VIII. ACCOUNTING AND SETTLEMENT OF ESTATE

Program Agenda Subtopics for "VIII. Accounting and Settlement of Estate"

A. Duty to Maintain Records

B. Time to Account

C. Informal Settlement by Agreement

D. Formal Voluntary Judicial Settlement

E. Petition for Judicial Settlement and Prayers for Relief

F. Jurisdiction

G. Proceedings on Return Date

H. Compulsory Accountings

I. Preparation of Account

J. Special Problems and Adjustments in Accountings

K. Payments to Infants and Incompetents

Outline of Online Coursebook's Chapter on "Fiduciary Accounting"
Submitted by Douglas H. Evans, Esq.

FIDUCIARY ACCOUNTING

I. Preliminary Concepts

A. Distinction between Probate and Non-Probate Property

B. Distinction between Principal and Income

II. Record Keeping

A. Duty to Maintain Records

B. Forms of Records

III. Preparing the Account

A. Form of Accounting

B. Contents of Schedules

C. Apportionment of Estate Taxes

D. Accounting Adjustments

E. Allocation of Income

G. Computing Commissions

H. Computing Distributive Shares

INFORMAL SETTLEMENT OF ESTATES

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2

INFORMAL SETTLEMENT OF ESTATES

Introduction

Receipt and Release Agreements

Filing Receipt and Release Agreements Without Incurring a Filing Fee

Recording or Filing Instruments Pursuant to SCPA §2202

Decree on Filing Instruments Pursuant to SCPA §2203

Virtual Representation Pursuant to SCPA §315

Sample Receipt, Release and Refunding Agreement

4

INTRODUCTION

The informal or non-judicial settlement of an estate permits the executor or administrator to wind-up the administration of the estate, make final distribution, and be released from liability for his actions by agreement with the parties, with no or only limited involvement by the court. Informal settlements of accounts, which come in several forms, are a popular choice among executors, administrators and trustees, who may thereby avoid the expense and delay of a formal or judicial settlement. (Inasmuch as informal settlements of accounts are equally valid and widely used in the context of estate as well as both inter vivos and testamentary trust administration, the term "executor" as used in this section of the materials includes administrators and trustees, unless otherwise specified.)

While the majority of accounts are settled informally, this option may not be appropriate or advisable in every situation, and the executor and his attorney should always consider a variety of factors in deciding whether to use this procedure. Some of the factors to be considered are: the value of the estate and nature of the assets; the duration and complexity of the administration of the estate; whether the parties to be accounted to include infants, incompetents, unknown persons or charitable organizations; the relationship of the executor to the parties and to the attorney for the estate; the relationship and quality of the relations between and among the parties; and the willingness of the parties and the executor to forego a formal settlement of account, including judicial review of the account, approval of attorney's fees and executor's commissions, and discharge of the executor.

The term "informal" is generally taken to refer to the manner in which the account is settled. It may also refer to the account itself. Because an informal settlement does not contemplate judicial review or approval of the account, there is no requirement that the account

be in any particular form. Indeed, the account need not even be filed with the court. Thus, the account may consist of typed or handwritten summary schedules of assets and income received and distributions made, or copies of transaction statements produced by a corporate executor or custodian. Although there appears to be no restriction against an oral account, it is strongly recommended that the account be memorialized in some tangible form. What is most important is that the account fully and accurately convey to the parties the actions taken by the executor, so that an informed release of liability may be given.

Of course, the account exhibited to the parties may be in the form prescribed for the judicial settlement of an account (as described elsewhere in these materials). As it becomes more and more common for estate administration records to be kept on computer, and with the availability of software designed to produce account schedules conforming to local court requirements, it may require little additional effort or expense on the part of an executor (or his attorney or accountant) to produce a "formal" account, even when an informal settlement of the account is contemplated. Such an account might also provide greater protection for the executor seeking to be released from liability, as it would leave little opportunity for a beneficiary to claim at a later date that a release given should be voided due to a lack of full disclosure.

