective to insure protection of the residence at a little more cost to the heirs. If the couple have sufficient assets to fund both credit shelter amounts (currently $1,350,000) without having to take the personal residence into account, then the residence certainly should be handled separately from the living trusts with the credit shelter trust provisions, even if that means a separate trust for the residence.

The second problem is the election under Code §121 to exclude up to $250,000 or $500,000 of gain on the sale of the personal residence. If the residence is split between the credit shelter trust of the first spouse to die and the still revocable trust of the surviving spouse, there can be a problem if the residence is sold. The trust will not be eligible for the exclusion on its share of the gain, meaning there will be a tax if the residence has appreciated since the date of death of the first spouse, since the trust would have received a §1014 fair market value basis on that date. Consideration should therefore be given to directing the successor to substitute, if pos-

sible, other property for the residence in order to take it out of the credit shelter trust or simply not to fund the credit shelter trust with the residence in the first place.

Partnerships and LLCs. If a settlor has an interest in a partnership or limited liability company (LLC), there are some issues concerning how the interest should be handled. A partner in a partnership has three interests in the partnership: (1) an interest in the property of the partnership; (2) an interest in the management of the partnership; and (3) an interest in the profits. Of these interests, only the third, the interest in profits, can be transferred or assigned to a third party without the need for the consent of all the other partners in the absence of a written partnership agreement providing otherwise. A member of an LLC has only the second and third, since the LLC owns its property as a separate entity. For purposes of our discussion, however, there is no difference between the two, and the discussion will be phrased in terms of partnerships.

If the settlor-partner assigns or otherwise indicates that the partnership interest has been transferred to that partner's living trust, only the profits interest will have been transferred under state law. This conforms to what would happen at the death of a partner whose partnership interest passes through probate. The executor usually succeeds only to the profits interest, not to the other two, which pass to the remaining partners. It is therefore the profits interest that is administered in probate, and which the settlor-partner should want therefore to keep out. The estate of the deceased partner is entitled to receive distribution from the partnership of the value of the deceased partner's interest, and could probably enforce a liquidation and winding up of the partnership if necessary to obtain it.

The proper approach should therefore be that a settlor-partner should have to assign only the profits interest to the trust in order to avoid having the partnership interest pass through probate. The successor trustee should have equitable rights similar to a executor in enforcing settlement of the decedent's interest in the partnership, even in the absence of any written partnership provisions governing the issue. It might still be advisable, however, for the partners to provide in the partnership agreement for the event of a partner's death, with an agreement, for example, that any settlement of a deceased partner's interest would be first with the trustee of any living trust established by the partner. Alternative settlement options might also be provided in the event there is no trust, such as settlement with a surviving spouse.

S corporations. A revocable living trust is referred to for federal tax purposes as a "grantor" trust. This means that the trust is treated as if it did not exist, so that all items of income and deduction of the trust are treated as if they happened directly on the return of the grantor. This is why, for example, that no trust employer identification number is required; instead the Social Security number of the grantor is given to third party payors. It is also why the trust files no return of its own. All items are reported directly on the individual return of the grantor.

With certain limited exceptions only individuals can be shareholders of S corporations. Trusts that are shareholders must satisfy certain strict requirements and must make special elections. Because a grantor trust is treated as not existing, however, S corporation stock owned by a grantor trust is treated as being owned directly by the grantor, so there is no issue as long as the grantor is alive. Once the grantor dies, however, the trust is no longer a grantor trust and must either distribute the stock within two years after the grantor's death or qualify for an election that will enable it to remain a shareholder. It is important, therefore, to insure that provisions of a trust which will hold S corporation stock will not inadvertently cause loss of the subchapter S election after the death of the grantor.

Management of Assets

There are two aspects of asset management that are important for basic estate planning; management of assets during life in the event of incapacity, and management of assets as they are passed on to heirs.

During Life

Management of assets in the event of incapacity must be by a court appointed and supervised conservator unless other provisions have been made. One of the most common alternatives is the durable power of attorney for finances. Durable powers should always be done as part of any basic estate plan. The choice of who to name as agent should be somewhat carefully considered. Too often parents choose substitute agents (assuming each spouse has named the other as primary) based on such notions as who is the oldest or not wanting to hurt feelings. The correct choice should be that person who would, in the client's opinion, best handle the client's financial affairs if the client is unable to do so.

There are durable powers that are effective when signed and those that come into effect only upon the happening of an event, such as incapacity. The latter are referred to as "springing" powers. While it may be tempting to use springing powers, there are a couple of things mitigating against it. First, experience has shown that it is difficult enough in many cases to get third parties to accept durable powers. Using a springing durable power seems only to encourage third parties to challenge the authority to act, often requiring some evidence of the incapacity of the principal. Second, if the client is that concerned about whether the agent will abuse the power, one must ask why that agent would be chosen in the first place.

Although health matters are not exactly related to asset management, one should always prepare a durable power of attorney for health care and a living will for a client who does not have those documents.

There is no statutory form for durable powers of attorney in Missouri, as there is for the living will. Forms are generally available in forms books or from some public service agencies, especially health powers. Forms used by the author are included at the end of theses materials. The health power does not name specific procedures on purpose. It instead takes a qualify of life approach on the premise that it is quality of life that is the issue, and medical procedures will forever change.

One of the classical reasons for creating a trust is to provide for professional management of assets. The giving of legal title to the trustee vests in the trustee the legal authority to manage the trust assets. There are several circumstances under which the need for outside management can arise.

A living trust may be used to provide for management of property in the event an individual becomes legally incompetent to do so. By using a trust, the need to have a court appointed conservator is eliminated. This allows an individual to adopt the equivalent of a conservatorship without having to go through the judicial proceedings necessary for a formal conservatorship. The need for a competency hearing may therefore be eliminated, privacy may be maintained, the individual is able to chose who will manage the assets and expenses may be minimized, especially if the trustee is a family member. The use of a trust as a conservatorship substitute may involve either a funded or an unfunded trust. If unfunded, however, provision must be made through a durable power of attorney to allow funding of the trust when necessary.

