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WILLS AND PROBATE
Legal Assistance For Military Personnel
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Mission: The mission of estate planning is to protect families by preserving their wealth during incapacity or the generation transfer process.

Basic Elements: The three most commonly used documents are:

- The Power of Attorney,
- The Last Will and Testament, and
- The Trust.

All military prepared documents seen have been limited to the Power of Attorney and the Will.

OUTLINE

Sec I **Powers of Attorney** serve the maker only during their own lifetime and stops at death.

Sec II **Wills** only take effect as of the death of the maker and are interpreted only as if written at the moment of death.

Sec III **Probate** is the process of filing the Will with the Court and administering the Estate by collecting all probatable assets, paying the debts, and distributing the remaining balance.

Sec IV **Trusts** can avoid the expense and hassle of probate, be used for support of children or the disabled, and be used for legal tax avoidance purposes.

Sec V **Taxable Estates** involve additional planning techniques. The part of the estate that passes tax free is called the "exclusion." For a married couple, the exclusion can be easily doubled.

Pitfall: The documents are interpreted under State Law. Every State has different special provisions that change over time. There is no way to know when and where someone will die, nor what odd rule will be in effect.

Alert: Writing Powers of Attorney, Wills, and other documents citing State Law is the practice of law in that State. The unauthorized practice of law is a misdemeanor crime in Virginia and elsewhere.

Remedy: Stay with the basics stated in general terms without citing State Law.

I. POWERS OF ATTORNEY

- A. **Definition.** A Power of Attorney grants to another as the "attorney-in-fact" the authority to make legal decisions for and in the name of the person making the Power of Attorney.
- B. **Uses.** The Power of Attorney protects the maker during their own lifetime. There is no perfect size nor contents. Banks and hospitals frequently question validity. The better answer is to take a copy to the institutions in advance and ask for them to review it.
 - 1. **Short Form Example.** Attachment A is a very short form simple Power of Attorney complete within one page.
 - 2. **Long Form Example.** Attachment B is a very powerful lengthy example to include post-incompetency estate planning. Attachment B is derived from a long public agency form by adding language for Medicaid planning, commercial issues, trusts, and taxable estates.
 - 3. **Average Length.** Most Powers of Attorney seen run from three or four pages. The clients skim read much over one page. An answer is a one page summary signed, witnessed, and notarized in its own right attached to the main document as in Attachment B. The clients will tell you the errors on the first page about the family member names and addresses. The same errors go unnoticed in a multi-page document.
- C. **Validity.** Powers of Attorney operate only during the maker's lifetime. The powers lapse at the maker's death. There is a Federal Statute making Powers of Attorney valid when written within the military (10 U.S.C. 1044). But the banks, hospitals, and State Courts don't know this and will always go to their local laws for interpretation. Recommendation is don't recite the Federal statute as at best it confuses the banks and hospitals and at worst the family member will unwittingly rely on it and be misled to their detriment.

D. **Durable.** Powers of Attorney lapse on the disability of the maker. To have it continue after the maker becomes temporarily or permanently incompetent, an additional clause is needed to make the powers "durable." A temporary incompetency could be anesthesia for surgery. A permanent incompetency could be from old age. Hospitals and financial institutions are troubled when the durable clause is absent as they can take the position they have to determine as an outside fact whether the maker has become incompetent.

A **Durable** clause can be as simple as:

"The powers granted hereby shall not terminate on my disability."

E. **Powers Granted.** Most any legal act a person can do him/herself can be done by a Power of Attorney except getting married and making a will. Unlikely extremes would be arranging Counsel for a divorce or to file a suit. Courts are capricious in the rare instances when called upon to interpret Powers of Attorney where unusual facts are brought to the Court's attention. Keep the language in as general terms as possible since any list can result in some other word or phrase being deemed to be excluded. The basic powers are:

1. **Omnibus Powers.** Include broad powers first such as: "My attorney in fact is authorized to do any act for me in my place and stead with full power to do, execute, or perform any act on my behalf the same as I might or could do myself."
2. **Financial Powers.** Simple language will work with banks for managing, collecting, and paying money, such as "Signing checks and depositing and transferring funds." The stock brokerage financial institutions will want references to their kinds of transactions, such as add to the above short statement ", including buying, selling and trading stocks and bonds." The financial institutions may want their own forms used. The best method to have financial institution acceptance is for the maker to take them a copy in advance. They dislike the attorney-in-fact dashing in and demanding immediate action. When a copy is brought in advance with the question of what else they may need, the level of cooperation rises dramatically.
3. **Property Powers.** A statement on property brings in most other legal transactions. A very short statement could be: "Buying, selling, exchanging, and transferring real and personal property." A Power of Attorney for real estate transactions must be recorded with or before the Deed, and the real estate title insurance companies want to see their favorite clauses and strongly prefer the address of the property to be specifically mentioned. An example of a Real Estate Power of Attorney is included as a summary to Attachment B.
4. **Medical Powers.** Medical offices need time to review and maybe have their own higher authority think about it. The hospitals and doctors want it on their form. Everybody has their own form Living Will, or Advanced Medical Directive, and is known by other

names. State laws are inconsistent with the differences being most noticeable starting with different names for the documents between Maryland, D.C., and Virginia. The difference between a legally enforceable document and a mere wish is the enforceable version has a notary public and the wish doesn't. Several states also require witnesses.

South Carolina (where many from this area travel on I-95) is a state where two witnesses are required. To convert any medical form to an enforceable right, add the power to make a decision and have it notarized. For a sample form, see the Living Will attached as a summary to the large Power of Attorney of Attachment B.

5. **Estate Planning Powers.** Only the few with taxable estates need estate planning clauses in their power of attorney. A Will can not be made by a Power of Attorney. Estate planning uses are transferring assets to trusts and LLCs, as in the example: "Formation and funding of corporations, partnerships, trusts, and LLCs."
6. **Client's With Businesses.** Banks will rarely accept a Power of Attorney for a signature to a corporate or business entity account other than a proprietorship. The only reliable method is to have the client's corporation or LLC owned by the client's revocable (also called an *inter vivos*, or living) trust. Then the co- or substitute trustee can successfully go to the bank to have himself appointed as a new officer, such as Assistant Treasurer.
7. **Ineffective Or Ignored Provisions.** Clauses on burial, cremation, and what to do with the dog are frequently ignored because the decisions are made faster than the documents are found. Burial contracts, private letters, and talking with the family are far more effective.

F. **Appointment of Representative.** The person(s) appointed in a Power of Attorney are known as the "attorney-in-fact" for which there is not a good common word substitute. The spouse is the nearly universal choice. For young unmarried military, the typical choices are the parents and/or siblings. Resist naming girl friends, boy friends, and unit comrades. Not often, but enough, both spouses are killed or injured in an auto accident which leads to naming alternate choices.

1. **Pitfall:** Any factual question used to determine who holds the powers will have the financial and medical institutions trying to determine "the facts", which causes delays at the moment when immediate action is needed.
2. **Remedy:** In the Attachment A & B examples, three people are listed, "any of whom may act." An excellent but rarely used method is to have all of the appointed persons reach an agreement on who serves and in what order by a private letter signed and enforceable by all.

G. **Signatures.** A Power of Attorney is generally invalid unless the signature is notarized. Recommend having the witnesses to the wills also witness the Power of Attorney in case the maker is hospitalized in any of the several states that require witnesses.

- H. **Revocation.** Is difficult at best and unreliable at other times. Full and final revocation requires obtaining and destroying all originals and all copies. Estranged spouses loath giving up their Power of Attorney. An expedient but incomplete method is to write a replacement Power of Attorney to include language "revoking all similar powers previously granted by me."

II. **WILLS.** The Virginia statutes start at §64.1-1.

- A. **Definitions.** A Will directs the distribution of probate assets upon the maker's death.
 - 1. **Real Estate.** May pass to another upon death by the terms of the Deed granting title.
 - 2. **Financial Accounts.** May pass to another at death by the account agreement.
 - 3. **Life Insurance & Retirement.** May be paid to another by beneficiary designation.
 - 4. **Cars** and other vehicles are transferred by using the vehicle registration forms.
 - 5. **Probate Assets.** Is everything else not otherwise transferred at death.
 - 6. **Guardian.** The Will can also appoint a Guardian for the maker's minor children.
 - 7. **Executor.** The Will can nominate the Executor to administer the Estate.
 - 8. **Trustee.** The Will can appoint the Trustee to administer any Trust created in the Will.
 - 9. **Taxable Estate.** The taxable estate is the total (fair market) value of everything passing at death, but only the probate estate pays the taxes.
- B. **Uses.** The Last Will & Testament becomes effective only upon the death of the maker. It is interpreted as if made at the moment of death and as if the maker knew the laws in effect at the moment of death. A Will is just a piece of paper until it is filed to start the probate process. Attachment C is an average Virginia Will for a spouse.
- C. **History.** The "Will" transferred property held pursuant to the Kings Laws. The "Last Testament" was the advice given to the next of kin pursuant to Church Law. When King Henry VIII overthrew the Pope in England, he acquired an entire second judicial system. Until then, the King's Laws only dealt with money judgment, criminal penalties, and land ownership and boundary disputes. Until then, the Church's Chancery Courts dealt with everything else. The distinction continues to this day in Virginia with the choice of whether to file a cause of action At Law or In Chancery. The Will and Last Testament were combined to become the Last Will and Testament.
- C. **Will Pitfall One.** A common error in non-lawyer prepared wills is the absence of Executor's Powers.
 - 1. **Deficiency.** The glaring defect in every software prepared will seen to date and every military prepared will seen to date is the absence of Executor's Powers. When the Will

doesn't make a grant of powers to the Executor, in many states the Executor must petition the Court. Petitions to the Court are expensive and annoy the heirs. State laws are particularly fussy about Executor's Powers. Maryland, for instance, will not recognize any powers granted by reference to the laws of a sister state. In probate, the other states of the Union are referred to as "foreign states."

2. **Remedy.** Add Executor's Powers in broad generic terms to the standard forms. And add Trustee's Powers if a Trust is included in the Will. The Will in Attachment C sets forth the powers in one place to apply to all of the functions of Executor, Administrator, Trustee, and Guardian.

- D. **Executor's Powers.** Attachment E is the Virginia statute §64.1-57 providing the administrative powers if referenced. The Will shown as Attachment C references the statute. But Maryland doesn't recognize references to powers in other state's statutes. The example in Attachment C of a Will also includes an extensive list of Executor's Powers drawn from three generations of probate experience. A shorter version could be:

In administering my estate, my Executor or other personal representative shall have all the powers granted by law including the power to collect and hold all assets; to sell, lease, exchange, and buy real and personal property; to liquidate, open, and administer checking, savings, and other bank types of accounts; to sell, buy, and hold stocks, bonds and other financial institution types of accounts; to settle, compromise and adjust any claims including the payment of debts and taxes; to arrange ancillary probate of any real or other property in other states; to make division or distribution of my estate in kind, in money, or partly in both; to make distribution to or for the benefit of a minor by delivery to the parent or the person having the care, custody, or control of such minor, and the receipt of such payee shall be full acquittance to my Executor; to hire attorneys, accountants, appraisers, and others to assist in the administration and at the expense of my estate; and to make any election required or allowed to be made by my personal representative.

Call to Action: Check your forms. A good and serviceable powers clause has never been seen in a military or software package produced will. Practicing lawyers only see the bad examples afterwards as the good examples never need legal assistance.

- E. **Selection and Qualification of the Personal Representative.** The generic term for Executor is Personal Representative, or Administrator. Practicing estate planning lawyers try to get clients to provide additional alternative choices to the spouse as Executor because we are trying to keep our clients in control. It doesn't work that way in actual probate experience. State laws vary, but all provide some method of determining who can first apply to qualify

as the Personal Representative. The Executors nominated in the Will have priority; then the beneficiaries or their attorney; and lastly the representative of any interested party (creditor) can apply.

- F. **Beneficiaries.** Most wills leave everything to the spouse, and if the spouse predeceases, then to the children. Attempts to disinherit any spouse before a decree of divorce is granted will be upset by state laws providing for minimum required distributions to the spouse which is typically one-third of the estate. Both marriage and divorce render a prior will partially or completely invalid. For young service people who have never been married, the most common choice is to leave everything to the parents, with a second choice to the siblings.

- G. **What's In; What's Out - Guardians and Burial.** Guardians can be nominated in a Will. Burial decisions are made before anybody looks at the Will.
 - 1. **Guardian Nominations** are needed whenever the other parent has also died. In contests for guardianship between the other parent and alternative guardians nominated in a Will, the other parent almost invariably wins as "the natural custodian." Most guardians are nominated from the same list as the choice of Executors and/or Trustees for testamentary trusts for the minor children.

 - 2. **Burial Instructions** are better made by private letter to the immediate or close family members. Outside the military, the best method is to make the funeral arrangements before death. There is a nice discount for advance arrangements. The nursing homes remove the body quickly leaving no time to negotiate.