The informal settlement of an estate account is usually accomplished by means of an instrument known as a "Receipt and Release Agreement," also known as a "Receipt, Release, Refunding and Indemnification Agreement" or simply "Agreement Settling Account." There is no requirement that the account or any agreement settling the account be filed with the court, and the executor or his attorney may choose simply to retain such documents in his files. However, if for any reason the executor or his attorney chooses to file the agreement or account with the court, certain rules of procedure, as described below, should be observed.

RECEIPT AND RELEASE AGREEMENTS

A Receipt and Release Agreement is the means by which a beneficiary of an estate may acknowledge receipt of the property to which he is entitled, and agree to release the executor from any further liability with respect thereto. The form of the instrument should be tailored to the nature of the distribution for which the executor is seeking a release. Thus, a receipt and release, also known as a legacy receipt, for a cash bequest or a bequest of a specific item of personal property is frequently a brief instrument or printed form which reveals little about the nature and extent of the assets and liabilities of the estate. The same may be true of a receipt and release obtained in connection with a partial distribution on account of a beneficiary's interest in a share of the residue of an estate, especially if the executor intends to present a final account to the beneficiary for his approval.

A Receipt and Release Agreement can be thought of as telling a story - the story of the administration of the estate - by summarizing the significant events which occurred between the date of death and the closing date of the account. This serves two important functions. First, while the various steps taken from the time the decedent died until the final distribution of the estate assets may be well known to the executor and his attorney, the beneficiaries of the estate often don't know or don't remember what happened. The agreement helps the beneficiaries to understand the actions that were taken and the results that were obtained, so that the release they give the executor is meaningful. Second, the agreement serves to memorialize the administration of the estate, thereby creating a record for future reference. If an issue regarding an estate, such as an after-discovered asset or claim, comes to light some time after the estate has been closed, the agreement can be a resource for the executor and his attorney, as it is a document which contains an accurate summary of the estate administration that was reviewed and signed by the interested parties at the time the estate was closed.

A Receipt and Release Agreement in connection with a final account should contain (at a minimum) the following information: (i) a list of the names and addresses of the parties to the agreement; (ii) the date of death and domicile of the decedent; (iii) the name of the court which issued letters testamentary (and letters of trusteeship, if relevant) and the date thereof; (iv) a statement that funeral and administration expenses, the decedent's debts and all estate taxes have been paid (and that all required estate tax returns have been filed and closing letters or discharges received), that all specific devises and bequests of cash and other property have been satisfied, and that the executor is prepared to make final distribution of the remaining assets comprised in the estate; (v) a summary or quotation from the Will or trust instrument of the provisions governing the disposition of the residuary estate or remainder of the trust; (vi) an identification of the account which has been exhibited to the parties; (vii) a summary of the account or a recitation as to the parties' knowledge and approval of such matters as the amount of legal fees and disbursements and executor's commissions proposed to be charged and paid to date; (viii) an acknowledgment of receipt of all property to which each such party is entitled; (ix) an agreement to release the executor from all liability with respect to the administration of the estate, to indemnify the executor against any expenses or claims which may at any time be asserted against the executor, and to refund to the executor any amount of such party's total distribution which is either needed to so indemnify the executor or later discovered to be an overpayment to such party; and (x) the duly acknowledged signature of each party.

After the specific information for the estate which is the subject of the account has been set out, many of the provisions, such as releases and acknowledgments and agreements to refund and indemnify the executor, are relatively consistent from one Receipt and Release Agreement to the next. However, an agreement can be customized by the addition of provisions which

describe the handling of an issue unique to that estate administration. The goal is always to make full disclosure to the interested parties and to create a complete record of the executor's actions.

One original agreement may be circulated for signature by all parties or, if numerous signatures must be gathered or the parties are widely dispersed geographically, multiple counterparts of the agreement may be used. In either case, it is strongly recommended that a copy of the account be attached to the Receipt and Release Agreement so that each party will have ample opportunity to review it and raise questions. A sample Receipt, Release and Refunding Agreement is appended to this section of the materials. An official form of Receipt and Release (in a much more abbreviated form) has been approved for use in the Surrogate's Courts (Official Form JA-2).