The use of a trust to manage property during incompetency is not without its problems. First is the need to define incapacity for purposes of allowing a successor trustee to assume responsibilities. A common technique is to base the determination on the certificate of a family doctor or doctors. Whatever definition is used, it must be simple, clear and objective. Anything else will only invite third parties to question the authority of the trustee to act.

The use of a trust as a conservatorship substitute assumes that the situation will be friendly. This means that no one is trying to use the trust as a means of taking advantage of the settlor and that the best interest of the incapacitated settlor is the primary consideration. This is important because there is generally no court supervision in these kinds of situations. It should also be noted that the trustee may have a difficult time carrying out the purpose of the trust if the incapacitated settlor continues to try to act or interferes in the management of the trust. Because the trust is essentially only a contract between the settlor and trustee, the trustee has no legal right to

enforce the trust provisions involuntarily against the settlor (assuming it is not an irrevocable trust). Thus, a judicial conservatorship may become necessary to prevent the settlor from thwarting the scheme entirely.

It seems to be the consensus of authors in this area that the living trust offers more flexibility as a conservatorship substitute than the durable power of attorney. In fact, both instruments should be used together, with the trust being the primary management tool and the durable power of attorney a backup. Furthermore, it should be possible to give the attorney authority to fund the trust if the settlor has left assets out or to modify the trust, which can allow for changes in federal estate and gift tax laws. Provisions should also be built into the durable power of attorney that prevent such powers from being abused.

Passage of Assets at Death

In a classical testamentary "I leave all to my children in equal shares" estate plan, the children will take ownership as equal tenants in common of assets that are not divisible, such as cash or securities. This can create a problem, especially with real estate, as the heirs become involuntary partners. This may not be much of an issue with an asset upon which they all agree, such as selling the residence of the decedent and dividing the proceeds. Their ability to get along becomes much more problematic, however, when the estate involves ownership of trade or business assets and not all of the children inheriting interests are involved in the business, or there are multiple properties and differences of opinion as to what should be done with them.

It is easy enough in a family business to say that the child inheriting the business must buy out the interests of the other children to the extent non-business assets are insufficient to provide the others with inheritances equal in value to what the business owner will receive. There is considerable danger in this type of situation, however.

First, if there is undivided ownership of sole proprietor assets, how can the child inheriting the business run it without the possibility of interference from the others? If the business is run through an entity, ownership of interests in the entity by non-business children presents a similar issue. By the same token, if ownership of business assets or entities passes directly to a particular child, how can provisions of a buyout be equitably enforced so that the interests of both sides are adequately protected, especially if the business is a sole proprietorship, which is typical of family farms?

An answer here is the bucket. If you cannot control each asset directly, then you must control them all indirectly by putting them in a bucket. If assets are in a bucket and you control the bucket, then you control everything that is in the bucket by wrapping a contract around the bucket. So what's a bucket?

Trusts, LLCs, corporations, and partnerships are all buckets. This is because they are generally treated as entities under Missouri law with respect to the assets they hold. Trusts, LLCs, and corporations are clearly separate legal entities under Missouri law for property ownership purposes. Even a partnership is an entity in this sense although technically partnership property is owned directly by the partners as tenants in partnership. This is because partners are only permitted to possess and use partnership property for partnership purposes. Thus, a partner's ownership interest in the partnership's property can be controlled through the partnership agreement.

If assets are owned by one of these buckets, control of the bucket is control of the assets. Converting a sole proprietorship to an LLC, for example, would permit all of the business assets to be controlled with one single document, the operating agreement of the LLC. Similarly, putting assets in a trust permits all of the assets to be controlled by one document, the trust agreement.

What this does, especially with a trust, is permit flexibility. One can set the default terms for a buy-out if the heirs cannot agree on them, provide alternative dispositions if the buy-out does not occur, give rights of first refusal, etc. It is possible to be equally creative with LLCs or statutory close corporations.

Asset and Liability Protection

Individuals today are increasingly concerned about limiting their liability exposure. This is reflected in legislative and judicial movements to limit punitive and products liability damages and in the increased number of business organization forms enabling individuals to conduct business through limited liability entities. Although this is not a business planning session per se, asset and liability protection often become concerns of estate planning clients. ***Note:*** The subject of Medicaid qualification planning and avoiding the spend-down requirements is not covered in these materials. Nor are self-funded spendthrift trusts or offshore asset protection schemes.

A basic rule of liability exposure is that one cannot avoid the consequences of one's own personal wrongdoing. If someone is directly responsible for injuring another person, such as through negligent driving, the wrongdoer will have liability for that injury. This is true even though some other person, such as the employer for whom the responsible party was working, may also have liability. We are therefore not as concerned in these materials with the consequences of direct liability exposure.

Instead, we will be dealing with the issues of indirect liability exposure and protection of assets from execution. This will be defined for purposes of our discussions as liability that is imputed to an individual as a result of what another person has done wrong. This is the classic problem of general partnerships, in which every partner is liable for what any partner does wrong, even though the other partners did not in any manner participate in the wrongdoing. This also occurs in the employer-employee context, in which an employer has virtually automatic liability for anything an employee does wrong within the scope of the employment relationship.

Tort liability is the one most often sought to be avoided. That is because damages that arise from torts are more difficult to measure and tend to be, on average, much higher than damages resulting from breach of contract. Tort liability is also a more frightening thing for most people because one has so little control over it. In contractual relationships there is at least the feeling that one has entered into the relationship voluntarily and has a degree of control over whether there is a breach. Damages for breach of contract are also fairly definable and exclude punitive damages.

There are two aspects to liability protection. The first consideration is avoiding liability exposure in the first place. Assuming one does have exposure, the other consideration is protecting assets if liability does in fact attach.