- H. **Testamentary Trusts.** Trust clauses included in a Will are known as Testamentary Trusts and can be useful when minors may become direct beneficiaries of an estate. The alternative method is to authorize distributions to be made to the parent or guardian of the children. In some states at some times, Testamentary Trusts require annual reports to the probate administration officials. Beneficiaries and families hate these reports. Any probate system that requires reports is likely to also require a bond which may have an annual fee. Most Trustees do not instinctively understand accounting. Attachment C includes a Testamentary Trust for both the decedent's minor children and any circumstance where the named beneficiary dies leaving minor children. For the more modest estate, outright distribution to the surviving parent or guardian may be better. Most Trustees are nominated from the same list as the choice of Executors and./or Guardians for the minor children.

- I. **Witnesses.** Are mandatory when a Will is signed. The Will is the only document that takes effect **ONLY** after the maker can no longer say what he or she really meant. Without witnesses, the Will is invalid.
 - 1. **Two or More.** Nearly all (perhaps all?) States now require two witnesses. A few used to require three. The reason the Will at Attachment C has three is the possibility some

state in the future or foreign country will require three, or have some provision we can not know that makes one of them invalid. Avoid using a beneficiary as a witness.

2. **Self-Proving Clause.** Virginia has a self-proving clause. The Will shown in Attachment C has the standard one based on the statute. Maryland will not recognize the Virginia self-proving clause.
3. **Death Bed Signatures.** Yes, you can rush to the hospital bed. In Virginia, the Will can be signed with as little as a blink of an eye or the lifting of a finger of a dying and immobilized but competent client. The Virginia self proving clause statute §64.1-87.1 includes the phrase:

"... declared to me and to the witnesses in my presence that said instrument is his Last Will and Testament and that he has willingly signed *or directed another to sign the same for him* (italics are mine) and executed it in the presence of said witnesses as his free and voluntary act ..."

4. **In My Presence.** The case law in Virginia is that the notary and all of the witnesses have to be together when they witness the signing (execution) of the Will. Out of sight in the hall nearby isn't good enough when challenged in Court. When banks notarize wills, they are not careful with this detail (but then, the bank tellers wont be available years later to testify otherwise). I use and recommend you use the following at every will signing including so if the will you wrote is challenged, you know you said this as you say this at every will signing:

Helpful Hint: You say at the time they sign: "Are you [their name]?" [They answer yes.] " And do you want this to be your new Last Will and Testament." [Yes.] "And do you want us to witness it with you and for you?" [Yes.] "Sign ... while we are all together in the same room at the same time." When this method is always used, the testimony on proper execution is reliably available.

5. **Presumption of Validity of Military Wills.** Many states have statutes presuming military Wills to be valid even if not exactly done in accordance with State Law. The Virginia statute is at §64.1-54. **Caution:** The statute comes right back around to the basic issues of proving the witnesses with "... proof of signature by the testator by any two disinterested witness ..."
- J. **Will Pitfall Two.** The use of languid language in the directions for distribution will embarrass you when somebody files an action for the "Aid and Direction of the Court." And running up the costs with litigation is contrary to the mission of "preserving family wealth."
1. **Deficiency.** Courts in different states have been known to interpret the same will in two different ways (Rinker v Trout, 171 Va 327, 1938) on language that appears to be crystal clear.

2. **Remedy.** Use direct language.
 - a. Limit each paragraph to one subject.
 - b. Keep the sequence of factual tests crystal clear by only having one per paragraph.
 - c. Distribute equal divisions within one paragraph and its sub-parts.
 - d. Make specific bequests before disposing of fractional shares.
 Land first when the parcel is to be distributed as a whole.
 Exact dollar amounts next.
 Avoid if you can unless the person is dying since the recent stock market is so volatile an exact amount may be too large or too small.
 Fractional shares next.
 The rest known as the residuary estate.
 - e. Make bequests transfer (vest) with the time limit of the lifetimes of those currently alive plus twenty one (21) years. This is the time limit of the Rule Against Perpetuities. There is a movement through the state legislatures to abolish the Rule Against Perpetuities, but the process is incomplete and uncertain.
 - f. No bequests to pets. Make the pet the bequest with some money.
 The first indexed Virginia case (*Marston v Parish*, 1 Va 1 Jeff 1, 1730) had to deal with predeceasing parents and step-parents and the equivalent of livestock.
- K. **Safe Storage.** Wills must be safely stored as a copy is unacceptable if the original is lost. Write the location of the original on the back of the copies. The choices for storage in descending order of preference are:
1. Safe deposit box
 except in DC where the safe deposit box can not be opened until after the Executor has qualified which requires the original of the Will. In states with similar requirements, a second signature is wise or store it in a family members bank.
 2. With the lawyer, but this only works when both lawyers and clients are settled down.
 3. Fire proof box at home. Preferred location is down low beneath any leaping flames.
 4. With a family member or close friend who has a safe deposit box or fire proof vault.
 5. In a plastic bag in the freezer (have a good laugh) suggested by poverty stricken writers. The freezer's heavy insulation is excellent fire proofing.
 6. File cabinet as most home files are not in fire proof

7. With the court. Except active duty military move around too much.

L. **Bonds.** Personal Representatives are usually bonded. After a few cases of serious lost money, lawyers in civil practice come to love Executor's Bonds as the heirs best friend.

Serious Suggestion. Other than a spouse or an only child is the Personal Representative, delete the bond waiver clause found in most form Wills. Don't join in misleading the family as Clerks of Court in Virginia require it.

M. **Choice of Forum.** The choice is the state laws under which the Will will be interpreted.

1. Define the State Law to be used for interpretation although the Courts where the Will is probated will go to their own experience with their own laws no matter what is specified. If you are not licensed in the State chosen, have a competent lawyer review the forms to avoid the unauthorized practice of law risk of criminal prosecution.

2. Attachment C is a Virginia Will with the language of:
"... shall be construed, interpreted, or directed under and by the laws of the Commonwealth of Virginia."

N. **Intestate Estates.** An Intestate Estate is where there is no will to file.

1. The original will is required in most states, and copies are not an acceptable substitute.

2. **Lost and Destroyed.** In the absence of writing a new will, the alternate method to renounce a Will in Virginia is to destroy it.

a. But so do the heirs, who destroy or hide the Will when they don't like it.

b. In Virginia, the Will can be lodged with the Clerk of Court in advance.

c. In Virginia, evidence of destruction with a copy is not a reliable substitute. Courts have been known to allow the copy to be filed, but it is reversible error on appeal.

3. **Damaged Wills.** Non-lawyers think they can fiddle with mark-ups, but they don't understand the rules of re-dating and re-signing. Case law makes for unreliable results.

4. **Electronic Wills.** Before the Internet, computer people liked to put their will on their computer thinking electronic records are sufficient. Especially for Wills, this is not acceptable in Virginia. The Internet and the legal software is causing more electronic Wills. Nothing less than signed, dated, and witnessed wills on paper are acceptable.

5. **Who May Not Make a Will.** §64.1-47 states "no person of unsound mind or under the age of 18 shall make a Will."

III. PROBATE. Probate is forms process driven. The current forms are issued at the start.

A. **Definitions.** Probate is the process of qualifying the Personal Representative with the Court and administering the Estate by collecting all probatable assets, paying the debts, and distributing the remaining balance. The Virginia Statutes are mostly within §64.1-116 through 196.

1. **Administrator.** The Administrator is the title of the Personal Representative when the person nominated in the Will as the Executor is not serving.
2. **Executor.** The Executor is the person nominated in the Will as the Personal Representative to administer the Estate. The feminine form of Executor is Executrix, but some scholars claim there is no such word form, and some software programs ignore the distinction of the feminine form.
3. **Intestate.** An intestate estate is where there is no Will to determine the distribution of the assets.
4. **Qualification.** Qualification is the initial application to the probate process. The Personal Representative qualifies by swearing to an oath for the faithful performance of duties, and the Will (if any) qualifies by an administrative review by the Clerk of Court. Disputes in the Clerk's Office are resolved by a Petition to the Court.

B. **Probate Process.**

1. **Primary Steps.** The Personal Representative takes control of the assets, determines and pays all claims, and distributes the net proceeds to the beneficiaries.
2. **Process Steps.** Using the Virginia requirements, but other states are similar, although the titles of the probate supervisory officials change.
 - a. **Inventory.** The inventory is filed four months after the date of qualification of the Personal Representative.
 - b. **Assets Controlled.** Only those assets that "come into the hands" of the Personal Representative are within the reporting. Frequently the clothes and minor items are disposed of before qualification specifically to simplify the reporting.
 - c. **Annual and Final Accounting.** The annual accountings are due four months after the annual anniversary of the qualification of the Personal Representative. The Estate is closed by the review of the Final Accounting. The forms change from State

to State and from time to time. The Clerks of Court provide the forms in Virginia at the time of qualification.

- d. **Liability.** The Personal Representative is personally liable if any claim, debt, or distribution is paid outside of the prescribed order. Virginia has a statute §64.1-158. The order and amounts of some items change from time to time. Check the statutes as of the date of each death. The order of payment is very important in an insolvent estate where errors are charged personally against the Personal Representative.
- e. **Taxes.** All taxes come second in priority only after the costs of administration of filing fees, bonds, administrator's fees, and similar items. Taxes include:
 - Federal and State Income Taxes not yet filed from during the decedent's lifetime
 - Federal and State Income Taxes on interest and other income after death.
 - Property Taxes.
 - Estate Taxes assessed on all assets transferring because of death.
 - These include assets such as life insurance that transfer outside of Probate.
- e. **Costs.** The typical probate around Northern Virginia costs Eight percent (8%) of the gross value of the Estate.
 - a. **Executor.** The historical Executor fee is Five Percent (5%), and they are frequently underpaid for their time, effort, and risk.
 - b. **Recordation and Clerk's Fees.** From experience these approach One Percent (1%). The fee to record the Will is small. It's the other fees that mount up.
 - c. **Bond Fee.** From experience these approach One Percent (1%). The fee to record the Will is small. It's the other filing fees mount up.
 - d. **Appraisals and Other Costs** always seem to wiggle up to another 1%.
- C. **Probate Assets.** The Personal Representative controls all that assets that pass through probate. The probate assets are everything that isn't distributed another way, such as:
 - 1. **Clothes.** Clothes and mementos frequently are disposed of before qualification.
 - 2. **Financial Accounts.** May pass to another at death by the account agreement.
 - 3. **Life Insurance & Retirement.** May be paid to another by beneficiary designation.
 - 4. **Cars and other vehicles** are transferred by using the vehicle registration forms.
- D. **Taxable Estate.** The taxable estate is the total (fair market) value of everything passing at death, but only the probate estate pays the taxes.

E. Determining Distribution.

1. **By Will.** The Will determines the distribution of the estate after all debts and claims are paid or otherwise satisfied. The original of the Will is required.
2. **Intestate Estate.** An Intestate Estate is when there is no Will, and the distribution is controlled by statute.
 - a. Attachment D is the Virginia law on distribution from an Intestate Estate of §64.1-1 and §64.1-12. Essentially, the estate property passes to spouses, children, and grandchildren. If there are none of those surviving, then go up one generation to the parents and come down all of their other descendants. If none, go up another generation, and come down all of their other descendants. And keep on going until some distant relation is found.
 - b. Copies of Wills are inadequate.
3. **Later Found Wills.** There is a process for bringing and proving a Will after the commencement of an estate under an earlier Will or as an intestacy. This can result in expensive litigation. Check statutes and case law before proceeding.
4. **Disclaimer.** Heirs can refuse to accept bequests without stating their reason. The Virginia statute is §64.1-188 through 196. The most common reason is to avoid increasing the taxes when more wealth is added to the survivor's estate.

E. Inadequate Assets. Estates can be insolvent when too much of the wealth passes outside of probate, such as through insurance.

1. **Recovery Through Litigation.** If too much of the decedent's property passes outside of probate leaving the estate with inadequate resources for debts and taxes, the Personal Representative can pursue the beneficiaries including real estate. §64.1-162.
2. **Small Estates.** Very small estates are exempt from debts. The amounts vary between states and from time to time. The amount of money in Virginia was recently raised to \$15,000. Check statutes such as §64.1-132.1 to -132.4. Clothes, furniture, and chinaware may also be separately exempt such as at §64.1-151.1 to -151.6.

F. Jurisdiction. The primary probate is at the Decedent's primary residence.

1. **Ancillary Probate.** Real estate and other property in another state requires ancillary probate in the other state(s). The typical ancillary probate is expensive and irritating.

2. **Example.** Maryland estate taxation has more tedious detail with small taxes at lesser valuations.

G. **Appraisals.** Obtain personal and real estate appraisals.

1. **General Liability.** Appraisals are protection from the Executor's liability for losing assets the Executor never had.
2. **Tax Issues.** Appraisals are required for taxable estates and are filed with the IRS 706 Tax Form. The Form is not required for non-taxable estates. Have the appraisals in the file to prove the estate was non-taxable for Estate Taxes.

IV. **TRUSTS.** Trusts were unknown to the average estate until a man named D'Arcey in 1966 wrote a book about the egregious difficulties of probate in New York.