FILING RECEIPT AND RELEASE AGREEMENTS WITHOUT INCURRING A FILING FEE

Section 2402(4) of the Surrogate's Court Procedure Act ("SCPA") provides that no fee shall be charged for filing an instrument (i.e., a Receipt and Release Agreement) which releases and discharges a fiduciary but does not contain any statement of account. (An instrument which contains even a brief summary of the account exhibited to the parties will not be accepted by the court without payment of the full filing fee.) The fee for recording any such instrument is currently $6 per page. An executor or his attorney may choose to file such an instrument with the court for safekeeping upon the termination of an estate. No presumption arises as a result of such filing as to the accuracy of the account or the adequacy of the disclosure made to the persons who signed the instrument.

If local court rules require that the court be provided with proof of the completion of the administration of the estate, the filing of such an instrument may serve this purpose. In this context, reference should also be made to Uniform Rules for Surrogate's Court ("Uniform Rules") §207.42, "Report of estates not fully distributed," perhaps more honored in the breach than in the observance.

RECORDING OR FILING INSTRUMENTS PURSUANT TO SCPA §2202

SCPA §2202 provides that there may be recorded or filed in the court any instrument settling an account in whole or in part executed by one or more fiduciaries and one or more beneficiaries including, in the case of a beneficiary under a legal disability who has been paid, such beneficiary's legal representative or the person who actually received payment on such beneficiary's behalf. If the instrument is to be recorded and not merely filed, the parties' signatures must be acknowledged in the presence of a notary public. It is important to note that if the instrument is recorded, such record or a certified copy of the record or the instrument "shall be presumptive evidence of the contents of such instrument and its due execution." By its terms, SCPA §2202 is applicable to both an intermediate account (more common in the case of a trust than an estate) or a partial distribution, and a final account. No special proceeding is required and no notice need be given of an executor's choice to act under SCPA §2202.

SCPA §2402(4) directs that upon the filing or recording of an instrument pursuant to SCPA §2202, a fee shall be charged based on the gross value of the assets accounted for, including principal and income, computed in accordance with the schedule found at SCPA §2402(7). The fee charged includes the cost of filing or recording the instrument, and if multiple counterparts of the same instrument executed by different beneficiaries are filed, only a single fee shall be charged for filing or recording all such instruments. Thus, SCPA §2202 seems to contemplate that the instrument settling an account which is filed with the court will contain a summary of the account or have a copy of the account attached to it (local court procedure may permit the executor to submit his account to the court for review and request that it be returned to him rather than filed). The clerk of the court is directed under SCPA §2502(4) to maintain a record book listing the name and file number of the estate and the date of filing of any informal

account or any release pursuant to SCPA §2202. However, neither the filing nor recording of the instrument settling an account secures or implies any judicial approval of the account.

The statutory presumption of due execution and of the contents of the instrument afforded by recording a Receipt and Release Agreement under SCPA §2202 provides a limited measure of protection to the executor which is not available if the instrument is merely filed. As is the case with all methods of informal settlement of an account however, if fraud or duress is used in obtaining the signed instrument settling the account, then the instrument may be voided by the signatory thereto. While it is true that "[o]rdinarily the burden of pleading and proving fraud in obtaining a release is placed upon the party seeking to establish that fact," it has been held that "the burden of proof on the whole issue remains with the fiduciary as to whether at the time of the execution of the release the beneficiary was fairly dealt with." In re Amuso's Estate, 13 Misc. 2d 686, 176 N.Y.S.2d 175 (Nassau Co. 1958). Even in the absence of a challenge by a beneficiary, every executor has an obligation to maintain the viability of the informal settlement procedure by making full disclosure to every beneficiary from whom a release is sought of all material facts and circumstances of and surrounding such executor's account.

DECREE ON FILING INSTRUMENTS PURSUANT TO SCPA §2203

A slightly more "formal" means of informally settling an account may be had under the provisions of SCPA §2203. Under this section, the executor may file with the court a petition praying for a decree releasing and discharging him as executor. Unlike SCPA §2202, only final accounts may be settled under this section.

