

Modifying Irrevocable Trusts Using Nonjudicial Settlement Agreements

Structuring NJSA Wrappers, Relocating Trust Situs, Resolving Disputes, Remediating Trust Construction Issues

THURSDAY, SEPTEMBER 24, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Christopher P. Massaro, Member, **Cole Schotz**, Hackensack, NJ

Miguel Pena, Attorney, **Law Office of Miguel D. Pena, Esq.**, Hackensack, NJ

Louis A. Silverman, Attorney, **Silverman Law Offices**, Tempe, AZ

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**NONJUDICIAL SETTLEMENT AGREEMENT BY AND AMONG THE TRUSTEE AND
BENEFICIARIES OF THE ABC CHARITABLE TRUST**

THIS AGREEMENT (the “Agreement”) concerning the trust known as the **ABC CHARITABLE TRUST** (the “Trust”) is entered into by and among **JANE DOE** individually, as the sole surviving executor of the Estate of John Doe (the “Estate”), and as trustee of the Trust (the “Trustee”); the **XYZ CHURCH**, located at _____ (the “Church”), and the **XYZ CHURCH DIOCESE**, located at _____ (the “Diocese”). The Trust, Trustee and the Diocese shall be identified as the “Parties” when referenced collectively.

RECITALS

WHEREAS, on August 11, 1998, John Doe (the “Decedent”), executed his last Will and Testament (the “Will”);

WHEREAS, the Decedent died on April 1, 2002;

WHEREAS, the Trust was subsequently created pursuant to Article II of the Will;

WHEREAS, Article II.A of the Will identifies the Church as the Trust’s primary beneficiary;

WHEREAS, Article II.B identifies the Diocese as a contingent beneficiary entitled to receive funds from the Trust only if the Church is either no longer in existence or fails to comply with any condition imposed by the Will;

WHEREAS, the Trustee is currently acting as the Trust’s sole trustee and has served in that capacity since its inception;

WHEREAS, the Church previously requested the Trustee to provide an accounting of the Trust’s activities for the period from the initial funding of the Trust in January 2003 through December 2017;

WHEREAS, with assistance provided by the law firm of Cole Schotz P.C. and the accounting firm of ABC, LLP, the Trustee prepared and submitted an accounting to the attorneys for the Church and Diocese (A Law Firm, LLC), which addresses the period from January 2003 through December 2017 (the “Initial Accounting”);

WHEREAS, the Trustee subsequently provided the attorneys for the Church and Diocese with additional statements and invoices relating to the Trust’s administration for the period from December 2017 through December 2018 (the “Subsequent Accounting”);

WHEREAS, the Trustee, Church, and Diocese now wish to enter into this Agreement resolving all issues related to the Initial and Subsequent Accountings and addressing other matters pertaining to the Trust as set forth below;

WHEREAS, N.J.S.A. 3B:31-11(b) provides that interested persons, such as the Parties to this Agreement, may enter into a binding nonjudicial settlement agreement with respect to any

matter involving a trust, and such agreement will be valid to the extent it includes terms and conditions that could properly be approved by a court;

WHEREAS, N.J.S.A. 3B:31-11(d)(4) specifically identifies, among other things, the following subjects as appropriate for resolution by nonjudicial settlement agreement: a) the approval of a trustee's report or accounting; b) the determination of a trustee's compensation; and c) the liability of a trustee for actions relating to a trust;

WHEREAS, N.J.S.A. 3B:31-69 provides that, except as limited by the terms of a trust, the trustee is empowered to exercise any powers contained in Title 3B of New Jersey's statutory laws;

WHEREAS, Article V of the Will and N.J.S.A. 3B:14-23(L) authorize the Trustee to employ accountants and attorneys in connection with administering the Trust;

WHEREAS, consistent with N.J.S.A. 3B:14-23(m), Article VIII of the Will provides the Trustee with the discretion to "compromise [or] settle . . . any claim or demand . . . against [the "Trust"] . . . and to enter upon such contracts and agreements and to make such compromises or settlements of debts, claims or controversies as [the Trustee] may deem necessary or advisable";

NOW THEREFORE, in consideration of the terms and conditions set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above Recitals are herein incorporated at length.
2. Acceptance of Initial and Subsequent Accountings by Beneficiaries. The Church and the Diocese represent that they have reviewed the Initial and Subsequent Accountings, the commission schedules (the "Schedules"), and the invoices for accounting and legal services (the "Invoices") attached as Exhibit A to this Agreement. The Church and Diocese hereby accept the Initial and Subsequent Accountings, Schedules, and Invoices as a proper and valid account of the Trust's activities and release the Trustee from all liability in accordance with Paragraph 6 of this Agreement. The Church and Diocese further acknowledge that the Trustee is entitled to receive any and all commissions identified in the Schedules and to pay any and all Invoices related to the periods covered by the Initial and Subsequent Accountings. The Church and Diocese waive any right to seek a further accounting of either the Estate's activities or the Trust's activities for the periods covered by the Initial and Subsequent Accountings.
3. Designation of Authorized Church Representative. The Church hereby appoints Richard Roe ("Roe"), who currently resides in Morristown, New Jersey, as the Church's official representative ("Representative"). In the event that Roe is removed by the Church or is otherwise unwilling or unable to act as the Church's Representative, the Church shall appoint a new Representative with the consent of the Trustee, which shall not be unreasonably withheld. The Church will use its best efforts to select potential successor Representatives with substantial experience working in the financial services industry and confirm any appointment in writing to the Trustee. The Church hereby authorizes the Representative to communicate with the Trustee and act on behalf of the Church with regard to any matter pertaining to the Trust.