A. **Definitions.** An Example is provided at Attachment F.

1. **Beneficiary(ies).** One of the three essential parties to form a Trust.
2. **Grantor.** Is the creator of the Trust and the person who makes the grant of assets to the Trust. Also called a Creator, Maker, or Trustor.
3. **Intervivos.** Is Latin for something during the lifetime. The word is rarely used except to describe a Trust written during the Grantor's lifetime. This is also called a **Living Trust** and a **Revocable Trust**. The **Intervivos Trust** form is almost exclusively used in writing a **By-Pass Trust** explained below at IV.C.2. for reduction of Estate Taxes.
4. **Trustee(s).** The Trustee administers the Trust. Real Estate is titled in the name of the Trustee with the caveat "as Trustee."

B. **Creation.** A Trust is created in writing which is referred to as the "Trust Instrument" or "Trust Agreement."

1. **Minimum Essentials.** The valid formation of a Trust requires five essentials of:
 - a. A Grantor,
 - b. A written document,
 - c. The designation of a Trustee,
 - d. The designation of beneficiaries, and
 - e. The concurrent transfer of property. The property listed in Schedule A of the Example at Attachment F starts with \$100 cash.

2. **State Law.** Trusts are created under State Law (New York may be the big exception) such as Virginia at §55-19, which has new enactments on details at §55-19.1 through §55-19.5.

C. **Uses.**

1. **Popularity.** There are geographic areas where estate planning always includes Trusts. Financial Planners are overly promoting Trusts without knowing when or when not to.
2. **Probate Avoidance.** Assets actually transferred to a Trust are not part of the probate estate unless in the rare instance the Trust sends them back into probate.
 - a. **Saves 8%** costs of probate. Costs explained above at III., B., 2., e.
 - b. **Saves** hassle of inventories, accountings, and public disclosures. Some families think public disclosure is a patriotic duty. Other families hate public disclosure.
 - c. **Transfer** the assets. Arrange competent local legal assistance for real estate Deeds.
 - d. **No Supervision.** Trustee beneficiaries can abuse the other beneficiaries.

Pitfall: As many as 95% of clients making Trusts do not transfer the assets.

Alert: What isn't transferred will remain within the probate process.

Remedy: Retitle your secretary (even if that is you) as your Funding Coordinator with the client's agreement to call the financial institutions to arrange the transfers.

3. **Reduction of Estate Taxes.** The common name for this technique is a "By-Pass Trust." The common use of Trusts is for each Spouse to make the other the beneficiary and substitute Trustee. This avoids the assets being transferred to the surviving Spouse. The assets of the first to die "By-Pass" the surviving Spouse. Otherwise, the assets of the first spouse to die would increase the surviving Spouses estate where the increase would be taxed. The technique can double the amount of the exclusion for Taxable Estates (below). Use the By-Pass Trust for married couples worth more than \$1,000,000.
4. **Power of Attorney.** The Trust enhances and enables the attorney-in-fact under the Power of Attorney to manage and protect the client's assets. The Trust replaces the Power of Attorney for those assets transferred to the Trust. The Trust does not replace the Power of Attorney for medical decisions, for assets not transferred, for tax preparation and reporting, for retirement coordination, and for public benefits applications..

5. **Special Needs.** Trusts can be written, enhanced, or amended for disabled beneficiaries with special needs. A Special Needs provision is in the Trust of Attachment F.
 6. **Educational and Other Needs.** The Intervivos Trust is easier to operate than a Testamentary Trust for future education, medical attention, and maintenance of minor beneficiaries. The sanctioned words are "support, medical care, health, welfare, and education," as shown in the Trust of Attachment D. To go beyond these words is to risk an adverse decision from the IRS or government public benefit agency that the Trust does not have a "definable" benefit.
- D. **Size and Complexity.** The Trust at Attachment F is small in size at nine (9) pages. It empowers decisions based on future unknown facts instead of telling the Trustee what to do. Larger trusts have been seen at 50 pages, and 70 pages has been heard of. The larger Trusts can include detailed instructions that suffer scrivener errors and not being read coherently.
1. **Understanding.** The larger trusts are easier to misread. Confusion leads to litigation.
 2. **Errors.** Scrivener's errors are more common in larger Trusts.
 3. **Incompleteness.** The more detailed the instructions, the more likely someone will claim an omission was an intentional statement not to do something.

Hint: Put the detailed preferences and instructions in a private letter.

- E. **Get Help.** There is no standard Trust document for all occasions, nor all personalities. Clients are not alike. Attornies' approach trust writing based on their professional and personal family experiences and their own differing personalities. Seek a mentor. Attend the State Bar and other Estate Planning Continuing Legal Education (CLE) seminars. The Virginia CLE phone number is 800.979.8253 and their address is:

Virginia Law Foundation
Committee on Continuing Legal Education
P.O. Box 4468
Charlottesville, Virginia 22905

- F. **Trusts Last Longer Than Wills.** The Will goes into Probate and dies when probate closes. Trusts can go on very years, decades, lifetimes, and across multiple generations. Alternative forms of trusts last even longer in family partnerships, family limited liability partnerships, ILITs (irrevocable life insurance trusts), family LLCs, family banks, and family business trusts.

V. **TAXABLE ESTATES.** Complexites are summarized as an alert to when to call for help. There are additional important details needing research.

A. Definitions

1. **Federal and State Income Taxes** are always assessed against the Estate. The Estate as a separate entity is a taxpayer.
2. **Estate Taxes.** The trade use of the term taxable estate means an estate for which Federal Estate Taxes are due, or for an approximately equally high State Estate Tax.
3. **Lesser State Estate Taxes.** Some states such as Maryland have smaller taxes on the gross value of the Estate which are not part of general estate planning.
4. **Paid by Estate.** Estate taxes are paid for by the Estate, reducing the heirs' share, but not by the heirs directly making the payment. The Executor is personally liable.

B. **The Exclusion.** The exclusion amount is the first and most important concept to understanding Estate Taxes. For Federal Estate Taxes (and most State Estate Taxes), the tax doesn't commence until the estate is larger than the "Exclusion Amount." Then the rates are applied to the value of the estate over the Exclusion.

1. **Compare to Income Tax.** Income Tax is based on a theory of deductions. Some deductions are against income before tax is applied, and some deduction credits are applied after tax is computed. Then some of both deductions are affected by other tax laws such as the alternative minimum tax. The Estate Tax is computed on the value after the Exclusion. The distinction is small but critical in computing the tax.
2. **Combined Estate and Gift Tax.** The Exclusion is applied to the value of the estate plus the value of all recognized gifts made during the decedent's lifetime. The gifts recognized are those exceeding an annual exclusion (currently \$11,000 per year per donor per donee) which were not for health or education or for the support of minor children nor for disabled family members (for which there are more rules).
3. **Another Exclusion** is to the Generation Skipping Tax which is currently of \$1,060,000, with an index for inflation and a new exclusion amount in 2004. Check the complex laws and regulations before actually computing. The combined estate and generation skipping tax is approximately 80%, or nearly confiscatory. The Generation Skipping Tax is applied to all distributions over the Generation Skipping tax Exclusion made to grandchildren, and beyond, or to anyone many years younger than the decedent. The number of years and the allocations are based on increasingly complex rules. Use 37 years of age separation between decedent and beneficiary as a guide of when research or mentoring is needed. The Generation Skipping Tax does not generally apply until the transfer to the "skip generation" exceeds \$1,060,000.

C. **Appraisals.** Obtain personal and real estate appraisals.

1. **General Liability.** Appraisals are protection from the Executor's liability for losing assets the Executor never had.
2. **Tax Issues.** Appraisals are required for taxable estates and are filed with the IRS 706 Tax Form. The Form is not required for non-taxable estates. Have the appraisals in the file to prove the estate was non-taxable for Estate Taxes.

D. Future Changes (in the law).

1. **Political Strife.** The money branch of the Republican Party thinks they are going to completely abolish estate taxes. But their own chair of the legislative finance committees don't believe so when talking to Chamber of Commerce and Bar Association meetings. Is this donation hype or an honest opinion?
2. **Budget Troubles.** The current Federal budget troubles and State budget crises lead knowledgeable tax planners to think the Democrats will have estate tax remain with us.
3. **History as a Prologue.** The Roman Empire enacted an estate tax to pay for a War. The United States enacted an Estate Tax in the 1790s to pay for a War. The next US Estate Tax was in 1863 because of the costs of the Civil War. The First World War also saw an Estate Tax. Our current Estate Tax was enacted during World War II, and the Cold War ran up the deficits, and the War on Terrorism has run up a deficit.

E. Exclusions, Rates, and Effective Dates.

1. The following table is the Exclusion amounts under current Federal law and the percentage rate of both Federal and Virginia estate taxes on the value above the Exclusion.
2. Virginia, like many states, applies a low tax rate to the Federal taxable estate. Then this is reported to change as of 2004 when the Federal exclusion goes up again. Then Virginia is reported by tax scholars on current law to opt out of that system and merely grant a credit for Federal estate taxes actually paid. If true, then the Virginia rate becomes the effective Estate Tax rate.
3. The Generation Skipping Tax is indexed for inflation when the amount has an "*". The Gift Tax Exclusion stays at \$1,000,000 and does not rise with the Estate Tax Exclusion.
4. The Exclusions and the Rates under current law are:

Year	Federal Estate Tax Exclusion	Federal Generation Skipping	Federal Estate Top End Tax Rate	Virginia Estate Top End Tax Rate Before Credit for Federal Estate Taxes
------	------------------------------------	-----------------------------------	--	--

2002	1,000,000	1,060,000	50%	54%
2003	1,000,000	1,060,000*	49%	57%
2004	1,500,000	1,500,000	48%	60%
2005	1,500,000	1,500,000	47%	55.5%
	And Virginia's Exclusion may go back to \$1,000,000			
2006	2,000,000	2,000,000	46%	54.6%
2007	2,000,000	2,000,000	45%	53.8%
2008	2,000,000	2,000,000	45%	53.8%
2009	3,500,000	3,500,000	45%	53.8%
2010	Zero	3,500,000	Zero	53.8%
	But there will be capital gains tax at the time of sale by the heirs.			
2011	1,000,000	1,000,000	50%	53.8%

In the year 2011, the current law lapses reinstating the estate tax before the tax act of 2001. Under current law, Virginia and a majority of states may have significant estate taxes to affect estate planning for everybody with an estate of \$1,000,000 or more.

Attachment A
A One Page Virginia Power of Attorney Kept Simple

DURABLE GENERAL POWER OF ATTORNEY

KNOW EVERYONE BY THESE PRESENTS:

THAT I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia, have this day made a durable General Power of Attorney whereby I named, constituted and appointed my Wife, Martha W. McLean, my brother, William B. McLean, currently of 125 South Main Street, Fairfax, Virginia, and my sister, Margaret D. McLean, currently of 321 West Winchester Street, Leesburg, Virginia, any of whom may act, to be my true and lawful attorney-in-fact to act in my place and stead to do any act the same as I might do myself including but not limited to:

- Sign checks, deposit money, and transfer my funds;
- Pay bills, collect money, and enforce contracts and my behalf;
- Make claims, sue and defend on my behalf with Counsel if needed;
- Take possession, buy, sell, transfer, or exchange real, personal, and mixed property including stocks and bonds; and
- Arrange for health and medical care including to suspend any such care.

The powers granted herein are to be binding on my heirs, assigns and representatives; hereby revoking any and all similar powers previously granted; hereby ratifying and confirming whatsoever my said attorney in fact acting pursuant to this Power of Attorney may do by virtue hereof in the premise; this Power of Attorney shall be interpreted under the laws of Virginia, and shall not terminate on the disability of the maker.

WITNESS my signature and seal this ____ day of August, 2002.

Michael H. McLean (SEAL)

Witness

Witness

STATE of VIRGINIA

To Wit

COUNTY / CITY of _____

The foregoing Summary of Durable General Power of Attorney was acknowledged before me by Michael H. McLean as the maker and by _____ and _____ as the witnesses. My commission as a Notary Public expires on:

Given under my hand and seal this ____ day of August, 2002.