Most lay persons still think in terms of corporations when they consider business liability protection. Both corporations and LLCs offer clients the ability to protect themselves to a large extent from imputed liability. The LLC has, however, given us a tool that can provide a combination of advantages under both state law and federal tax law that cannot be equaled by any other form of business entity. This is because the LLC can be designed in such a way that it can be any form of business entity for federal tax purposes—all the way from a sole proprietorship to a C or S corporation—while remaining the same entity under Missouri law (although an election by the LLC to be classed as a corporation would also cause it to be a corporation for Missouri income tax purposes). At the same time the use of such entities, especially the LLC, allows clients to create convenient buckets for purposes of asset control.

A word of caution about business entities. Anyone doing business entity planning for a client must have at least a basic understanding of the tax laws that affect the use of that entity. It is all too common for clients to find themselves in entities that are not appropriate to their situation or which have no viable exit strategies of when the entity or business is no longer needed. Remember the KISS principal: "keep it simple, stupid," and use it for clients. It is much easier to climb up the ladder of complexity than to climb back down.

A common question individuals have is whether a living trust can protect assets from creditors. In the case of the typical living trust, under which the settlor has the right to amend or revoke, the answer is generally no, especially with a revocable trust.

It is generally, possible, however, to protect trust assets from the creditors of a nongrantor beneficiary, provided that beneficiary has no right of revocation or amendment. In most states it is legal to have a provision in the trust under which a beneficiary who tries to assign his or her interest to creditors or whose creditors try to get at such interest will lose any right to benefit under the trust. This is referred to as a forfeiture provision.

Many states, including Missouri, also permit spendthrift provisions, under which a beneficiary is not permitted in the first place even to attempt any assignment or transfer. The difference between the two approaches is in the consequences. With the forfeiture provision, the attempt by the beneficiary to assign results in the beneficiary losing all rights under the trust. It may still be possible to permit the trustee to make discretionary distributions to or for the benefit of the individual, but that person no longer has any right to demand distributions. Under a spendthrift provision, any attempt at assignment is simply ineffective and the beneficiary retains all rights under the trust.

It is also thought that the use of a living trust may help to avoid will contests. A will contest is usually predicated on the decedent having been under a disability or undue influence when a will was executed, thus rendering the will invalid as a true indication of the decedent's dispositive intent. Because a living trust is in existence during the decedent's life, the theory goes, a court is much more likely to find that the decedent fully intended what was in the trust, especially if the decedent was involved in the administration of a trust as a trustee as well as settlor and beneficiary.

A common form of liability protection available to married couples in Missouri, and which is often overlooked by lawyers, is the tenancy by the entirety. If at all possible an estate plan should seek to maintain that form of ownership. As a general rule of thumb, there should be no reason not to continue a tenancy by the entirety unless estate tax issues prevent this. Do not, however, make the mistake of converting separate property to entireties property unless the spouses are fully informed of the possibility of thereby converting the separate property to marital property.

Use of Disclaimers

Although qualified disclaimers under § 2518 may be used during life, their most common application is in post-death planning. In the hands of a sophisticated planner, they can become very creative estate planning tools. They can also be used, however, in more common situations, such as curing defective estate planning. The following are examples of ways in which disclaimers can be used.

Correct Drafting Errors

If the will or other estate planning instrument of a decedent is defective or causes a result that beneficiaries do not like or do not think the decedent would have intended, disclaimers may be able to cause a different result. For example, if a decedent fails to dispose of all of his or her assets under a will and the will does not contain a residuary clause, those assets not specifically disposed of will pass under the intestacy laws of the state. If it was the intent of the decedent for the surviving spouse to have the entire estate, this may not occur because most intestacy laws divide the intestate estate between the surviving spouse and the decedent's children. A disclaimer by the children would correct this problem.

Skipping Generations

It sometimes happens that parents may die at such an age that their children, who are mature themselves, have substantially enough assets of their own that they do not need to receive anything from their parents. In fact, it can be detrimental, as the death of the child would serve merely to subject the parents' assets to

an additional estate tax. A disclaimer can therefore serve to pass assets onto grandchildren. (For purposes of the generation-skipping tax, this would be considered a skip.)

Avoidance of Creditors

Because a disclaimer is considered under state law to relate back as if the disclaimant had predeceased the transferor, it may be possible to avoid creditors of the disclaimant by making the disclaimer. Care should be taken to insure that this result does in fact occur under state law. Missouri law specifically provides that a disclaimed interest is not subject to the claims of any creditor of the disclaimant.[2] Furthermore, for Medicaid purposes, a disclaimer may be considered a transfer for inadequate consideration, thus possibly disqualifying the disclaimant for a period of time.

Charitable Contributions

An outright transfer by a decedent to a charity qualifies for the charitable deduction. The transfer of a remainder interest to a charity does not qualify, however, unless it is in the form of a charitable remainder trust. Thus, a transfer of the remainder to a charity with the income to be paid to another person for life fails to qualify for a charitable deduction, because it is neither a charitable remainder annuity trust nor unitrust. While it may be possible to seek a reformation of the instrument in a state court, if the surviving spouse has sufficient independent assets, an alternative would be a disclaimer of the life interest. This would accelerate the charitable remainder, qualifying the decedent's gross estate for a charitable deduction.

Marital Deduction

Disclaimers can be used to accomplish several things in conjunction with the marital deduction. For example, if all property of the spouses is owned by them jointly, there will be no estate tax on the death of the first spouse because of the unlimited marital deduction. However, the entire value of the joint property will be in the estate of the second spouse to die. If this value exceeds $2,000,000 under current law there will be an estate tax. Thus, under current law with joint ownership spouses effectively can pass only $2,000,000 of assets with no estate tax. With proper estate planning, however, they would be able to pass $4,000,000. This problem is commonly referred to as "over-qualification of the marital deduction" because it is the marital deduction that eliminates the tax in the estate of the first spouse rather than the unified credit.

An answer in this case might be for the surviving spouse to disclaim his or her interest in enough of the joint property received from the decedent to take advantage of all or a portion of the unified credit available to that decedent. Although the result of such a disclaimer would probably be to pass the interest in the property to the children, if the surviving spouse has sufficient assets this should not be a problem.