The petition must show the names and addresses of all interested parties, that all taxes have been paid (or that none were due), and that the petitioner has fully accounted and made full

disclosure in writing of his administration of the estate to all persons who would be required to be served with process in a proceeding under SCPA §2210 (although, of course, this is not such a proceeding). SCPA §2203(1). The petition shall also show: (a) in the case of a fiduciary other than a trustee or guardian, either that the fiduciary's letters have been revoked or that he has been removed or that the time for creditors to present claims has expired and that all known debts and administration expenses have been paid; (b) in the case of a trustee, whether or not the trust has been fully executed; and (c) in the case of a guardian, either that the infant has reached majority or has died. SCPA §2203(2).

In addition to filing his petition, the petitioner must also file with the court duly acknowledged instruments executed by all interested parties, as defined in SCPA §2210, or, in the case of a person under a legal disability who has been paid, executed by such person's legal representative or the person who actually received payment, which approve the account of the petitioner and release and discharge him. It is suggested that the instruments filed under this section be recorded as provided under SCPA §2202, to invoke the statutory presumption of due execution and of the contents of the instrument described above.

While there is no requirement that a copy of the account exhibited to all parties who have executed such instruments be filed with the court, SCPA §2402(5) provides that a filing fee shall be charged based on the gross value of the assets accounted for, including principal and income, computed in accordance with the schedule found at SCPA §2402(7). Unlike the filing fee provisions relating to SCPA §2202, the statute provides an alternative means of fixing the filing fee if no values are shown in the petition and Receipt and Release Agreements, by looking to "the estate of the decedent as shown in the estate tax return [Form ET-706] filed under article 26 of the tax law or a proceeding under such article." Obviously, such an alternative would not

apply in the case of a trust or guardianship account, unless for some reason the filing of a New York State estate tax return is also required. More importantly, at least one court has held that "estate" means gross taxable estate, including such items as insurance payable to the surviving widow individually and jointly held property, and not just the comparatively small amount of the decedent's property passing under his Will and accounted for by his executor. In re Estate of Carriero, 107 Misc. 2d 968, 436 N.Y.S.2d 175 (Saratoga Co. 1981). Thus, since the statute requires that some form of written account be prepared and exhibited to the interested parties in order to obtain their informed releases, it would seem prudent to file a copy of the account with the court, so as to avoid any question with respect to the proper amount of the filing fee.

Upon filing the petition and duly executed instruments of all interested parties and payment of the filing fee, and the court being satisfied upon its review of these documents, the court may "make a decree releasing and discharging the petitioner and the sureties on his bond, if any, from any further liability to all persons interested." SCPA §2203(4). It is questionable whether such a decree is of any greater significance than the recording of Receipt and Release Agreements under SCPA §2202, and it has been held that an account settled by means of properly obtained and recorded instruments of release and discharge "is as effectual for all purposes as a settlement pursuant to a judicial decree." In re Kahn's Will, 144 N.Y.S.2d 253 (West. Co. 1955), aff'd, 156 N.Y.S.2d 1016 (2d Dep't 1956).

As stated above, this form of informal settlement of account specifically requires that all interested parties, as defined in SCPA §2210, execute instruments of receipt and release. As will be covered elsewhere in these materials, such "interested parties" may include not only legatees, devisees and residuary beneficiaries, but also unpaid creditors, the surety on the fiduciary's bond, all co-fiduciaries who do not join in the petition, and the attorney general, among others. While

it is generally good practice, for the protection of the accounting executor, to obtain the signatures of all residuary beneficiaries on any Receipt and Release Agreement, the rather burdensome requirements of SCPA §2203 render this a little used method of informal settlement of accounts. Because this section does stop short of all the procedural requirements of a judicial settlement of account, it may be of use in a case where nothing less than a judicial decree will permit the discharge of the surety on the executor's bond.

While the attorney general is an "interested party" under SCPA §2210 and for purposes of SCPA §2203, it is recommended that the attorney general be advised of any informal settlement of an account for an estate in which a charitable organization has an interest beyond that of a specific devise or bequest which has been satisfied, and that his office be provided with a copy of the account as well as the Receipt and Release Agreement. (In this context, reference should also be made to Estates, Powers and Trusts Law ("EPTL") §8-1.4(e)(1), "Supervision of trustees for charitable purposes.")