Notary Public

Attachment B
A Powerful Virginia Power of Attorney

DURABLE GENERAL POWER OF ATTORNEY

KNOW EVERYONE BY THESE PRESENTS:

THAT I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia, make this durable General Power of Attorney naming, constituting, and appointing my Wife, Martha W. McLean, my brother, William B. McLean, currently of 125 South Main Street, Fairfax, Virginia, and my sister, Margaret D. McLean, currently of 321 West Winchester Street, Leesburg, Virginia, any of whom may act, to be my true and lawful attorney-in-fact ("my attorney in fact"). I retain the power and privilege to revoke and or amend this Power of Attorney. My attorney in fact including any substitute duly appointed hereunder by the powers conferred herein is authorized to do any act for me in my place and stead with full power to do, execute, or perform any act on my behalf the same as I might or could do myself including:

PERSONAL POWERS

1. My attorney in fact shall have absolute and sole discretion to act for me in my name on all matters and to do all things which I could do if personally present intending this to be my general grant of my full powers, including to appear on my behalf and generally perform all acts necessary to be done on my affairs the same as I might do personally;
2. To do all acts necessary or appropriate for maintaining or improving my customary standard of living including to continue or alter whatever provision I have made with respect to my support, maintenance, personal welfare, comfort, including food, shelter, clothing, transportation, and other living expenses;
3. To pay all bills and sums of money that may now or in the future be owing by me, whether the obligation is incurred by me or by my attorney in fact;
4. To demand, sue for and defend from same, receive, collect and hold any and all moneys, dividends, coupons, securities, benefits, interests on my behalf, choses in action, and other property, of any nature whatsoever, including to do all things necessary concerning any insurance claims, that now belong to me or may belong to me in the future or in which I may have an interest, and generally to deal with any such matters including to defend suits in my name and/or to compromise or submit to arbitration any claim, whether it is against me or in my favor, and to receive or give releases in connection with claims against me or in my favor;
5. To open accounts of whatever nature in my name or in the name of a nominee on my behalf or in the name of my attorney in fact;

6. To instruct any entity or person having custody or control of any assets of mine, or any assets in which I may have an interest, in any agency, fiduciary or other capacity, and I authorize that person or entity to rely upon such instructions;

7. To accept and continue, modify, or refuse to accept and continue any special, restricted, or limited authorizations or limited powers of attorney heretofore made by me particularly regarding any made with any banking, investment, or financial institution, and to inquire of and respect (but not be bound by) any private letters or instructions I may have made;

8. To provide information including confidential information, or authorize the disclosure of such information, as may be reasonable, useful, or required for any of the purposes set forth herein

BANKING TRANSACTIONS

9. To sign, endorse or assign any note, check or other instrument of any nature whatsoever, negotiable or non-negotiable, for deposit, discount, collection or otherwise in any bank, trust company, savings bank or association, federal savings and loan association, or other type of financial institution;

10. To write checks upon or otherwise withdraw all funds or account balances now or in the future standing to my credit or to the credit of my attorney in fact on the books of any bank, trust company, savings bank or association, federal savings and loan association, other type of financial institution, or other firm, corporation or association, however organized and wheresoever situated, whether or not the check or other instrument is drawn to the order of my attorney in fact;

11. To have access to any safe deposit box registered in my name and to remove or add to the contents;

STOCKS, BONDS AND OTHER FINANCIAL SECURITIES

12. To buy, endorse, and cash savings bonds;

13. To buy, acquire, redeem, convert, exchange, transfer, sell, hypothecate, deliver, pledge, otherwise dispose of, and enter into contracts on any security, stocks, bonds, debentures, options, other forms of securities, and any other type of investment;

14. To vote in person or by proxy, or cause to be registered in the name of a nominee on my behalf selected by my attorney in fact, and to make, execute and deliver any endorsement, assignment, certification, or other document in connection with any security;

INSURANCE

15. To acquire, purchase, and exercise or perform any act, power, duty, right, or obligation whatsoever in regard to any contract or policy of life, accident, health, disability, or

liability insurance or any combination thereof procured by me on my behalf, for me, or for or on any insurable interest that I may have;

16. To change the beneficiary or designation of beneficiary on any existing or other insurance or contract of insurance and to designate anyone as my beneficiary including a nominee acting on my behalf and including my attorney in fact;

17. To terminate coverage or contract of insurance or cancel any insurance or policy of insurance and to receive and make such disposition of any cash or other receipt upon termination as my attorney in fact may deem appropriate;

PERSONAL PROPERTY

18. To buy, acquire, sell, rent, or invest in personal property, tangible or intangible, of whatever kind or nature;

19. To make, execute, and deliver to the proper person(s) and authority(ies) all papers necessary or proper to buy, register, lease, insure, finance, title, and sell any vehicles;

20. To remove, ship, and store any of my property including to sign any necessary and proper papers thereon;

REAL PROPERTY

21. To buy, acquire, sell, lease, demand and recover possession, repair, improve, and enter into contracts on any real estate property and any improvements thereon belonging to me now or in the future or in which I may have an interest, and to execute and cause to be recorded any and all deeds or other writings that may be necessary or proper on transactions involving such property;

22. To make, sign, acknowledge and deliver any contract, deed or other document relating to real estate or personal property or both, and to perform any contract binding either me or my attorney in fact, and to assure performance of any contracts made on my behalf;

23. The foregoing powers apply specifically but are not limited to my property and home at 125 South Main Street, Fairfax, Virginia, and I have concurrently executed herewith a Special Power of Attorney to be controlled by this General Power of Attorney for the express purpose of permitting the filing of public record of the said Special Power of Attorney for the sale of the said real estate without the necessity of recording this document among the land records;

BORROW OR LEND

24. To borrow or lend money or property, with or without security, and for such purposes to deliver or receive any documents that may be necessary or proper;

25. To make inquiry into and demand information of my legal, medical (including psychological), religious, financial, and other affairs including the power to waive any attorney-client privilege, and to make such disclosures as my attorney in fact deems necessary or appropriate, as well as the power to limit or preclude disclosure to any third party of my said affairs except this power to limit disclosure shall not apply to medical information to competent medical authority, nor to financial information to members of my immediate family and/or the natural beneficiaries of my estate;

EMPLOYMENT AND PUBLIC BENEFITS

26. To apply for, receive, collect, and pursue any money or benefit or assistance, financial or otherwise, to which I am entitled or to which I might claim, because of or with respect to, any employment I have or have had or may have served, including benefits from or through the government enumerated immediately hereafter;

27. To apply for, receive, collect, and pursue any money or benefit or assistance, financial or otherwise, to which I am entitled to which I might claim, because of or with respect to, any benefit provided by or through any government, domestic or foreign, that I have or have had or may have entitlements from;

28. To apply on my behalf for, pursue, prosecute, and collect any public benefits;

TAXES

29. To sign, make, execute and file in my name and on my behalf with any tax authority, any tax returns, forms, amendments, reports, and other responses that may be required by law or otherwise and to negotiate and settle any claims with any such tax authority;

TRUSTS AND OTHER ENTITIES

30. To create, amend, modify, reform and make transfers of money or other assets or claims to any revocable and irrevocable trusts in my name including the power to appoint my attorney in fact or another as Trustee (as long as I retain the prerogative to amend the powers and beneficiaries and substitute Trustees until any permanent or long term incompetency) including any trust I have established such as McLean New Dominion Trust and make withdrawals therefrom, and exercise any powers I may have in any trust for my benefit or for estate planning purposes, including custodial trusts pursuant to the Virginia Custodial Trust Act or similar laws as applicable to my assets or trust beneficiaries, as well as to coordinate financial planning with the immediate members of my family and/or my natural and other previously designated beneficiaries, although I request my attorney in fact to be mindful of requirements for trusts to have ascertainable standards such as to make disbursements to beneficiaries only for their health, education, support, or maintenance;

31. To create, modify and make sales, exchanges, and other transfers for value to any corporation, partnership, limited partnership, or limited liability company for including the power

to appoint my attorney in fact or another to serve in my stead with all of the powers I might exercise (as long as I retain the prerogative to amend the powers and nominees until any permanent or long term incompetency) and exercise any powers I may have in any such entity for my benefit or for estate planning purposes, as well as to coordinate financial planning with the immediate members of my family and/or my natural or other designated beneficiaries;

32. To make any act on my behalf in any or all of such partnerships, limited partnerships, corporations or limited liability companies and other entities in which I may have an ownership or beneficial and/or contractual interest or to which I owe a contractual duty or other obligation including to act in place and stead regarding my rights and duties and otherwise on any corporate Board of Directors on which or to which I may be appointed;

MEDICAL DECISIONS

33. To provide for, consent, and arrange to any medical, surgical, nursing, psychological or similar treatment, related or supporting services including caregivers for me including to arrange and decide any and all comfort, health, and medical care including the power and discretion to prohibit, prevent, and suspend any such medical or other operations and procedures;

34. To inform and enforce my instruction and direction to my attorney in fact and my health care providers to alleviate pain and suffering;

35. To inform, provide and enforce my desire that no physician, hospital, or their agent or employee will be liable to me or my estate for recognizing and honoring this power I have granted my attorney in fact;

36. To inquire of, accept and provide instruction from, make, modify, or revoke any Advanced Medical Directive or Living Will I may have made or my attorney in fact deems may be advisable to make, and I have concurrently executed herewith a Summary of these powers to make medical decisions as my Living Will and Advanced Medical Directive to be controlled by this General Power of Attorney for the express purpose of providing a Living Will and Advanced Medical Directive to health care providers preferring to receive such an instrument;

GIFTS, DISCLAIMERS AND ESTATE PLANNING

37. To make gifts for estate planning or other purposes in my name and exercise any powers I may have to make gifts not prohibited by law, subject to however, that gifts made in my name following any history or pattern of gift giving established by myself need not be justified as strongly as in my interests (or as any other person might make under the same or similar circumstances as myself) as gifts made in my name beyond any such history or pattern, and that such gifts (if any) need not be made in equal amounts to all my relatives in the same degree of kinship to me, and that no donee of such gifts shall receive more than \$10,000 (or \$20,000 if made jointly with my Wife) in any one calendar year, and further that the aggregate amount of gifts (other than compensation for services performed for me) made in any one calendar year to my attorney in fact

shall not exceed the greater of \$5,000 or 5% of my assets at the time of the gift except and unless my said attorney in fact obtains the written opinion of competent counsel and competent accountant that any gift larger than the said limits set forth is reasonable and prudent for estate or tax planning purposes; gifts made hereunder are not made under an unlimited gifting power as I have set forth standards herein and I retain the power to amend or revoke this Power of Attorney;

38. To disclaim my interest in any estate, if in their opinion or estimate, my attorney in fact or counsel to my attorney in fact believes that disclaiming any interest I may have would or may result in the improvement in the total value of the sum of the assets received and/or retained by all of the beneficiaries with a particular emphasis on the reduction of taxes paid;

39. To selectively move, sell, assign, exchange, or transfer for value my assets (including to entities created hereunder), and re-arrange my financial affairs for estate planning purposes or reach settlement with creditors, if in the opinion of my attorney in fact selective payment and transfer would yield a net better result or opportunity for a better result for me;

RETENTION, SUBSTITUTION AND DELEGATION

40. To delegate authority or to substitute another or to arrange for a successor attorney in fact and to appoint any individual or corporation (as long as any said corporation can qualify as the executor or administrator of a decedent's estate under the laws of the state of my primary residence, which is currently Virginia) as substitute attorney in fact under this power of attorney with all of the powers and authority granted my attorney in fact including the power of any such substitute attorney in fact to decline to accept appointment as my attorney in fact and/or to immediately appoint another as substitute attorney in fact;

41. To retain and use on my behalf (including to protect my attorney in fact from liability for acts taken on my behalf other than failures of fiduciary responsibilities, or gross negligence, or wanton dereliction of duty) any of attorneys at law, accountants (including bookkeepers), medical and health care (including caregiving) providers, and other professionals at my expense including to pay any said professionals and/or my attorney in fact reasonable compensation for services (other than for trivial services) at a rate commensurate to the rate charged by the same or similar professional for the same or similar services as the community of my primary residence, including to enforce (by bringing suit if necessary) the decisions made on my behalf by my attorney in fact;

42. Without limiting the above powers, generally to perform any other acts of any nature that, in the opinion of my attorney in fact, should be done in the circumstances, as fully and effectively as I could do if acting personally.

APPOINTMENT OF GUARDIAN OR CONSERVATOR

43. I request that no guardian or conservatorship proceeding for my person or property be instituted in the event of my disability. I intend that this General Durable Power of Attorney shall permit my attorney in fact to act on my behalf with respect to my person or property as fully or more

than as fully as if a guardian or conservator might be able to do. It is my intent that this Power of Attorney shall remove any necessity for the appointment of a guardian, conservator, or similar appointment, and that if any such appointment be made, that my duly designated attorney in fact shall be so appointed or so designated.

ADMINISTRATION

44. I acknowledge that this Power of Attorney may take effect immediately upon my endorsement below, and that the powers granted herein terminate upon my death.

45. Any person, firm or corporation shall be fully protected in relying upon this power of attorney unless and until actual notice of its revocation or actual notice of my death is received. No person or entity (other than myself or a court of competent jurisdiction) shall require my attorney in fact to disclose any information of (or relating to) any action(s) taken by my attorney in fact hereunder or allow any inspection of the records maintained by my attorney in fact hereunder. However, my attorney in fact may disclose information and/or records if required by an Order of a court of competent jurisdiction, or if my attorney in fact deemed disclosure to be in my best interest to do so or in my attorney in fact's best interest. My attorney in fact is authorized to pursue damages against any person, organization, or both for unreasonably refusing to accept this Power of Attorney or any decision of my said attorney in fact made on my behalf.

46. In the event that any person, firm, corporation, or other entity unreasonably refuses to accept or recognize this power of attorney and/or the authority of my Attorney-in-Fact to act on my behalf, and if such refusal causes any cost, loss, or damage (such as additional estate taxes imposed upon my estate or any other estate in which I have an interest, or market losses incurred as a result of delay in the fulfillment of instructions issued by my Attorney-in-Fact), then my Attorney-in-Fact (and/or any other appropriate fiduciary such as my Executor, Manager, or Trustee) is specifically authorized to pursue all appropriate actions, including, but not limited to, the commencement of any legal proceedings, in attempting to recover such costs, loss, or damage.

47. The powers granted herein are separable, so that the invalidity of one or more powers shall not invalidate other powers granted herein.