With proper planning, in fact, the use of the unlimited marital deduction and qualified disclaimers can become a sophisticated estate planning tool. The technique is to qualify all property in the gross estate of the first spouse to die for the marital deduction. The surviving spouse then determines how much unified credit equivalent is desirable and disclaims an interest in sufficient assets to equal that value. The decedent, however, has provided a standby credit shelter trust and has directed that any disclaimed assets go into it. Thus, the disclaimed assets do not go to the children directly, but are used instead to fund the credit shelter trust where the income will be paid to the surviving spouse for life, remainder to the children. The fact that some interest in the disclaimed property passes to the surviving spouse will not disqualify the disclaimer as long as the survivor exercised no direction over the passage of the property.[3] This can be especially effective if the combined assets of husband and wife hover around the $600,000 mark by allowing what is effectively a post-death determination of whether there should be a credit shelter trust.

[2] § 469.010, RSMO.

[3] Code § 2518(b)(4)(A).

Qualification for Special Treatment

Stock redeemed under § 303 for the payment of administrative expenses and estate taxes qualifies for exchange treatment. However, the stock must be subject to an obligation to pay those expenses to qualify. If stock is devised to a specific beneficiary and expenses are to be paid out of the residue, the stock will not qualify for § 303 redemption. A disclaimer by the beneficiary that causes the stock to become part of the residue would allow qualification.

Similarly, receipt of stock or other interest by an individual that would prevent special use valuation under § 2032A or would prevent a qualified subchapter S trust election could be cured by a timely disclaimer.

EXPLANATION OF NONPROBATE TRANSFERS
[For husband and Wife]

The Missouri nonprobate transfers law permits you to title property in your joint names with a provision that the property transfer on death ("TOD") or pay on death ("POD") to your children (or anyone else) as beneficiaries. If you title something this way, the beneficiaries will have no interest in the property and you can still do anything you want with it. In the event one of you should die, the survivor will own it. But, at the death of the survivor, it will go to the beneficiaries without going through probate. If you have named your children as beneficiaries and one of them has predeceased you, their share would go to their children. If they are not survived by children, their share will go to the remaining children.

You can title nearly any form of property in nonprobate form. Thus, you can have your cars "TOD" to your children and your bank accounts "POD" to them.

Any insurance or annuity policies should each name the other of you as beneficiary. You should then name your children as contingent beneficiaries, with a provision that a child's share go to their children if they should not survive the two of you. This is not a nonprobate transfer under the nonprobate transfer law, so it is necessary actually to say a deceased child's share will go to that child's children. Because this is done on the insurance contract, however, it still avoids probate. Do not have your estate named as the contingent beneficiary of life insurance. You should do the same thing with any retirement benefits that might possibly pay beyond your single or joint lives, each naming the other as beneficiary in the event of death, with the kids as contingent beneficiaries, then their children if they should die first.

Any cars should be retitled at the license bureau so that you still own them jointly, but adding that they are to transfer on death to your children.

[*If appropriate:*] I have prepared a "beneficiary deed" that continues to title your real estate in your joint names, but has it transfer on death to your children. You can still do anything you want with the real estate without having to have the consent of anyone else. At the death of the first of you the survivor will continue to own the real estate. At the death of the survivor, however, the real estate will go automatically to the children without going through probate and, if one of your children has predeceased the survivor, that child's share will go to his or her children as described above. The beneficiary deed should be executed before a notary public and filed with the County Recorder in the appropriate county.

You may also use the nonprobate transfers law to transfer tangible personal property to specific children. This can be used for such things as jewelry, family items, furniture, machinery and equipment, livestock and the like—anything that doesn't require a separate title or document showing ownership. To do this, you need to execute a written document in which you state that you are transferring the listed items on death to the indicated children, describe the items in sufficient detail that they can be identified and sign the list with your signature acknowledged before a notary public. Two forms that can be used for this purpose are included for your use. One is for assets owned by either of you individually; the other is for assets owned jointly by the two of you. You should save the originals and use them to make as many additional copies as you need.

NONPROBATE TRANSFER
TANGIBLE PERSONAL PROPERTY

I, _____, hereby transfer on death the following-described item(s) of tangible personal property to the beneficiary or beneficiaries indicated. If there is more than one beneficiary for any item, they shall take as equal tenants in common. I may revoke any transfer by destroying this document, by drawing a line through the item and the beneficiary and initialing and dating such strikeout (which shall not affect any other transfers shown on this list), by executing any document of revocation (whether or not acknowledged before a notary public) or by executing a later nonprobate transfer in which I change the beneficiary in any respect. **I have indicated the last item on this list by drawing a line from the last item to the line which says [END OF LIST.]**

ITEM NO.	DESCRIPTION OF ITEM	BENEFICIARY
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

----------END OF LIST----------

In witness whereof, I have signed this list on the ____ day of _____, 20____.

_____

STATE OF MISSOURI }
} ss.
COUNTY OF _____ }

On this ____ day of _____, 20___, before me, a notary public, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

_____
Notary Public

Commissioned in _____ County, Missouri.
My commission expires: _____

NONPROBATE TRANSFER
TANGIBLE PERSONAL PROPERTY

We, _____, and _____, husband and wife, hereby transfer on death the following-described item(s) of tangible personal property to the beneficiary or beneficiaries indicated. If there is more than one beneficiary for any item, they shall take as equal tenants in common. We (or the survivor of us) may revoke any transfer by destroying this document, by drawing a line through the item and the beneficiary and initialing and dating such strikeout (which shall not affect any other transfers shown on this list), by executing any document of revocation (whether or not acknowledged before a notary public) or by executing a later nonprobate transfer in which we (or the survivor of us) change the beneficiary in any respect. **We have indicated the last item on this list by drawing a line from the last item to the line which says [END OF LIST.]**

ITEM NO.	DESCRIPTION OF ITEM	BENEFICIARY
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

----------END OF LIST----------

In witness whereof, we have signed this list on the ____ day of _____, 20____.