Although it is sometimes felt by practitioners that only a judicial settlement of account is appropriate when the residuary beneficiaries include charitable organizations, this is not required by statute. A charity may be quite willing to execute a Receipt and Release Agreement upon receipt and review of an account by the charity's in-house or outside counsel, in order to avoid any diminution of its share by the general estate administration expenses attendant upon a formal proceeding, and to receive the funds to which it is entitled more quickly. Of course, a charity, like any other party, may request a judicial settlement of the account, but there is nothing inappropriate in inquiring as to whether the charity would consider dispensing with such a proceeding. If all charitable organizations interested in the executor's account have been willing to execute Receipt and Release Agreements, a fully executed copy of the Agreement, together

with the account, may be submitted to the attorney general as and for the final periodic report required to be filed by the estate (pursuant to EPTL §8-1.4(f)-(h)), and the executor may request the attorney general to issue a "Notice of No Objection" with respect to the executor's informal settlement of his account.

VIRTUAL REPRESENTATION
PURSUANT TO SCPA §315

This section applies in any proceeding in which all interested parties are required to be served with process and, accordingly, it is expressly applicable to voluntary judicial settlements of accounts under SCPA §2210. With respect to informal settlements of accounts, the rules of this section provide a useful means of determining if the signatories to a Receipt and Release Agreement may adequately represent all parties who may potentially raise a claim against the executor or the estate, thereby rendering the instrument settling the account "binding and conclusive on all persons upon whom service of process would not be required to the same extent as that instrument binds the persons who executed it." SCPA §315(8).

In general terms, the theory underlying this section is that if one looks at the group of persons interested in, for example, an estate account, there may be two or more persons who share an identity of interests in the estate. That is, one of those persons ("X") may be so situated that, in looking after his own interests, he will also be looking after the interests of another person ("Y"). If X is made a party to the proceeding, he may be able to "virtually represent" Y, who shares an identity of interests with him, thereby rendering it unnecessary for Y to be made a party at all. The person who is made a party to the proceeding and who has been found qualified to virtually represent other interested persons is commonly referred to as the "representor." Those persons who are being virtually represented by another are the "representees." Thus, in the example given, X is the representor and Y is the representee. In re Estate of Putignano, 82 Misc. 2d 389, 368 N.Y.S.2d 420 (Kings Co. 1975).

As used in this section, the term "an interest in the estate" includes both income and principal interests. The statute does not define the terms "same interest" or "identity of interest," but these terms have been interpreted to mean "same economic interest" rather than a literal

congruence of property interests. In re Estate of Connable, 102 Misc. 2d 406, 423 N.Y.S.2d 421 (N.Y. Co. 1979); In re Goldstick, 177 A.D.2d 225, 581 N.Y.S.2d 165 (1st Dep't 1992). Thus, the nature of the proceeding in which virtual representation is sought to be used can be important. For example, the life income beneficiary of a testamentary trust and the remainderman of that trust most certainly do not have the same interests with respect to the settlement of a trust account, but they may well have the same interest in a contested probate proceeding, where the very existence of the trust is threatened. Further, even if two persons have the same economic interests as beneficiaries of an estate, if one of those persons is also the fiduciary who is rendering the account, his dual status will likely be considered to put him in conflict with the person who is only a beneficiary.

While the statute provides that the decree or order entered in any proceeding in which all interested parties are required to be served with process shall be binding and conclusive on all persons upon whom service is not required (SCPA §315(6)), it is important to remember that virtual representation does not assure the same finality as when a guardian ad litem is appointed by the court to represent an interested person under a disability, or when a competent adult person is cited. In re Estate of Dickey, 195 Misc. 2d 729, 761 N.Y.S.2d 473 (Nassau Co. 2003). Just as a Receipt and Release Agreement obtained by fraud is not binding on the signatories thereof, an improper application of the virtual representation rules will render a decree entered with respect to a representor not binding on his purported representee. Accordingly, courts are not disposed to apply the statute loosely. In re Estate of Lawrence, 106 Misc. 2d 19, 430 N.Y.S.2d 533 (N.Y. Co. 1980). A distinction must also be drawn between virtual representation and legal or actual representation, such as the representation afforded the beneficiaries of a trust

by the trustee, who stands in a fiduciary relationship to the trust beneficiaries. In re Ziegler, 157 Misc. 2d 423, 596 N.Y.S.2d 963 (N.Y. Co. 1993).