48. Subject to the limits set forth herein above or as I otherwise direct, I charge my attorney in fact with the duty to perform on my behalf to the standard of care of acting on my behalf that would be exercised by a reasonable and prudent person in the same or similar community of my primary residence having the same or similar relationship to myself as my attorney in fact's relationship to myself and knowing me to the same or similar knowledge of myself as my attorney in fact has of me, but limited to the facts known to my said attorney in fact upon a minimum inquiry as any such reasonable and prudent person having the same or similar relationship to myself would have made when instructed, as I hereby instruct my said attorney in fact, to limit any such inquiry to an inquiry into any written instruction letter I may have left among my most important financial papers and/or that inquiry which seems financially prudent (including the cost of any such inquiry) from time to time. I hereby hold my said attorney in fact to personal liability for any breach of

fiduciary duty, prohibit my said attorney in fact from commingling funds unless my said attorney in fact and I have jointly held property, require my said attorney in fact to keep accurate records, require my said attorney in fact to make accountings of my affairs to me as long as I am competent at least annually or as I otherwise request. With particular reference to investment choices that I have personally made, my attorney in fact does not need to adhere to the Virginia or any other Prudent Investor standards although my attorney in fact is to make reasonable determinations of the need to diversify my investments and to change my investments in the light of prudent recommendations regarding new developments.

49. I hereby ratify and confirm all actions which may be taken by my attorney in fact. My attorney in fact may act in my attorney in fact's sole discretion even in the event of any potential or actual conflict of interest. The powers granted herein to be binding on my heirs, assigns and representatives hereby revoking any and all similar powers previously granted.

50. This power of attorney shall be interpreted in accordance with the laws of Virginia and shall not terminate upon my disability.

51. This instrument may be executed in more than one counterpart, any one of which shall, for all purposes, be deemed an original.

WITNESS my signature and seal this ____ day of August, 2002.

_____(SEAL)
Michael H. McLean

Witness

Witness

STATE of VIRGINIA

To Wit

COUNTY / CITY of _____

I, _____, a Notary Public in and for the jurisdiction aforesaid do hereby certify that the foregoing Durable General Power of Attorney was acknowledged before me by Michael H. McLean as the maker and by _____ and _____ as the witnesses. My commission as a Notary Public expires on: _____

Given under my hand and seal this ____ day of August, 2002.

Notary Public

I certify that the foregoing is a true and correct copy made from the original. My commission as a Notary Public expires on:

Given under my hand and seal this ____ day of _____, _____.

Notary Public

**Part of an All Powerful Virginia Power of Attorney
SUMMARY OF DURABLE GENERAL POWER OF ATTORNEY**

KNOW EVERYONE BY THESE PRESENTS:

THAT I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia, have this day made a durable General Power of Attorney whereby I named, constituted and appointed my Wife, Martha W. McLean, my brother, William B. McLean, currently of 125 South Main Street, Fairfax, Virginia, and my sister, Margaret D. McLean, currently of 321 West Winchester Street, Leesburg, Virginia, any of whom may act, to be my true and lawful attorney-in-fact to act in my place and stead in all matters including:

- Signing checks and depositing and transferring funds;
- Buying, selling, exchanging, and transferring real and personal property;
- Determining medical and other personal care;
- Formation and funding of corporations, partnerships, trusts, and LLCs;
- Other powers granted in the referenced durable general Power of Attorney.

This and the referenced power of attorney shall not terminate upon my disability.

WITNESS my signature and seal this ____ day of August, 2002.

Michael H. McLean (SEAL)

Witness

Witness

STATE of VIRGINIA

To Wit

COUNTY / CITY of _____

The foregoing Summary of Durable General Power of Attorney was acknowledged before me by Michael H. McLean as the maker and by _____ and _____ as the witnesses. My commission as a Notary Public expires on: _____

Given under my hand and seal this ____ day of August, 2002.

Notary Public

**Part of an All Powerful Virginia Power of Attorney
REAL ESTATE POWER OF ATTORNEY**

KNOW EVERYONE BY THESE PRESENTS:

THAT I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia hereby declare for public recordation (if needed) of this Real Estate Power of Attorney that I have concurrently herewith by a general durable Power of Attorney to which this document is subordinate have named, constituted and appointed my wife, Martha W. McLean, my brother, William B. McLean, currently of 125 South Main Street, Fairfax, Virginia, and my sister, Margaret D. McLean, currently of 321 West Winchester Street, Leesburg, Virginia, any of whom may act, to be my true and lawful attorney-in-fact to act in my place and stead in all matters pertaining to the sale of that property located at:

125 South Main Street, Fairfax, Virginia

with all the powers and privileges to act as if I were acting personally and to at least sign, acknowledge and act for me on all Deeds, Deeds of Trust, lender guarantees, settlement papers, acceptance of statements of settlement monies, contracts or waivers, indemnity agreements, insurance and other claims, and other documentation required by an appropriate title insurance company, and obtain the performance of any applicable contracts made on my behalf, and to do each and every other act which may become required to make the conveyance of this property complete, or in the sole discretion of my said attorney in fact, to act in any manner my said attorney in fact deems required to enforce my rights and privileges prior to consummating the conveyance of this property including to refuse to complete the conveyance of said property; hereby ratifying and confirming whatsoever my said attorney in fact acting pursuant to this Power of Attorney may do by virtue hereof in the premise; this Power of Attorney shall not terminate on the disability of the maker.

WITNESS my signature and seal this ____ day of August, 2002.

Michael H. McLean (SEAL)

STATE of VIRGINIA

To Wit

COUNTY / CITY of _____

The foregoing Subordinate Real Estate Power of Attorney was acknowledged before me by Michael H. McLean. My commission as a Notary Public expires on:

Given under my hand and seal this ____ day of August, 2002.

Notary Public

**Part of an All Powerful Virginia Power of Attorney
LIVING WILL, ADVANCED MEDICAL DIRECTIVE,
AND SUMMARY OF MEDICAL POWERS
FROM GENERAL POWER OF ATTORNEY,**

KNOW EVERYONE BY THESE PRESENTS:

THAT I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia hereby declare to and for my physicians and other health care providers of this Summary of Medical Powers that I have concurrently herewith by a general durable Power of Attorney to which this document is subordinate have named, constituted and appointed my wife, Martha W. McLean, my brother, William B. McLean, currently of 125 South Main Street, Fairfax, Virginia, and my sister, Margaret D. McLean, currently of 321 West Winchester Street, Leesburg, Virginia, any of whom may act, to be my true and lawful attorney-in-fact to act in my place and stead in all matters pertaining to my health care and medical treatment decisions including:

A. To provide for, consent, and arrange to any medical, surgical, nursing, psychological or similar treatment, related or supporting services including caregivers for me including to arrange and decide any and all comfort, health, and medical care including the power and discretion to prohibit, prevent, and suspend any such medical or other operations and procedures; and

B. To inform and enforce my instruction and direction to my attorney in fact and my health care providers to alleviate pain and suffering.

My said durable General Power of Attorney and this summary shall not terminate on my disability. I request my attorney in fact to honor any private letter or instructions I may provide.

WITNESS my signature and seal this ____ day of August, 2002.

Michael H. McLean (SEAL)

STATE of VIRGINIA

To Wit

COUNTY / CITY of _____

The foregoing Living Will, Advanced Medical Directive, and Summary of Medical Powers was acknowledged before me by Michael H. McLean as the maker. My commission as a Notary Public expires on:

Given under my hand and seal this ____ day of August, 2002.

Notary Public

Attachment C
An Average Virginia Will With A Spouse

LAST WILL AND TESTAMENT

I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia, being of sound mind and memory, do hereby make this, my Last Will and Testament, hereby revoking any and all other wills and codicils heretofore made by me.

ARTICLE I
PREFATORY PROVISIONS

1. My wife is Martha W. McLean. My children are my son, Tom S. McLean, who was born on July 7, 1987, and my daughter, Tulip D. McLean, who was born on September 9, 1991. The terms "child" and "children" as used herein shall refer equally to both my existing children as well as any children hereafter born to or adopted by me.

2. I direct that all my just debts, including funeral expenses and expenses of my last illness, if any, be paid as soon as practicable after my death although such may be renewed or extended as otherwise provided for herein. The estate is to bear the expense of bonds and sureties. My Executrix or Administrator may request that any or all of the aforesaid expenses, costs and debts be paid by the Trustee of that certain Trust Agreement referred to herein as the "*McLean Family Trust.*"

3. I request that my heirs and beneficiaries honor any written memoranda I may leave regarding the disposition of any particular items of my tangible property. This request is precatory and not mandatory.

4. Any natural person beneficiary is to be considered as not surviving me in the event he or she dies within 6 months of the date of my death. Unless otherwise stated herein, the share for any beneficiary who predeceased me shall go *per stirpes* to his or her descendants who survive me, or if there are none, any such deceased beneficiary's share shall be added to my estate to be distributed hereunder to my other beneficiaries and their heirs.

ARTICLE II DISPOSITIVE PROVISIONS

5. All the rest, residue and remainder of the property, real, personal, or mixed, of which I may die seised or possessed, or to which I may be entitled at the time of my death, I give, bequeath and devise to the Trustee in Trust of that certain Trust Agreement known as the "*McLean Family Trust*" which I have created and a copy of which may be found among the files of my attorney, Emory E. Hackman, Jr., Esq.

6. If any of the assets of my Estate remain undistributed, then all the rest, residue and remainder of the property, real, personal, or mixed, of which I may die seised or possessed, or to which I may be entitled at the time of my death, I give, bequeath and devise to my wife.

7. In the event that my wife predeceases me, and if any of the assets of my Estate remain undistributed, then I give, bequeath and devise all that I may have to my children in equal shares, and

if any of my children predecease me with issue, to my grandchildren and their descendants *per stirpes*.

ARTICLE III TRUST FOR MINORS

8. Unless an Executor or Executrix named herein elects to make direct distribution to a parent or guardian under powers set forth elsewhere herein, that portion of my estate which is to pass under this will other than through any other trust to any minor child is to be placed in a trust created hereby for their benefit according to the following terms, conditions, and instructions:

8A. The trust is to be expended for their health (including medical, dental, and other health care of all kinds), education, support, or maintenance;

8B. The Trustee is empowered to consume the entire corpus of the trust to accomplish the foregoing;

8C. In the Trustee's sole discretion, the trust may also be used for education subsequent to a beneficiary's eighteenth (18th) birthday even while another living beneficiary may remain younger than eighteen (18) years of age;

8D. Upon the youngest living beneficiary of the trust attaining the age of fifteen (15) years, the Trustee may, in his or her sole discretion, set aside and reserve portions of the trust for similar health, education, support, or maintenance for the trust beneficiaries remaining younger than twenty-five (25) years of age as compared to the educational opportunity previously provided, and then to divide the residue and remainder of the trust among the surviving trust beneficiaries per capita, and pay over the proceeds thereof to each trust beneficiary upon each such beneficiary's 25th birthday;

8E. Any trust beneficiary who fails to survive without issue until the distribution of their share of the trust shall be excluded as a continuing beneficiary hereof and any such share shall be divided among the remaining surviving current and former trust beneficiaries, and if none are surviving, then the trust shall be distributed outright to the other beneficiaries of my Estate in proportion to their participation in distribution(s) from my Estate as otherwise provided.

8F. If all of the surviving trust beneficiaries have attained the age of twenty-three (23) years within ten (10) months after my death, then the trust is to be terminated and distributed to all of the trust beneficiaries, *per stirpes*.

ARTICLE IV ADMINISTRATION

9. In administering my estate, my Executor, Executrix, Administrator, Trustee, or Guardian, as applicable, shall have all the powers granted by law including those provided for by §64.1-57 (including as amended or replaced) of the Code of Virginia, which is included herein by reference thereto. It being my intention to confer the broadest and fullest powers, the following are by way of illustration and not be way of limitation, the powers to administer my Estate or Trust shall include that my Executor, Executrix, Administrator, Trustee, or Guardian is authorized and empowered:

9A. To retain any assets which become a part of my estate;

9B. To sell, lease or exchange any property contained in my estate, whether real, personal or mixed, and in case of sale, to sell at public auction or privately, for cash or credit, and upon such terms and conditions as he or she may deem best including terms which extend beyond any existing terms or the terms of any Trust I have created or are created herein, and to change investments from realty to personalty, and vice versa;

9C. To make, execute, acknowledge and deliver any and all instruments of conveyance, deeds of trust, or assignments in such form and with warranties and covenants as the fiduciary may deem expedient and proper; and in the event of any sale, conveyance, exchange, or other disposition of any of the Trust estate, the purchaser shall not be obligated in any way to see to the application of the purchase money or other consideration passing in connection therewith;

9D. To hold any investments I have made or to invest and reinvest in such notes, bonds, debentures, shares of common or preferred stock, or other security or property, secured or unsecured, as he or she may deem best in his or her sole discretion, without being confined to such investments as are usual for the investment of trust funds;

9E. To vote any stocks, bonds, or other securities held by the fiduciary at any meeting of stockholders, bondholders, or other security holders, to exercise options under any shareholders or buy-sell agreement, and to delegate the power to so vote to attorneys in fact or proxies under power of attorney, restricted or unrestricted;

9F. To make division or distribution of my estate in kind, in money, or partly in both, and his or her valuation of property for such purposes shall be final and binding on all parties interested therein;

9G. To settle, compromise and adjust any claims against or in favor of my estate upon such terms and conditions as he or she deems proper in his or her sole and absolute discretion;

9H. To make any payment or deliver any property to or for the benefit of a minor (other than through a trust) to pay or deliver the same to the parent or the person having the care, custody, or control of such minor, or to a trust established for the benefit of any such minor, and the receipt of such payee shall be full acquittance to my Executor, Executrix, or Administrator.