_____ _____

STATE OF MISSOURI }
} ss.
COUNTY OF _____ }

On this ____ day of _____, 20___, before me, a notary public, personally appeared _____and_____, husband and wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

_____
Notary Public

Commissioned in _____ County, Missouri.
My commission expires: _____

MISSOURI BENEFICIARY DEED

THIS BENEFICIARY DEED, made on this ____ of _____, 2007, by and between _____ and _____, husband and wife, **GRANTORS**, of the County of _____, State of Missouri, parties of the first part, and _____ and _____, **GRANTEES**, parties of the second part, as beneficiaries [*State shares if not equal; no LDPS or LDPS as appropriate; form of ownership if not tenants in common.*] Address for tax purposes remains that of grantors, _____.

WITNESSETH, that the said parties of the first part, do by these presents TRANSFER ON DEATH unto the said parties of the second part, their heirs and assigns, the following described property in the County of _____ and State of Missouri:

[*Legal*]

PROVIDED, HOWEVER, that the conveyance provided for by this instrument shall be a transfer on death of the survivor of parties of the first part in accordance with the Nonprobate Transfers Law of Missouri.

TO HAVE AND TO HOLD the premises aforesaid with all and singular, the rights, privileges, appurtenances and immunities thereto belonging or in any wise appertaining unto the said parties of the second part and unto their heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year above written.

_____ _____

STATE OF MISSOURI }
} ss.
COUNTY OF }

On this ____ day of _____, 2007, before me, _____, a Notary Public, personally appeared _____ and _____, husband and wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

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

_____
Notary Public

Commissioned in _____ County.
My commission expires _____.

FINANCIAL DURABLE POWER OF ATTORNEY

I, _____, hereafter the principal, of _____ County, Missouri, hereby designate _____, as my attorney in fact and agent in my name, to exercise general powers in a fiduciary capacity on my behalf with respect to all lawful subjects and purposes, hereby revoking any durable power of attorney (other than for health care) previously executed by me.

1. Powers Conferred. It is my intention that the authorizations granted herein shall be a general power of attorney and extend to and include each and every action or power that an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises with respect to any and all matters whatsoever in accordance with section 404.710.2 of the Durable Power of Attorney Law of Missouri. The powers of my attorney in fact shall include any and all acts that I could perform, whether or not such acts are specifically described herein, and shall not be limited by any specific grant of power made in any other provision of this power of attorney, but shall instead be given the broadest possible construction permitted by law.

I understand and have had explained to me certain judicial rules of construction that would tend to require that the broad grants made in this power of attorney be given a narrow construction or disregarded altogether. I declare that such rules shall have no application to this power of attorney. I further declare that any court of competent jurisdiction or any third party that shall interpret or attempt to construe the grants of authority made in this power of attorney in any restrictive way shall do so in clear and complete violation of my express intent and in utter disregard of my wishes.

I declare that I have been advised by counsel of the breadth of the delegation I have made in this power of attorney, and that I understand it and desire it. I also understand that there is always the possibility of abuse of such a broad delegation of power and I accept that risk.

2. Durable Power. This is a durable power of attorney and the authority of my attorney in fact shall not terminate if I become disabled or incapacitated or in the event of later uncertainty as to whether I am dead or alive.

3. Substitute Attorney in Fact. If _____ ceases to act as my attorney in fact due to death, incapacity or resignation, then I appoint _____ as my attorney in fact and agent, with all the rights, powers and authority set out herein as though originally appointed attorney in fact and agent hereunder. If _____ is unable or unwilling to act, then I appoint _____. This provision shall not, however, prevent _____ or any substitute attorney in fact from time to time revocably or irrevocably delegating any and all of the powers conferred herein to one or more qualified persons or naming such as successor attorneys in fact pursuant to section 404.723.1 of the Durable Power of Attorney Law.

4. Additional Powers Permitted Under the Durable Power of Attorney Law. I expressly authorize my attorney in fact to carry out the following actions:

(a) to execute, amend or revoke on my behalf any trust agreement;

(b) to fund with my assets any trust not created by me;

(c) to make or revoke a gift of my property in trust or otherwise, including to himself or herself;

(d) to disclaim a gift or devise of property to or for my benefit;

(e) to create or change survivorship interests in my property or in property in which I have an interest and to create or change beneficiary registrations in such property under the Missouri Nonprobate Transfers Law;

(f) to designate or change the designation of beneficiaries to receive any property, benefit or contract right (including, but not limited to, life insurance and retirement benefits) on my death, and to change the ownership thereof to the extent permitted by law;

(g) to nominate a conservator of my estate (including himself or herself) for me; and,

(h) to designate one or more substitute or successor or additional attorneys in fact.

Any actions taken under items 4(a) through 4(f) shall be taken only to the extent required to insure avoidance of as much federal and state estate and gift or other similar transfer taxes as is possible and to avoid subjecting assets owned by me at my death to probate administration. In no event shall such actions reduce or change what any person would be entitled to receive under my estate plan as in effect prior to actions under authority of this article 4 unless there is written consent to the action by such person. By way of example, my attorney in fact could create a trust for my benefit and transfer property to it that would have gone to my heirs as equal tenants in common so long as the same heirs would take the property under the trust as equal tenants in common. Or my attorney in fact could title property to transfer on death to the same beneficiaries who would have received the property without such beneficiary designation.

My attorney in fact shall also be permitted to make gifts of my property in order to avoid federal gift or estate taxes without regard to whether I have made previous gifts. Any such gifts shall be made only to those persons who would take under my estate plan and shall be made to them in the same proportions as they would take under such plan. Gifts may be made to other persons or may be made in excess of my annual gift tax exclusion only with the written consent of all those who are entitled to take under my estate plan. No gifts shall be permitted, however, unless my attorney in fact reasonably believes that doing so would not jeopardize my care and well being or that of anyone dependent on me.

5. Financial Institution Transactions. My attorney in fact is authorized to open, close, continue, and control all accounts and deposits in any type of financial institution (which term includes, without limitation, banks, trust companies, savings and building and loan associations, credit unions, and brokerage firms); deposit in and withdraw from and write checks on any financial institution account or deposit; and, in general, exercise all powers with respect to financial institution transactions which the principal could if present and under no disability.