4. Communications Between Trustee and Representative. The Trustee shall provide the Representative with account statements reflecting the activities of the Trust on a quarterly basis each calendar year. The Trustee shall respond to all reasonable requests for information made by the Representative as promptly as circumstances permit. Although the Trustee may exchange information regarding the Trust's investments with the Representative, nothing contained in this Agreement shall be construed as authorizing the Representative or Church to direct the investments of the Trust. The Parties acknowledge that all investment decisions shall be made at the sole discretion of the Trustee in accordance with the terms of the Will.

5. Release. The Church and Diocese, and their respective agents, attorneys, employees, consultants, representatives, successors, predecessors and assigns hereby completely release and forever discharge the Trustee and the Trustee's agents, attorneys, employees, consultants, representatives, heirs, executors, administrators, successors, predecessors and assigns from any and all actions, causes of action, rights, claims, debts, liabilities, obligations, attorneys' fees, costs, expenses, liens, suits, losses, damages, right to an accounting and demands of any nature whatsoever, whether known or unknown, vested or contingent (collectively, the "Claims"), unless otherwise stated in this Agreement, which the Church or Diocese ever had, now have or may hereafter have or otherwise acquire to the date of this Agreement, including, but not limited to, any and all Claims relating to the Estate or the administration of the Trust for the periods covered by the Initial and Subsequent Accountings, and the commissions and expenditures identified in the Schedules and Invoices.

6. No Admission of Liability. The Parties acknowledge that this Agreement is a compromise of disputed claims and compliance with any or all of its terms by the Parties is not to be construed as an admission of liability or violation of any federal, state or local law, rule or regulation, and any liability or admissions are denied.

7. Counterparts. This Agreement may be executed in counterparts, and each such counterpart will be deemed to be an original instrument, but all such counterparts together will constitute a single agreement. Facsimile and "PDF" signatures shall be deemed original signatures.

8. Cooperation. The Parties agree to execute any documents and take such further action reasonably necessary to carry out the terms of this Agreement and cause it to be fully effective.

9. Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement will not be affected unless such a result would substantially deprive any of the Parties of the benefit of their bargain.

10. Authority to Execute. The Parties represent and warrant that they have complete authority to enter into this Agreement.

11. Representation by Counsel. The Parties represent that they understand and assent to all terms of this Agreement and that they have had the opportunity to obtain independent legal advice regarding this Agreement.

12. Voluntary Nature. This Agreement has been entered into voluntarily by each of the Parties, free of any duress or coercion.

13. Governing Law; Choice of Forum. The laws of the state of New Jersey shall govern the interpretation of this Agreement, without regard to any conflict of law principles. Any action to enforce this Agreement shall be filed in the Superior Court of New Jersey, Chancery Division, Probate Part, in Bergen County.

14. Binding Effect. All the terms of this Agreement shall be binding upon and enforceable by the Parties and anyone who succeeds to their rights, responsibilities or obligations including, but not limited to, their respective heirs, representatives, successors and assigns.

15. Entire Agreement. This Agreement contains the entire Agreement between and among the Parties and fully supersedes any prior understanding or agreements, whether written or oral, between any of the Parties.

16. No Oral Modification. The Parties acknowledge that the terms of this Agreement may not be amended, modified, supplemented, canceled or discharged except by a writing signed by the Parties against whom enforcement of the amendment, modification, supplement, cancelation or discharge is sought.

17. Approval. The Parties hereby approve of the terms of this Agreement as a fair and equitable resolution of all matters contained herein. The Parties further acknowledge that this Agreement shall be presented by the Trustee to the New Jersey Attorney General's Office for review and that the enforceability of this Agreement remains subject to approval by the Attorney General's Office.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement and assented to its terms as of the date last written below.

Dated: _____

JANE DOE, individually, as Executor of
the Estate of John Doe, and Trustee of the
ABC Charitable Trust

Dated: _____

XYZ CHURCH

By: _____
Name:
Title:

Dated: _____

XYZ CHURCH DIOCESE

By: _____

Name:

Title:

STATE OF)
) SS.:
COUNTY OF)

On this ___ day of _____, JANE DOE, personally came before me and executed the foregoing Settlement Agreement, and duly acknowledged to me that she had the authority to sign and did so of her own free will.

Notary Public

STATE OF)
) SS.:
COUNTY OF)

On this ___ day of _____, a representative of The XYZ Church, personally came before me and executed the foregoing Settlement Agreement, and duly acknowledged to me that he or she had the authority to sign and did so of his or her own free will.

Notary Public

STATE OF)
) SS.:
COUNTY OF)

On this ___ day of _____, a representative of The XYZ CHURCH DIOCESE, personally came before me and executed the foregoing Settlement Agreement, and duly acknowledged to me that he or she had the authority to sign and did so of his or her own free will.

Notary Public