9I. To employ attorneys, accountants, agents, custodians, clerks, investment counsel and other such assistance as he or she may deem necessary in the administration of my estate and any trust created hereby, and to make such payments therefore as he or she may deem reasonable and proper, and to delegate to such persons any discretion which he or she may deem proper;

9J. To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by my estate or any trust created hereby, for as long and on such terms, as he or she may determine in his or her sole discretion as being in the best interests of the beneficiaries hereunder;

9K. To apportion extraordinary and share dividends between income and principal in such manner as he or she may determine in his or her sole discretion;

9L. To make distribution or division in kind, in money, or partly in kind and partly in money;

9M. To borrow money and renew obligations for my estate, and for such purposes to pledge, mortgage and encumber all or any portion of my estate;

9N. To continue any business of mine in any form, with the power to intentionally change the form, as shall be in the best interests of my estate, or of any trust created by me, with full power to employ a manager for any such business, to enter into any agreement, and to organize any form of separate entity, as may be useful, expedient, or required to carry out this authority including the power to subject the general assets of my estate, or the principal of any trust of which any such business is a part, to the debts or liabilities of such business, if required to continue a profitable business or to provide temporary solvency to any such business, and to make decisions, elections, and options, to participate directly in the conduct or management of any such business, and to receive reasonable additional compensation for such services.

10. I nominate and appoint my wife, Martha W. McLean, as the Executrix of my Estate, and if she fails, declines, or refuses to qualify as Executrix, then my brother, William B. McLean, currently of 12 East Main Street, Fincastle, Virginia, shall be the Executor of my Estate, and if he fails, declines, or refuses to qualify as Executor, then my sister, Margaret D. McLean, currently of, 321 West Winchester Street, Leesburg, Virginia, shall be the Executrix of my Estate.

11. I nominate and appoint my brother, William B. McLean, as the Trustee of my Trust for Minors created herein, and if he fails, declines, or refuses to qualify as Trustee, then my sister, Margaret D. McLean, shall be the Trustee of my Trust for Minors created herein.

12. If at the time of my death my wife has predeceased me and any of my children remain minors, then my brother, William B. McLean, shall be the Guardian of my children, and if he fails, declines, or refuses to qualify as Guardian, then my sister, Margaret D. McLean, shall be the Guardian of my children.

13. I direct my Executor, Executrix, or Administrator to pay from my estate or provide for the payment of all inheritance, estate, succession, transfer and similar taxes (except generation-skipping transfer taxes) payable by reason of my death, including other costs of administration and taxes on assets not passing under this Will and interest on these taxes prior to apportioning shares among my beneficiaries. Said deductions or costs of administration are to include payments for the transfer, disposition or distribution of any property deemed a part of my taxable estate or on non-probate property.

13A. Any insurance or other property for which a beneficiary has been designated by a beneficiary designation or other form (that has not been revoked) that by operation of law comes into my probate estate shall pass to the designated beneficiary less any prorata deduction for any tax obligations caused, created, or otherwise increased by any such property or asset increasing my taxable estate, and any such increase in taxation may be deducted by my Executor before paying or transferring to any such beneficiary.

13B. I direct that the estate is not to pay, satisfy or otherwise adjust for any mortgage, deed of trust, or other form of security interest attached to any property which becomes part of my estate, although my estate may make periodic mortgage, tax, and utility payments while any of my real estate is being administered as part of my estate.

13C. My Executor is directed to take all prudent and reasonable actions regarding retirement and pension fund and any other elections to attain the least total tax burden, and to adjust the distribution from my Estate for any such direct distribution to attain the same results on a fractional or percentage basis of my entire Estate as would otherwise have been attained if any such action or election had not been taken.

13D. Any and all real and other property that passes under this, my Last Will and Testament together with any applicable Codicils, shall pass to the beneficiaries thereto as each such beneficiary's sole and separate equitable estate or equivalent status as sole owner such that the spouse of a beneficiary shall have no interest in any such real or other property.

13E. If my heirs do not agree to the division of said property among themselves, my Executor, Executrix or Administrator shall make such division among them, the decision of my Executor, Executrix or Administrator to be in all respects binding upon my heirs.

13F. Any of said property that is not desired by my heirs, or, in the discretion of my Executor, Executrix or Administrator is not appropriate for distribution in kind, may be sold by my Executor, Executrix or Administrator and the proceeds shall be added to my residuary estate to be disposed of as hereinafter provided.

14. In constructing this Will, the use of words implying one gender shall include the other gender, and the use of the singular includes the plural. This Will and any Trust or other action created or caused hereunder shall be construed, interpreted, or directed under and by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, I hereunto set my hand and seal to this my Last Will and Testament this ____ day of August, 2002.

_____(SEAL)
Michael H. McLean

We, the undersigned, do hereby certify that Michael H. McLean has signed, sealed, acknowledged and declared the foregoing paper as and for his Last Will and Testament in the presence of us, competent

witnesses, who, in his presence, at his request and in the presence of each other, all present together at the same time, have hereunto subscribed our names as attesting witnesses, this ____ day of August, 2002.

Name of Witness

Address

Address

Name of Witness

Address

Address

STATE of VIRGINIA

To Wit

COUNTY/CITY of _____

Before me, the undersigned authority, on this day personally appeared Michael H. McLean,

_____, and _____
known to me to be the Testator and the witnesses, respectively, whose names are signed to the attached instrument and all of these persons being by me first duly sworn, Michael H. McLean, the Testator, declared to me and to the witnesses in my presence that said instrument is his Last Will and Testament and that he has willingly signed or directed another to sign the same for him and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the Testator as his Last Will and Testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day and the date of said Will, and that the Testator at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

Testator

Witness

Witness

Subscribed, sworn and acknowledged before me by Michael H. McLean, the Testator, and subscribed and sworn before me by

_____, and _____
witnesses, this ____ day of August, 2002. My commission as a Notary Public expires on:

Notary Public

Attachment D
DISTRIBUTION WHEN THERE IS NO WILL
Intestate Estates

Title 64.1 Wills and Decedents' Estates
Chap. 1 Descent and Distribution, §§ 01 - 18

§64.1-11 **Distribution of personal estate** ... specifies that personal property after payment of funeral charges, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportions, to whom and in which real estate is directed to descend. However, if the intestate was married, the surviving spouse shall be entitled to one-third of such surplus, if the intestate left surviving children or their descendants, one or more or more of whom are not children or descendants of the surviving spouse. If no such children or their descendants survive, the surviving spouse shall be entitled to the whole of such surplus.

§ 64.1-1. Course of descents generally. When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, in the following course:

First. To the surviving spouse of the intestate, unless the intestate is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, in which case two-thirds of such estate shall pass to all the intestate's children and their descendants and the remaining one-third of such estate shall pass to the intestate's surviving spouse.

Second. If there be no surviving spouse, then the whole shall go to all the intestate's children and their descendants.

Third. If there be none such, then to his or her father and mother or the survivor.

Fourth. If there be none such, then to his or her brothers and sisters, and their descendants.

Fifth. If there be none such, then one moiety shall go to the paternal, the other to the maternal kindred, of the intestate, in the following course:

Sixth. First to the grandfather and grandmother or the survivor.

Seventh. If there be none, then to the uncles and aunts, and their descendants.

Eighth. If there be none such, then to the great grandfathers or great grandfather, and great grandmothers or great grandmother.

Ninth. If there be none, then to the brothers and sisters of the grandfathers and grandmothers, and their descendants.

Tenth. And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

Eleventh. If there be no paternal kindred the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the kindred of the husband or wife, in the like course as if such husband or wife had died entitled to the estate. (Code 1950, § 64-1; 1956, c. 109; 1968, c. 656; 1977, c. 474; 1982, c. 304; 1985, c. 189; 1990, c. 831.)

Attachment E
Virginia Statutory Powers
For Wills and Powers of Attorney
If Referenced

Title 64.1 Wills and Decedents' Estates
Chap. 3 Wills, §§ 45 - 96.11
Art. 1 Requisites and Execution, §§ 45 - 57.3

§ 64.1-57. Incorporation by reference of certain powers of fiduciaries into will or trust instrument.

(1) The following powers, in addition to all other powers granted by law, may be incorporated in whole or in part in any will or trust instrument by reference to this section:

(a) To keep and retain any or all investments and property, real, personal or mixed, including stock in the fiduciary institution, if the same be a corporation, as they may be at the time they come into the custody of said fiduciary, regardless of the character of same or whether they are such as then would be authorized by law for investment by fiduciaries or whether a disproportionately large part of the trust or estate remains invested in one or more types of property, for such time as the fiduciary shall deem best, and to dispose of such property by sale, exchange, or otherwise as and when such fiduciary shall deem advisable.

(a1) At the discretion of the fiduciary, to receive additions to the estate from any source, in cash or in kind, and to hold, administer and distribute such additions as a part of and under the same terms and conditions as the estate then currently held.

(b) To sell, assign, exchange, transfer and convey or otherwise dispose of, any or all of the investments and property, either real, personal or mixed, which may be included in, or may at any time become part of the trust or estate upon such terms and conditions as the fiduciary, in his absolute discretion, may deem advisable, at either public or private sale, either for cash or deferred payments or other consideration, as such fiduciary may determine; and for the purpose of selling, assigning, exchanging, transferring or conveying the same, to make, execute, acknowledge and deliver any and all instruments of conveyance, deeds of trust, or assignments in such form and with warranties and covenants as such fiduciary may deem expedient and proper; and in the event of any sale, conveyance, exchange, or other disposition of any of the trust or estate, the purchaser shall not be obligated in any way to see to the application of the purchase money or other consideration passing in connection therewith.

(b1) To grant, sell, transfer, exchange, purchase or acquire options of any kind on property held by such trust or estate or acquired or to be acquired by such trust or estate or held or owned by any other person.

(c), (c1) [Repealed]

(d) To lease any or all of the real estate, which may be included in or at any time become a part of the trust or estate, upon such terms and conditions as said fiduciary, in his sole judgment and discretion, may deem advisable, and any lease or leases made by such fiduciary may extend beyond the term of the trust or administration of the estate and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments, in such form and with such covenants and warranties as such fiduciary may deem expedient and proper.

(e) To vote any stocks, bonds, or other securities held by such fiduciary at any meeting of stockholders, bondholders, or other security holders, and to delegate the power to so vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted.

(f) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as to such fiduciary shall seem advisable, including the power to borrow from the fiduciary, if the fiduciary be a bank, for the purpose of paying debts, taxes or other charges against the trust or estate or any part thereof, and with prior approval of the court for any proper purpose of the trust or estate, and to mortgage or pledge such portion of the trust or estate as may be required to secure such loan or loans; and as maker or endorser to renew existing loans.

(f1) To make loans or advancements to the executor or other representative of the grantor's estate in case such executor or other representative is in need of cash with which to pay taxes, claims or other indebtedness of the grantor's estate; but no assets acquired from a qualified retirement benefit plan under ^o 2039(c) of the Internal Revenue Code shall be so used, and such assets shall be segregated and held separately until all claims against the estate for debts of the decedent or claims of administration have been satisfied. Such loans or advancements may be secured or unsecured, and the trustee shall not be liable in any way for any loss resulting to the trust or estate by reason of the exercise of this authority.

(g) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust or estate as the fiduciary shall deem best, and his decision shall be conclusive.

(h) To make distributions in cash or in kind or partly in each at valuations to be determined by the fiduciary, whose decision as to values shall be conclusive.

(i), (i1) [Repealed]

(j) To repair, alter, improve, renovate, reconstruct and demolish any of the buildings on the real estate held by such fiduciary and to construct such buildings and improvements thereon as such fiduciary may, in his discretion, deem advisable.