6. Power to Sell. My attorney in fact is authorized to sell any and every kind of property that I may own now or in the future, real, personal, intangible and/or mixed, including without being limited to contingent and expectant interests, marital rights and any rights of survivorship incident to joint tenancy or tenancy by the entirety, on such terms and conditions and security as my attorney in fact shall deem appropriate and to grant options with respect to sales thereof.

My attorney in fact is authorized to make such disposition of the proceeds of such sale or sales, including expending such proceeds for my benefit, as my attorney in fact shall deem appropriate.

7. Power to Buy. My attorney in fact is authorized to buy every kind of property, real, personal, intangible and/or mixed, on such terms and conditions as my attorney in fact shall deem appropriate; to obtain options with respect to such purchases; and to arrange for appropriate disposition, use, safekeeping and/or insuring of any such property.

8. Power to Borrow. My attorney in fact is authorized to borrow money for the purposes described herein and to secure such borrowings in such manner as my attorney in fact shall deem appropriate.

9. Power to Invest. My attorney in fact is authorized to invest and reinvest all or any part of my property in any property or interests, including undivided interests, in property, real, personal, intangible and/or mixed, wherever located, including without being limited to securities of all kinds, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell, including short sales, and terminate any investments whether made by me or my attorney in fact; and to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds.

10. Brokerage Accounts. My attorney in fact is authorized to establish, utilize and terminate accounts with securities brokers and in such accounts, to make short sales and to buy on margin and, for such purposes, my attorney in fact may pledge any securities so held or purchased with such brokers as security for loans and advances made to the account.

My attorney in fact is authorized to establish, utilize and terminate agency accounts with corporate fiduciaries.

11. United States Obligations. My attorney in fact is authorized to cash, convert or change the registered ownership of United States Savings Notes and any issue of United States savings bonds, including, but not limited to, series E, EE, H and HH;

12. Power to Manage Real Property. With respect to real property, including but not limited to any real property I may hereafter acquire or receive and my personal residence, my attorney in fact is authorized to lease, sublease, release; to eject and remove tenants or other persons. My attorney in fact is authorized to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by me, whether acquired by me or for me by my attorney in fact.

13. Power to Operate Businesses. My attorney in fact is authorized to continue the operation of any business, including a ranch or farm, which I now own or hereafter acquire, belonging to me or in which I have a substantial interest, for such time and in such manner as my attorney in fact shall deem appropriate, including but not limited to hiring and discharging my employees, paying my employees' salaries and providing for employee benefits, employing legal, accounting, financial and other consultants; continuing, modifying, terminating, renegotiating and extending any contractual arrangements with any person, firm, association or corporation whatsoever made by me or on my behalf; executing business tax returns and other government forms required to be filed by my business, paying all business related

expenses, transacting all kinds of business for me in my name and on my behalf, contributing additional capital to the business, changing the name and/or the form of the business, incorporating the business, entering into such partnership agreement with other persons as my attorney in fact shall deem appropriate; joining in any plan of reorganization, consolidation or merger of such business, selling, liquidating or closing out such business at such time and on such terms as my attorney in fact shall deem appropriate and representing me in establishing the value of any business under "Buy-out" or "Buy-Sell" agreements to which I may be a party; to create, continue or terminate retirement plans with respect to such business and to make contributions which may be required by such plans; and to borrow and pledge business assets.

14. Power to Exercise Rights in Securities. My attorney in fact is authorized to exercise all rights with respect to corporate securities which I now own or may hereafter acquire, including the right to sell, grant security interests in and to buy the same or different securities; to establish, utilize and terminate brokerage accounts, including margin accounts; to make such payments as my attorney in fact deems necessary, appropriate, incidental or convenient to the owning and holding of such securities; and to receive, retain, expend for my benefit, invest and reinvest or make such disposition of as my attorney in fact shall deem appropriate all additional securities, cash or property, including the proceeds from the sales of my securities, to which I may be or become entitled by reason of my ownership of any securities.

15. Power to Demand and Receive. My attorney in fact is authorized to demand, arbitrate, settle, sue for, collect, receive, deposit, expend for my benefit, reinvest or make such other appropriate disposition of as my attorney in fact deems appropriate, all cash, rights to the payment of cash, property, real, personal, intangible and/or mixed, debts, dues rights, accounts, legacies, bequests, devises, dividends, annuities, rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved, including but not limited to benefits payable to or for my benefit by any governmental agency or body, such as Supplemental Social Security (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI) and for the purposes of receiving Social Security benefits, my attorney in fact is herewith appointed my "Representative Payee;" and to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf, and to compromise claims and grant discharges in regard to the matters described herein.

16. Power with Respect to Employment Benefits. My attorney in fact is authorized to create and contribute to an employee benefit plan, including a plan for a self-employed individual, for my benefit; to elect retirement on my behalf; to select any payment option under any IRA or employee benefit plan in which I am a participant, including plans for self-employed individuals, or to change options I have selected; to make voluntary contributions to such plans; to make "roll-overs" of plan benefits into other retirement plans; to apply for and receive payments and benefits; and to waive rights given to nonemployee spouses under state or federal law.

My attorney in fact is authorized to make revocable and irrevocable beneficiary designations and to change revocable beneficiary designations; and to consent and/or waive consent in connection with the designation of beneficiaries and the selection of joint and survivor annuities under any employee benefit plan.

17. Power with Respect to Safe-deposit Boxes. My attorney in fact is authorized to contract with any institution for the maintenance of a safe-deposit box in my name; to have access to all safe-deposit boxes in my name or with respect to which I am an authorized signatory, whether or not the contract for such safe-deposit box was executed by me, either alone or jointly with others, or by my attorney in fact in

my name; to add to and remove from the contents of any such safe-deposit box; and to terminate any and all contracts for such boxes.

18. Power with Respect to Legal and Other Actions. My attorney in fact is authorized to institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, involving me in any way, including but not limited to claims by or against me arising out of property damages or personal injuries suffered by or caused by me or under such circumstances that the loss resulting therefrom will or may be imposed on me and otherwise engage in litigation involving me, my property or any interest of mine, including any property or interest or person for which or whom I have or may have any responsibility.

