VOLD & MORRIS, LLC

MEMO

From: Vold & Morris, LLC

Re: Trustee Duties and Responsibilities[1]

When you accept an appointment as trustee of an irrevocable trust, you become a fiduciary with several duties and responsibilities. A failure to adequately meet your obligations could result in a lawsuit by the beneficiaries and the imposition of damages, including punitive damages, against you by the court.

To assist you, we have prepared this memorandum to summarize what will be required of you. **SINCE THIS MEMORANDUM IS ONLY A BRIEF OVERVIEW, YOU MUST CONSULT AN ATTORNEY ABOUT THE APPLICATION OF LAW TO ANY SPECIFIC SITUATION OR CIRCUMSTANCES.**

<u>Notice</u>:

Within sixty days of accepting your position as trustee, you must notify each qualified beneficiary (any beneficiary that is entitled to a current distribution of income and/or principal and any beneficiary that would be entitled to a distribution if the trust is terminated) of your acceptance of the position and provide them your address and phone number. You must also inform each qualified beneficiary (in Missouri, any beneficiary) of their right to a copy of the trust agreement. If a copy is requested, it must be provided promptly.

Since trusts that become irrevocable because of the death of the settlor can be liable for the settlor's debts, you may want to publish notice to the settlor's creditors. Subject to a few exceptions, a creditor that fails to present its claim within six months of the notice cannot force the trust to pay its claim. If you would like to publish notice, please let us know and we can assist you.

<u>Investment and Management of Trust Assets</u>:

You have a duty to make sure that all trust assets are properly titled in the name of the trust (as an example, "John Smith, as Trustee of the Mary Smith Trust dated 12/1/2000") and registered with the trust's tax identification number (a/k/a TIN, Employer Identification Number, or EIN). If you do not have a tax identification for the trust, please let us know and we can obtain one for you.

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[1] **THIS MEMORANDUM IS ONLY FOR TRUSTEES OF IRREVOCABLE TRUSTS AND NOT FOR TRUSTEES OF A LIVING, REVOCABLE OR INTER VIVOS TRUST WHERE ONE OR MORE OF THE SETTLORS (THE CREATORS OF THE TRUST, ALSO KNOWN AS GRANTORS), IS LIVING.**

If there is not a trust checking account, one should be opened in the name of the trust using the trust's tax identification number. **All income, including proceeds from the sale of assets, and all expenses should be cleared through this account.** This will make several of your responsibilities much easier.

The surplus trust assets (assets that will not be needed in the immediate future for expenses or distributions) must be invested in a prudent and reasonable manner. This means that trust's overall investment portfolio must be diversified and have a reasonable risk/return composition. Investing in risky or speculative vehicles can expose you to lawsuits by the beneficiaries. If you are unfamiliar with investing, you should seek professional assistance.

If the trust owns any real estate or tangible personal property of significant value (artwork, collections, etc.), make sure that the assets are insured. In the case of real estate, make sure that there is personal injury protection.

<u>Prohibited Transactions</u>:

As trustee, the interests of the beneficiaries must be put before your own interests. **In other words, you must never: (1) commingle your individual assets with the trust assets; (2) use trust assets for your personal benefit or the benefit of your family or friends; (3) borrow money from the trust; (4) sell or exchange estate trust assets between yourself, your family, or your friends without first consulting with an attorney; or (5) title trust assets in your name as an individual.**

<u>Accountings</u>:

You must keep track of all trust transactions, including income received, expenses paid, and assets sold and purchased, and report such items to the qualified beneficiaries on at least an annual basis. You must also provide the qualified beneficiaries a balance sheet, which details the trust's assets and liabilities, on at least an annual basis.

<u>Distributions</u>:

The terms of the trust agreement govern your ability to make distributions to the beneficiaries, including who can receive distributions, when distributions are to be made and what is the amount of any distribution. Some distributions are mandatory and some are discretionary. Mandatory distributions must be made within a reasonable period of time, the length of which will depend on several factors, such as the resolution of any creditor claims, the time required for liquidation of assets, etc. In making discretionary distributions, you must treat all beneficiaries impartially and your discretion must be exercised in a reasonable manner.