(k) To employ and compensate, out of the principal or the income or both as to the fiduciary shall seem proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, licensed real estate brokers, licensed salesmen and other assistants and advisors deemed by the

fiduciary needful for the proper administration of the trust or estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

(l) To rely upon any affidavit, certificate, letter, notice, telegram, or other paper or upon any telephone conversation believed by such fiduciary to be genuine and upon any other evidence believed by such fiduciary to be sufficient, and to be protected and saved harmless in all payments or distributions required to be made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

(m) To retain any interest held by such fiduciary in any business, whether as a stockholder or security holder of a corporation, a partner, a sole proprietor, or otherwise, for any length of time, without limitations, solely at the risk of the trust or estate and without liability on the part of the fiduciary for any losses resulting therefrom; to participate in the conduct of such business and take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as the owner of such business, including the voting of stock, and the determination of any or all questions of policy; to participate in any incorporation, reorganization, merger, consolidation, recapitalization or liquidation thereof; to invest additional capital in, subscribe to additional stock or securities of, and loan money or credit with or without security to, such business out of the trust or estate property; to elect or employ as directors, officers, employees or agents of such business, and compensate, any persons, including the fiduciary or a director, officer, or agent of the fiduciary; to accept as correct financial or other statements rendered by the business from time to time as to his conditions and operations except when having actual notice to the contrary; to regard the business as an entity separate from the trust or estate with no duty to account to any court as to his operations; to deal with and act for the business in any capacity, including any banking or trust capacity and the loaning of money out of the fiduciary's own funds, and to be compensated therefor; and to sell or liquidate such interest or any part thereof at any time. If any business shall be unincorporated, contractual and tort liabilities arising out of such business shall be satisfied, first, out of the business, and second, out of the trust or estate; but it is intended that in no event shall there be a liability of the fiduciary, and if the fiduciary shall be held liable, such fiduciary shall be entitled to indemnification from the business and the trust or estate in the order named. Such fiduciary shall be entitled to such additional compensation as is commensurate with the time, effort, and responsibility involved in his performance of services with respect to such business. Such compensation for services rendered to the business may be paid by such fiduciary from the business or from other assets or from both as the fiduciary, in his discretion, may determine to be advisable; the amount of such additional compensation, however, shall be subject to the final approval of the court.

(n) To do all other acts and things not inconsistent with the provisions of the will or trust in which these powers are incorporated which such fiduciary may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his own property.

(o) To hold property in his name or in the name of nominees.

(p) During the minority, incapacity or the disability of any beneficiary, the fiduciary may, in his sole discretion, distribute income and principal to such beneficiary in any one of the following ways: (1) directly to said beneficiary; (2) to a relative, friend, guardian, conservator or committee, to be expended by such person for the education, maintenance, support or benefit of said beneficiary; (3) by himself expending the same for the education, maintenance, support or benefit of said beneficiary; (4) to an adult person or bank authorized to exercise trust powers as custodian for a minor beneficiary under the Uniform Transfers to Minors Act (§ 31-37 et seq.) to be held by such custodian under the terms of such act; or (5) to an adult person or bank authorized to exercise trust powers as custodial trustee for a beneficiary who is incapacitated as defined in § 55-34.1, under the Uniform Custodial Trust Act (° 55-34.1 et seq.) to be held as custodial trustee under the terms of such act.

(q) To continue and carry on any farming operation transferred to him and to operate such farms and any other farm which may be acquired and, in so doing, by way of illustration and not in limitation of his powers, to operate the farm with hired labor, tenants or sharecroppers; to hire a farm manager or a professional farm management service to supervise the farming operations; to lease or rent the farm for cash or for a share of the crops; to purchase or otherwise acquire farm machinery and equipment and livestock; to construct, repair and improve farm buildings of all sorts needed, in its judgment, for the operation of the farm; to make loans or advances or to obtain such from any source, including the fiduciary at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock; to employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil; to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate or trust; to ditch and drain damp or wet fields and areas of the farm when and where needed; to engage in livestock production, if it is deemed advisable, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such a livestock program; to execute contracts, notes and chattel mortgages relating to agriculture with the Commodity Credit Corporation, the United States Secretary of Agriculture or any other officer or agency of the federal or state governments, to enter into acreage reduction agreements, to make soil conservation commitments, and to do all acts necessary to cooperate with any governmental agricultural program; and in general, to employ the methods of carrying on the farming operation that are in common use by the community in which the farm is located, inasmuch as the duties the fiduciary is requested to assume with respect to farming operations may considerably enlarge and increase his usual responsibility and work as fiduciary, it is agreed that the fiduciary shall be entitled to such additional reasonable compensation as is commensurate with the time, effort and responsibility involved in his performance of such services.

(r) To purchase and hold policies of life insurance on the life of any beneficiary, or any person in whom the beneficiary has an insurable interest, and pay the premiums thereon out of income or principal as he deems appropriate; provided, however, that the decision of the beneficiary of any trust otherwise meeting the requirements of § 2056(b)(5) of the Internal Revenue Code of 1954, as

amended, shall control in respect to the purchase or holding of a policy of life insurance by the trustee of such trust.

(s) To make any election authorized under any law requiring, or relating to the requirement for, payment of any taxes or assessments on assets or income of the estate or in connection with any fiduciary capacity, regardless of whether any property or income is received by or is under the control of the fiduciary, including, but not limited to, elections concerning the timing of payment of any such tax or assessment, the valuation of any property subject to any such tax or assessment, the alternative use of items of deduction in computing any tax or assessment and including specifically elections permitted by statutes enacted after the date of execution of the will or trust instrument.

(t) To comply with environmental law:

1. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to a change in, or any actual or threatened violation of, any environmental law affecting property held by the fiduciary;

2. To take, on behalf of the estate or trust, any action necessary to respond to a change in, or prevent, abate, or otherwise remedy any actual or threatened violation of, any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

3. To refuse to accept property in trust if the fiduciary determines that any property to be transferred to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;

4. To disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law;

5. To charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate;

6. For purposes of this subdivision, "environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health and "hazardous substances" means any substances defined as hazardous or toxic or otherwise regulated by any environmental law.

(u) To resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(2) As used in the section, the term "fiduciary" shall mean and include one or more individuals or corporations having trust powers and the use of the male gender shall include the female; and any substitute, added or successor fiduciary shall have all of the powers hereby provided for the fiduciary named in the will or trust instrument. The provisions of this section may by reference hereto be made applicable to a fiduciary of the estate of a decedent as well as to the trustee of an inter vivos or testamentary trust.

(3) Any fiduciary upon whom a document confers any or all of the powers set forth in subsection (1) may irrevocably disclaim the right to exercise any or all of the powers conferred by filing a suitable written disclaimer with the clerk of court where the document is recorded or probated or, if the document is not recorded, by sending a written disclaimer by registered or certified mail to the last known address of all persons then living entitled to receive the principal or income. Such disclaimer shall relate back to the time when the disclaiming fiduciary originally assumed such fiduciary capacity and shall be binding upon any successor fiduciary. For the purpose of this subsection, a fiduciary shall not be deemed to have assumed a fiduciary capacity under a revocable document until the same becomes irrevocable.

(4) For the purposes of this section, unless the will or trust instrument expresses a contrary intention, the incorporation by reference of powers enumerated by this statute shall refer to those powers existing at the time of death and reference to powers under the Uniform Gifts to Minors Act in an instrument executed prior to July 1, 1989, shall be construed to refer to the Uniform Transfers to Minors Act (° 31-37 et seq.).

(5) This section is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in Article 2 (§ 26-45.3 et seq.) of Chapter 3 of Title 26.

(6) In the event that the will or trust instrument shall contain a provision in favor of a surviving spouse of the testator or grantor, the powers above enumerated shall in no way be construed or interpreted in any fashion which might cause the bequest to fail to qualify for the marital deduction permitted under the federal estate tax law, unless the will or trust instrument shall specifically provide to the contrary. A fiduciary acting under a construction or interpretation of a power, which action is otherwise reasonable under the circumstances, shall incur no responsibility for acts taken in good faith which are otherwise thereafter contended to be in a fashion which might cause disqualification for the marital deduction. The provision of this subsection shall apply without regard to the time the will or trust was executed or probated or the testator died in relation to the effective date of this section or amendments thereto. (Code 1950, § 64-57.2; 1966, c. 425; 1968, c. 656; 1970, cc. 65, 296; 1972, c. 788; 1973, c. 94; 1974, c. 659; 1976, c. 419; 1982, cc. 525, 549, 551; 1989, c. 736; 1990, c. 782; 1992, c. 584; 1994, c. 476; 1997, c. 801; 1999, cc. 772, 975.)

The 1999 amendments, effective January 1, 2000, repealed subdivisions (1)(c), (1)(c1), and (1)(i1), set out below; in subdivision (1)(p) substituted "a beneficiary who is incapacitated as defined in §55-34.1," for "an incapacitated beneficiary"; and substituted "Article 2 (§ 26-45.3 et seq.) of Chapter 3 of Title 26" for "subdivision (a) of § 26-45.1" in subsection (5). ~~(1)(e) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best,~~

~~including investment in stocks, common and preferred, and common trust funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa. (1)(c1) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best, including investment in interests in investment trusts and mutual funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa. (1)(i1) To determine whether any part of the trust or estate or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax or assessment shall be charged against income or principal, or partially against income and partially against principal, provided that this determination be made so as to balance fairly the interests of the income beneficiary and the remainderman.~~

The 1997 amendments, effective January 1, 1998, inserted "conservator" after "guardian" in subdivision (1)(p).

Attachment F
A Virginia Revocable Trust

MICHAEL MCLEAN TRUST

I, Michael H. McLean, of 125 South Main Street, Fairfax, Virginia, make this Trust Agreement to be known as the "Michael McLean Trust" with myself, Michael H. McLean, and my Wife, Martha W. McLean, either of whom may act, as the **Initial Trustee**, which together with such substitute Trustee as herein provided shall be referred to as "**My Trustee**".

SUMMARY

1. **Purpose.** The purpose of this Trust is to arrange control of my property during my lifetime and its orderly transfer thereafter without probate expenses while also providing for my beneficiaries.

2. **Beneficiaries.** As this is formed as a revocable living trust, I as the maker am a beneficiary hereof. This Trust contains By-Pass provisions regarding my Wife to reduce Federal and State Estate Taxes. My children are my son, Tom T. McLean, who was born on July 7, 1977, currently of 303 One Way Street, Elkton, Maryland, and my daughter, Tulip T. McLean, who was born on September 9, 1979, currently of 404 Narrow Way, Newton, New Jersey. The terms "minor", or "child" and their plural and other forms as used herein shall refer equally to both natural and adopted children.

ARTICLE I
CREATION OF TRUST

3. **Transfer to Trust.** I have transferred to My Trustee in trust the sum of One Hundred Dollars and the property listed on the attached "Schedule A" which may be supplemented or replaced as I may add other assets to this trust during my lifetime, or by the terms of any Will or by beneficiary designation. My Trustee shall hold all assets received in trust to be administered under the terms of this Trust agreement. My Trustee may also accept transfers and gifts from other sources and by any attorney-in-fact.

ARTICLE II
PROVISIONS DURING MY LIFETIME

4. **Residential and Other Real Estate.** I may continue to occupy or otherwise use and receive the rents and profits thereon on any real estate or real estate interests I may transfer to this Trust.

5. **Accumulation and Distribution.** My Trustee shall accumulate the income and retain the principal of the trust except as I may otherwise direct. If at any time, in the opinion of My Trustee, I am unable to so direct, My Trustee shall pay income or principal as My Trustee may deem appropriate to provide for the support, medical care, health, and welfare of my Wife and such other beneficiaries as I may have designated either herein or by amendment hereto or by private written instructions.

6. **Withdrawal.** Unless revoked by me, I reserve the right during my lifetime to withdraw any part or all of the trust assets.

7. **Amendments.** I reserve the right to revoke, refine, reform, reconcile (including with changes in any law), and/or amend this agreement by a writing (other than by my Will) signed by me and delivered to My Trustee during my lifetime. The duties of My Trustee shall not be changed without the consent of My Trustee. Without limiting other powers retained by me, I specifically reserve the right to change beneficiaries and to grant the power to modify this Trust unto anyone I may have designated as my attorney in fact under a durable Power of Attorney.

8. **Insurance.** I reserve for myself and any other person the right to make insurance policies payable to My Trustee and to transfer acceptable assets to My Trustee.

ARTICLE III PROVISIONS AFTER MY DEATH

9. **Debts and Charges.** At my death, at my Trustee's sole and exclusive discretion, My Trustee may pay to or upon the request of my Executor funds needed to pay my legally enforceable debts and taxes, funeral and burial expenses, cost of administration, taxes, and bequests under my Will. Whether to make such payments is an option of My Trustee, and the decision of My Trustee whether to provide funds shall be final.

10. **Division of Trust and By-Pass Provisions.** If I am married at the time of my death and if my spouse survives me by more than six (6) months, My Trustee shall divide this Trust into two portions to be known as the Family Trust and the Marital Trust. Otherwise, this Trust shall be administered after my death as the Family Trust. The Marital Trust shall consist of the balance not allocated to the Family Trust. An intended effect of the Family Trust is to provide income and other benefits to my spouse while having title to Family Trust assets "by-pass" my spouse to eventually pass to other beneficiaries to avoid title to such assets increasing Federal or State estate taxes on my spouse's estate.

11. **Computation of Division.** The Family Trust shall not exceed one half of the total net value of this entire Trust as of my death. Otherwise, the Family Trust shall consist of a fractional share of the entire Trust as of my death. The numerator of the fraction shall be the largest amount that can pass free of federal estate tax on my estate including by reason of the unified credit and the credit for state death taxes (to the extent the use of such credit does not increase state death taxes) allowable to my estate, after reduction by reason of (1) my adjusted taxable gifts, (2) other disposition

of property included in my gross estate for which no marital, charitable or other deduction is allowed in computing my Federal estate tax and (3) administration expenses and other charges to principal that are not claimed and allowed as Federal estate tax deductions. The denominator of the fraction shall be the total net value of my estate as finally determined for Federal estate tax purposes. If there is no Federal Estate tax as of the date of my death, then the denominator of the fraction shall be the total net value of my estate. I realize the fraction may be affected by the exercise of certain tax elections made for my estate.