19. Power with Respect to Insurance. My attorney in fact is authorized to purchase, maintain, surrender, collect, or cancel (a) life insurance or annuities of any kind on my life or the life of any one in whom I have an insurable interest, (b) liability insurance protecting me and my estate against third party claims, (c) hospital insurance, medical insurance, Medicare supplement insurance, custodial care insurance, and disability income insurance for me or any of my dependents, and (d) casualty insurance insuring assets of mine against loss or damage due to fire, theft, or other commonly insured risk; and to pay all insurance premiums, to select any options under such policies, to increase coverage under any such policy, to borrow against any such policy, to pursue all insurance claims on my behalf, to adjust insurance losses, and the foregoing powers shall apply to private and public plans, including but not limited to Medicare, Medicaid, SSI and worker's compensation.

My attorney in fact is authorized to designate and change (i) beneficiaries of insurance policies insuring my life and (ii) beneficiaries under any annuity contract in which I have an interest.

20. Power with Respect to Taxes. My attorney in fact is authorized to represent me in all tax matters; to prepare, sign, and file federal, state, and local income, gift and other tax returns of all kinds, and any power of attorney form appointing an attorney in fact required by the Internal Revenue Service and any state and local taxing authority.

21. Power to Provide for Principal's Support. My attorney in fact is authorized to do all acts necessary for maintaining my customary standard of living, to provide a place of residence by purchase, lease or other arrangement, or by payment of the operating costs of my existing place of residence, including interest, amortization payments, repairs and taxes, to provide normal domestic help for the operation of my household, to provide clothing, transportation, medicine, food and incidentals, and if necessary to make all necessary arrangements, contractual or otherwise, for me at any hospital, hospice, nursing home, convalescent home or similar establishment, or in my own residence should I desire it, and to assure that all of my essential needs are provided for at such a facility or in my own residence, as the case may be.

22. Revocation and Amendments. If this instrument is revoked or amended for any reason, I, my estate, and my personal representative will hold any person, organization, corporation or entity, hereinafter referred to in the aggregate as "Person," harmless from any loss suffered, or liability incurred by such Person in acting in accordance with the instructions of my attorney in fact acting under this instrument prior to the receipt by such Person of actual written notice of any such revocation or amendment.

23. No Liability for Reliance on Attorney in Fact. No person who relies in good faith on the authority of my attorney in fact under this instrument shall incur any liability to me, my estate or my personal representative. In addition, no person who acts in reliance on any representations my attorney in fact

may make as to (a) the fact that my attorney in fact's powers are then in effect, (b) the scope of my attorney in fact's authority granted under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been revoked or amended, or (e) the fact that my attorney in fact continues to serve as my attorney in fact shall incur any liability to me, my estate or my personal representative for permitting my attorney in fact to exercise any such authority. Any person who deals with my attorney in fact shall not be responsible to determine or ensure the proper application of funds or property by my attorney in fact. Any party dealing with any person named as attorney in fact (including any person named as an alternate attorney in fact hereunder) may rely upon as conclusively correct an affidavit or certificate of such attorney in fact that (i) my attorney in fact's powers are then in effect, (ii) the action my attorney in fact desires to take is within the scope of my attorney in fact's authority granted under this instrument, (iii) I was competent at the time this instrument was executed, (iv) this instrument has not been revoked, and/or (v) my attorney in fact continues to serve as my attorney in fact.

24. Authorization to release information. All persons from whom my attorney in fact may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my attorney in fact without limitation and are released from any legal liability whatsoever to me, my estate or my personal representative for complying with my attorney in fact's requests.

25. Reimbursement of Attorney in Fact. My attorney in fact shall be entitled to reimbursement for all reasonable costs and expenses, including reasonable attorney's fees, actually incurred and paid by my attorney in fact on my behalf at any time under any provision of this instrument. My attorney in fact shall not be entitled to compensation for services rendered hereunder.

26. Waiver for Acts of Omission. My attorney in fact (and my attorney in fact's estate and personal representative), acting in good faith, are hereby released and forever discharged from any and all civil liability and from all claims or demands of all kinds whatsoever by me or my estate and personal representative arising out of the acts or omissions of my attorney in fact, except for willful misconduct or gross negligence.

27. Severability. If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.

28. Instrument Unaffected by Lapse of Time. This power of attorney shall be legally unaffected by reason of lapse of time or staleness, and no third party shall require that this power of attorney have been executed within any particular period of time in order to be valid.

29. Attorney in Fact Authorized to Sign Power of Attorney Forms. In carrying out the authorizations set forth in this instrument, if in the sole opinion of my attorney in fact it is necessary or convenient for my attorney in fact to sign my name, as principal, on forms of powers of attorney (the "forms") required by governmental agencies, corporations, banks or other entities in transactions with me, my attorney in fact is authorized to execute such forms, and to appoint an attorney in fact or other person on the forms to represent me.

30. Additional Powers Related to Care. My attorney in fact shall also have the power for non-medical reasons to consent to and to contract for on my behalf the provision of physical care services and goods, including, but not limited to, nursing home or other long or short term care and any related services, including services that will provide for future medical or custodial needs. The authority under this

paragraph is for my convenience and is intended to address all needs I may have that do not require acts by my attorney in fact in the event of my incapacity under my separate durable power of attorney for health care. My attorney in fact shall therefore possess the powers granted in this paragraph without regard to whether I am unable to grant consent and without the need for any physician certification of my incapacity.

IN WITNESS WHEREOF, I have executed this durable general power of attorney, effective this _____ day of _____, 2007.