<u>Tax Returns</u>:

If a trust has income in excess of $600 in a tax year, the trust will be required to file an income tax return. A trust's first tax year begins on the later of the date that the trust was created, or the date the trust became irrevocable (usually the settlor's date of death), and ends on December 31st. All subsequent tax years will be run with the calendar year (January 1st to December 31st). **Unless an extension is granted, a trust**

income tax return is due no later than three and one-half months from the end of a tax year (April 15th, or if April 15th falls on a weekend or federal holiday, the next business day).

In cases where a trust becomes irrevocable because of the death of the settlor, the trust can elect a fiscal tax year (a non-calendar tax year) for up to two years. If the trust is to be distributed outright in a relatively short period of time, this can reduce the number of returns that must be filed. It can also be helpful to shift income to a different year. Consult with the party that prepares tax returns for your trust to find out if this election would be beneficial.

In 2007, the highest individual income tax rate of 35% is reached with an adjusted gross income of $349,700.00, while the highest trust income tax rate of 35% is reached with an adjusted gross income of only $10,450.00. The highly compressed trust income tax rate schedule can be avoided by distributing trust income out to the beneficiaries on an annual basis. When income is passed out to a beneficiary, it is taxed at the beneficiary's income tax rate, which is usually a lower rate than the trust's income tax rate. As a general rule, the income must be distributed out prior to the end of the year in which it is earned to take advantage of the beneficiary's tax rate. However, in some cases, the income can be distributed as late as March 15th of the year following the year in which the income was earned. You should consult with the party that prepares the trust tax returns before the end of each year to ensure that opportunities for a lower tax rate are not lost.

Compensation:

As a trustee, you are entitled to be compensated for work performed on behalf of the trust and reimbursed for expenses incurred on behalf of the trust. Most trustees waive their right to compensation because it must be reported as income on their individual income tax return. However, if you want to be compensated, you need to keep a log detailing the dates work was performed, what work was performed, and how much time was spent. This will allow you compensate yourself on an hourly basis. We usually suggest compensation of no more than $30.00/hour.

The amount of your compensation, the calculation of your compensation and reimbursement for any expenses must be disclosed to the qualified beneficiaries. Failing to make these disclosures could expose you to lawsuits from the beneficiaries. In fact, to avoid any potential for dispute, we suggest that you obtain consent from the beneficiaries for the method of calculation of your compensation at the time that you accept your position as trustee.

Our Fee:

If you wish to have our firm represent you with trust administration, our fee is calculated under our hourly billing procedure. Under our hourly billing procedure, a client is billed for all time spent on the client's matter, including telephone calls, and for any out-of-pocket expenses incurred by the firm on the client's behalf, including, but not limited to, court fees, publication fees, filing and recording fees, bond fees and certified postage. Our attorneys' hourly rates range between $175.00 and $415.00 and time spent performing services is measured in units of tenths of an hour (6 minutes = 0.10 of an hour). Please note that these rates are subject to change. We can make no guarantee about the total amount of charges that could arise under the hourly billing procedure. However, we can assure you that the attorneys and staff of this firm always strive to work efficiently.

We will send you periodic billing statements and request that payment be made within thirty days.

You may terminate this engagement at any time by providing written notice to the firm. The firm may also terminate this engagement by providing you written notice. Upon any termination, you will be billed for all services rendered prior to the termination notice and for any reasonable services provided in connection with transferring this matter to your new counsel.

If you have any questions, please do not hesitate to contact us.

I hereby acknowledge that Vold & Morris, LLC has provided me a general overview of my duties and responsibilities as a trustee, as discussed the importance of the general instructions described above. I further acknowledge receipt of a copy of this memorandum.

Date:________________ ________________________________
Signature

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Printed Name