12. **Adjustments.** My Trustee may allocate assets, including adjusting the allocation between the family and marital trusts as herein described, as My Trustee may deem to be in the best interests of the surviving spouse, but if there be no surviving spouse, then in the best interests of the surviving other beneficiaries, valuing each asset on the date of allocation. My Trustee can accept any disclaimer to any allocation to the Marital Trust my spouse may be willing to make in favor of the Family Trust subject to such terms and conditions as they may agree upon.

13. **Income Allocations.** Income earned by the Trust before the division between Marital and Family Trust shall retain its character as income and shall be allocated in the same fractions.

14. **Real Estate.** Unless required to pay debts including taxes, my Wife may continue to live free of rent in any primary or other residence to the extent any such residence is owned or partially owned by this Trust.

ARTICLE IV MARITAL TRUST

15. **Distribution to Spouse.** Unless directed otherwise by my spouse or any authorized attorney-in-fact for my spouse, My Trustee shall distribute the assets of the Marital Trust to my Wife. Unless otherwise directed by or for my spouse, or by agreement with my spouse, any assets retained from the Marital Trust shall be administered as part of my Family Trust.

16. **Remarriage of Surviving Spouse.** My Wife shall continue to have the rights specified herein if she remarries.

ARTICLE V FAMILY TRUST

17. **Benefits to Surviving Spouse.** My Trustee shall pay to my Wife who survives me on a quarterly or more frequent basis all of the net income from the Family Trust for her lifetime unless the cost of administering said payments would be 10% or more of the value of monthly payments, in which case payments may be made less frequently but not less frequently than annually.

18. **Distribution.** After the settlement of all claims against this Trust including those set forth above, and if none, then nine (9) months after my death or when there is not a surviving spouse, which ever occurs later, the Family Trust shall be distributed to the beneficiaries designated on the

first page in equal shares, *per stirpes*, including any in gestation, if applicable. If there remain any assets undistributed, then distribution shall be made in accordance with the laws of intestate estates of Virginia as of this date.

ARTICLE VI
SHARES VESTING IN CERTAIN BENEFICIARIES

19. **Support of Minor Beneficiaries.** Whenever any trust payment, interest, or other share or distribution vests in a beneficiary who is under the age of thirty (30), My Trustee may hold such beneficiary's share in trust. My Trustee shall pay to or for the benefit of the beneficiary as much of the net income or principal of the trust as My Trustee may deem appropriate for the beneficiary's support, medical care, health, welfare, and education. Whenever such beneficiary attains the age of thirty (30), My Trustee shall pay such beneficiary's prorata or proportional share of the trust including any accrued or undistributed income of the trust to such beneficiary.

20. **Shares of Deceased Beneficiaries.** If any beneficiary dies before their share is fully distributed to them, My Trustee may pay the principal and any accrued or undistributed income of the trust to the legal representative of the beneficiary's estate; or, if such deceased beneficiary has a child or children (referred to herein as "grandchildren"), My Trustee may continue the Trust herein created for the benefit of said grandchildren. If there are any grandchildren who are beneficiaries of this trust who are also below the age of thirty when all of the named direct beneficiaries have died, I empower My Trustee to opt out of the Rule Against Perpetuities to the extent allowed by law including by conversion of this Trust to another entity for the same purposes of this Trust as may then not yet be accomplished (and for that purpose I state my declaration that this Trust as of my death becomes its own legal entity thereby avoiding the Rule Against Perpetuities), and otherwise My Trustee shall distribute the entire Trust within twenty one (21) years of the death of the last surviving directly named beneficiary who is a natural person. My Trustee may also pay all or any portion of a vested share to another Trust or to a custodian under the Virginia Uniform Transfers to Minors Act (21) selected by My Trustee.

21. **Special Needs Beneficiaries.** Whenever I have designated a beneficiary as a "Special Needs Beneficiary" or as having "Special Needs", said beneficiary is excluded from other provisions hereof for general support and maintenance. My Trustee shall not make payments directly to any such Special Needs Beneficiary. Title to any tangible property bought for any such special needs shall to the extent practicable be retained and held by this Trust. My Trustee shall from such beneficiary's otherwise share of this Trust only provide for the special needs of any such beneficiary (by making payments other than directly to such Special Needs Beneficiary) for:

- A. Medical, Dental, and Eyesight Expenses
- B. Special needs companion services/home health aid
- C. Essential dietary special needs
- D. Training programs, rehabilitation, and education
- E. Transportation
- F. Equipment related to such special needs
- G. Insurance
- H. Physical and athletic training and competition

I. Other items to enhance self-esteem

Further, My Trustee may inquire of any such Special Needs Beneficiary, their close family members and/or caregivers as to changing requirements of the beneficiary and regulatory developments.

**ARTICLE VII
TRUSTEE POWERS**

22. **Full Trustee Powers.** In addition to the powers granted or implied by law, I grant My Trustee those powers set forth in Section §64.1-57 of the Code of Virginia as of this date including subsequent judicial interpretation, and I incorporate that Code Section into this agreement by this reference, and I specifically include without limitation the powers to sell, buy, and mortgage trust assets.

23. **Prudent Man and Prudent Investor Rules.** My Trustee shall at all times with regard to the purchase, retention and sale of trust property exercise the judgment and care under the circumstances then prevailing which businessmen 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. My Trustee shall at all times be governed by the so-called "prudent man rule" as set forth in Virginia Code Section 26-45.3 including as amended or replaced, except if any asset donated to this trust does not meet the requirements of the said standards, My Trustee may nevertheless retain the asset for so long as My Trustee may deem appropriate.

24. **Record Keeping.** My Trustee shall keep true and reasonably accurate records concerning all trusts hereunder and shall furnish to the current beneficiary, beneficiaries, or parent or guardian of any minor beneficiaries an annual account (or quarterly, if requested and paid for) showing the condition of such trust(s) and the receipts and disbursements during the period covered thereby. My Trustee shall not be required to file any accounting with any public official other than any required tax returns.

25. **Adjustments for Elections Made.** If My Executor under my Will or any other person or entity has made tax elections that affect income or principal, My Trustee may make equitable adjustments between income and principal as My Trustee may deem appropriate to restore distributions from this Trust to the same proportions as would have been made without such elections having been made.

26. **Consolidation and Merger.** After my death My Trustee may merge or consolidate for administrative purposes this Trust with another trust or entity subject to such terms, conditions, and agreements as to substantially make the same distributions and dispositive provisions.

27. **Assets of Different Kinds or Characters.** Assets allocated to one trust or share may be of a different character or have different income tax bases than assets allocated to any other trust or share.

28. **Interpretation for New Laws.** I grant unto My Trustee hereof the power to interpret this Trust in accordance with future laws and future interpretation of laws to carry out the purposes herein expressed in accordance with the laws as of this date. Definitions, designations, and distinctions have been made herein to conform to existing requirements and which may require interpretation to accomplish the tasks of this Trust in light of future revisions to such requirements.

ARTICLE VIII SUCCESSOR TRUSTEE

29. **Designation of Successor Trustee.** At my and my wife's death or disability, William B. McLean, and Margaret D. McLean, either of whom may act, shall become My Trustee. My wife may designate any of the said successor Trustees to succeed herself as Co-Trustee, and I may designate any of the said successor Trustees as my replacement Co-Trustee, or as the sole successor Trustee. I also reserve the right to substitute successors as My Trustee. If I am no longer a Trustee either as the sole Trustee or as a Co-Trustee, I may not then renominate myself. If the duly designated Trustee is unable or unwilling to serve, or to continue serving, and if I have not designated another successor Trustee, then he or she shall select his or her successor Trustee. Any other successor Trustee (or designated successor Trustee) shall in turn have the right to select his or her successor unless I have done so. Selection of a successor Trustee may be made by written designation during one's lifetime (before or after the need arises) or by designation in one's Will.

A designated successor Trustee shall have the sole discretion to determine if an acting Trustee is disabled. If these procedures result in two different people having been or being appointed concurrently as Trustee, then the Trustee who was most recently designated by myself or the subsequent Trustee claiming from my most recent designation shall be My Trustee. If the procedures specified fail to result in the selection of a successor Trustee, then a court of competent jurisdiction shall select a successor Trustee.

30. **Full Power to Successor Trustee.** Any successor Trustee shall be vested with all of the powers and duties, whether discretionary or otherwise, as if originally named and designated as an original Trustee hereunder, and shall be vested with all of the title and ownership rights to any property, real or personal, of the trust estate, without any further act or conveyance or transfer required therefor. No successor Trustee shall be liable or responsible in any way for any acts or defaults of any predecessor Trustee, nor for any loss or expense from or occasioned by anything done or neglected to be done by any predecessor Trustee. Any successor Trustee shall be liable only for the acts and defaults of said Trustee in respect to property actually received by such successor Trustee. No successor Trustee shall be under any duty to examine, verify, question or audit the books, records or accounts or transactions of any preceding Trustee.

31. **Compensation.** My Trustee may retain and use on my behalf, on my beneficiaries' behalf, or on behalf of this Trust (including to protect My Trustee from liability for acts taken as My Trustee of this Trust other than failures of fiduciary responsibility as set forth herein, or gross negligence, or wanton dereliction of duty) any attorneys at law, accountants (including bookkeepers), medical and health care (including caregiving) providers and managers, and other consultants or professionals at the expense of this Trust including to pay for any said assistance and/or My Trustee reasonable compensation for services at a rate commensurate to the rate charged by the same or

similar professional for the same or similar services as the community of my primary residence, including to enforce (by bringing suit if necessary) the decisions made by My Trustee on my behalf, on behalf of my beneficiaries, and on behalf of this Trust.

ARTICLE IX SPECIAL PROVISIONS

32. **Spendthrift and Creditor Protection.** To the extent permitted by law, the principal and income of this trust and any trust created hereunder shall not be liable for the debts of any beneficiary or subject to alienation or anticipation by a beneficiary, except as otherwise provided herein including by amendment hereto.

33. **Opt Out of Rule Against Perpetuities.** To the extent permitted by law, I hereby opt out of the rule against perpetuities, and this trust and all of its provisions, clauses, and beneficiaries are not subject to the rule against perpetuities so that final vesting to the most remote surviving beneficiary may be delayed until said beneficiary has reached such age as is otherwise provided for herein.

34. **Retained Rights.** Any and all rights, privileges, and powers not specifically renounced, revoked, disclaimed, or otherwise precluded, in the original trust or by amendment, or otherwise, are specifically retained by the grantor, beneficiaries, and trustee, as applicable.

35. **Adoption.** A person related by or through adoption shall take under this trust agreement as if the person were related by or through birth, except that a person adopted after reaching age twenty-one and descendants of such person shall not so take.

36. **Tax Interpretations.** Tax-related terms shall be construed in the context of the federal revenue laws in effect as of the date of my death, unless a legally available different date or dates will produce a better cumulative net result for all beneficiaries taken as a whole as long as My Trustee may adjust distributions to protect any beneficiary whose total distributions would be reduced by any such change in date.

37. **Distributions Are Separate Property.** Any real property distributed from this trust shall be distributed to the beneficiary as his or her sole and separate equitable estate or equivalent designation by law, and the spouse of a beneficiary shall have no interest in or other claim to any such real property. To the extent permitted by law, any other distribution shall similarly be the separate property of the beneficiary(ies) of this Trustee free and clear of the interest and claims of any such spouse.

38. **Disclaimers.** Any beneficiary or the legal representative of any deceased beneficiary shall have the right, within the time prescribed by law, to disclaim any benefit or power under this agreement. If a disclaimer by a beneficiary increases taxes against this Trust, my Trustee may reduce any such beneficiary's distribution by the amount of any such additional tax.

39. **Choice of Laws.** This agreement is made or delivered in Virginia and shall be governed by its laws. The use of words implying one gender shall include the other gender, and the use of the singular includes the plural unless a contrary meaning is clearly implied by the plain interpretation of the language used. The right is reserved to amend this Trust unless prohibited by specific language herein or by an Amendment hereto.

IN WITNESS WHEREOF, I have hereunto set my signature and seal this ____ day of July, 2002.

_____(Seal)
Michael H. McLean

The terms of the Trust Agreement are accepted.

_____(Seal)
Michael H. McLean, As Trustee

The terms of the Trust Agreement are accepted.

_____(Seal)
Martha W. McLean, As Trustee

STATE of VIRGINIA

To Wit

CITY/COUNTY of _____

The foregoing Trust was acknowledged before me by Michael H. McLean, and by Michael H. McLean and by Martha W. McLean as Trustees. My commission as a Notary Public expires on:

Given under my hand and seal this ____ day of July, 2002.

Notary Public

SCHEDULE A
to the
Michael McLean Trust

1. \$100 cash.
2. My home at 125 South Main Street, Fairfax, Virginia
- 3.

_____ (Seal)
Date Michael H. McLean