_____
Principal

STATE OF MISSOURI }
} ss.
COUNTY OF }

On this _____ day of _____, 2007, before me, _____

_____, a notary public in and for said State, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

_____
Notary Public

Commissioned in _____ County.
My commission expires _____

DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DECLARATION (LIVING WILL)

Durable Power of Attorney for Health Care

I, _____, hereafter the principal, of _____ County, Missouri, hereby designate _____ of _____, as my attorney in fact and agent in my name, to exercise general powers of attorney for health care on my behalf in accordance with the following provisions, hereby revoking all other durable powers of attorney for health care previously executed by me. This is a durable power of attorney and the authority of my attorney in fact shall not terminate if I become disabled or incapacitated or in the event of later uncertainty as to whether I am dead or alive. If _____ is unable or unwilling to serve, then I appoint, successively, _____ and _____.

If I am for any reason, including mental or physical incapacity, unable to consent or refuse to consent to any treatment or care that may be reasonably necessary for my health or welfare, my attorney in fact shall have the authority to make such consent or refusal for me. This shall include, but not be limited to, any form of medical treatment or surgery by a licensed doctor of medicine or osteopathy, dentist or psychologist, hospitalization or long or short term care in a nursing home or other care provider. In connection with the powers conferred herein, I specifically grant to my attorney in fact the right to direct the withholding or withdrawal of artificially supplied nutrition and hydration.

In determining whether to refuse or withdraw treatment, the refusal or withdrawal of which may result in my death, I specifically direct my attorney in fact to take into consideration as a benefit or burden of such treatment quality of life considerations. This is based on my determination that I do not want to be maintained in such a condition that I am not cognizantly aware of my environment. Conditions that would fall within this category include, but are not limited to, irreversible coma, persistent vegetative state and irreversible degenerative conditions of the brain or mind. I have discussed my feelings with my attorney in fact. In making this determination, therefore, no other evidence shall be required than the decision of my attorney in fact.

The ability to exercise health care powers shall require the certification only of the attending or any other single physician. My attorney in fact shall provide to any health care facility a copy of this durable power of attorney for health care and living will prior to the commencement of any treatments or confinement unless prevented from doing so by conditions beyond the control of such attorney in fact. In that case, my attorney in fact shall, as soon as possible, make such facility and any attending physician aware of this durable power and shall determine whether either objects to carrying out my intentions. If there is objection, my attorney in fact shall take such steps as are necessary to transfer my care to those who would not object.

I further grant to my attorney in fact the authority (1) to give or withhold consent to an autopsy or postmortem examination; (2) to make or decline to make a gift of my body parts under the Uniform Anatomical Gift Act; (3) to nominate a guardian of my person (including himself or herself) for me; (4) to have access to all medical records that pertain to me, including the right to release or to consent to the release of any such records to any other person to the same extent I would have such authority myself; (5) to have the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996, (Pub. L. 104-191), 45 through 164, and (6) to designate one or more substitute or successor or additional attorneys in fact.

I expressly grant to my attorney in fact the authority to delegate health care decision-making power as provided in section 404.723, subsections 1 and 2, of the Durable Power of Attorney Law. It shall not be necessary for a delegated or successor attorney in fact to indicate his or her capacity as a delegated or successor attorney in fact.

Health Care Declaration (Living Will)

I declare that I have the primary right to make my own decisions concerning treatment that might unduly prolong the dying process. By this declaration I express to my physician, family and friends my intent. If I should have a terminal condition, it is my desire that my dying not be prolonged by administration of death-prolonging procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw medical procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain.

Furthermore, if I am in a persistent vegetative state or irreversible coma, it is my desire that I be permitted to die with as much dignity as possible. I therefore intend that the definition of terminal condition include that of being in a persistent vegetative state or irreversible coma with no reasonable hope of recovery, and that the definition of death-prolonging procedures include the administration of nutrition and hydration. If I have been in a vegetative state or coma for three months and death-prolonging procedures have not been withdrawn, it shall become presumed that I am in a persistent vegetative state or irreversible coma for purposes of this declaration and death-prolonging procedures shall be withdrawn unless there is a reasonable medical certainty that I will recover. This is not intended to require that death-prolonging procedures be maintained for at least three months, but is meant to establish a rebuttable presumption that I am in a terminal condition.

General Provisions

The following provisions shall apply to both the durable power of attorney for health care and to the health care declaration.

If any person should refuse to abide by the decision of my attorney in fact under the durable power of attorney for health care or by the declarations I have made respecting withdrawal of death-prolonging procedures, I direct my attorney in fact under my durable power of attorney for health care to take whatever actions are necessary to carry out the intent of the power or the declaration, which shall include, but not be limited to, signing any consents or other documents required or taking appropriate legal action. To that end I give my attorney in fact whatever authority shall be required by any person to take the directed action.

The durable power of attorney and health care declaration can be revoked by me at any time and in any manner. They can be revoked separately or together. However, no one who withdraws or withholds life-sustaining treatment in reliance upon the durable power of attorney or declaration contained in this document without actual knowledge that I have revoked either or both of them shall have any liability or responsibility to me, my estate or any other person for such action.

My attorney in fact shall have all necessary powers to prosecute in my name and on my behalf any claims for Medicaid, Medicare, insurance, or other third party reimbursement or coverage, including related damages, for any medical expenses that may be incurred by me or on my behalf or for any injury suffered by me.

With respect to the health care powers conferred in this document and my declaration concerning death-prolonging procedures, I hereby exonerate, hold harmless, and agree to indemnify all parties in-

volved in any decisions to act pursuant to requests, consents or refusals to treatment made on my behalf by my attorney in fact. Any consent, waiver or other customary legal or medical form executed by my attorney in fact shall be considered executed by me as though I were acting under no disability or incapacity.

IN WITNESS WHEREOF, I have executed this durable general power of attorney, effective this _____ day of _____, 2007.

_____
Principal

The declarant is known to me, is eighteen years of age or older, of sound mind and voluntarily signed this document in my presence.

Signature of Witness _____

Printed Name of Witness _____

Address _____

Signature of Witness _____

Printed Name of Witness _____

Address _____

STATE OF MISSOURI }
} ss.
COUNTY OF }

On this _____ day of _____, 2007, before me, _____

_____, a notary public in and for said State, personally appeared _____ to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

_____
Notary Public

Commissioned in _____ County.
My commission expires _____.