The representor is not a fiduciary and is not liable to a purported representee for failing to adequately represent his interests. However, under Uniform Rules §207.18, "Use of virtual representation," the court shall require in an accounting proceeding where representation is based on SCPA §315(5), and may in any other accounting proceeding direct, both the petitioner or his attorney and the nominated representor to file affidavits with the court setting forth, inter alia, the statutory basis for the use of virtual representation and the steps taken by the representor to represent adequately the interests of the representee. In addition, the petition filed in any proceeding in which service of process upon interested persons may be dispensed with pursuant to SCPA §315 or SCPA §2210 shall set forth certain detailed information regarding such persons. SCPA §315(7). The appropriateness of a representor/representee relationship must be evaluated independently in each proceeding relating to an estate or trust, and the proper use of virtual representation in any prior proceeding is always subject to review in any subsequent proceeding.

The statute is primarily concerned with representation of successive or vertical interests and makes certain specific provisions with respect to the representation of class interests and contingent interests. Thus, the persons who shall compose a class upon the happening of a future event may be virtually represented by the members of that class who are in existence immediately before the commencement of the proceeding (e.g., if income is payable to A for life with remainder to A's issue, the now living issue of A may represent the class of A's issue). SCPA §315(2)(a)(i). Similarly, the persons who shall compose a class upon the happening of a future event who are described in terms of their relationship to a party to the proceeding may be virtually represented by such party (e.g., if income is payable to A for life with remainder to B or,

if B is not then living, to B's issue, B may represent the class of B's issue). SCPA §315(2)(a)(ii). In addition, the persons who shall compose a class of unborn or unascertained persons may be virtually represented by a person in being or ascertained who has the same interest (e.g., if income is payable to A for life with remainder to A's issue or, if none, to B's issue, the now living issue of A may represent both the class of A's issue and the class of B's issue). SCPA §315(2)(a)(iii). Finally, if the holder of a power of appointment is a party to the proceeding, he may virtually represent his potential appointees and, in the case of the holder of a general power of appointment, he may likewise represent the takers in default of his exercise of such power. SCPA §315(2)(b). In re Levy, 130 Misc. 2d 370, 496 N.Y.S.2d 911 (N.Y. Co. 1985). With respect to representation of contingent interests, a party to a proceeding may virtually represent a person who would succeed to such interest upon the happening of a future event (e.g., if income is payable to A for life with remainder to B or, if B is not then living, to C, B may represent C). SCPA §315(3).

In addition to vertical interests, representation of concurrent or horizontal interests is also permitted under the statute (e.g., if income is payable to A for life with remainder to A's children, B, C and D, and at the time of A's death B is an adult but C and D are still minors, B may represent his siblings, C and D). However, virtual representation of horizontal interests does not apply unless the Will or trust instrument expressly so provides. SCPA §315(5). In re Sanders, 123 Misc. 2d 424, 474 N.Y.S.2d 215 (Nassau Co. 1984). An example of such an express Will provision is as follows:

> Service of Process. In any proceeding in which all persons interested in my estate or a trust are required to be served with process, where a person having an interest in my estate or such trust is under a disability and a party to the

> proceeding has the same interest as the person under a disability, it shall not be necessary to serve the person under a disability, unless, notwithstanding this provision, such service is required under local law.

In the absence of such an express provision, a guardian ad litem must be appointed to represent the interests of a person under a disability, despite the fact that he may be a member of a class of beneficiaries all of whom have identical interests and all the rest of whom are parties to the proceeding.

Fall 2016

SAMPLE AGREEMENT

STATE OF NEW YORK
SURROGATE'S COURT: COUNTY OF NEW YORK

In the Matter of the Settlement of the Final Account of Proceedings of PETER BEALE and DEBORAH WILKINS, as Executors of the Will of LOUISE BEALE, Deceased.	:	**RECEIPT, RELEASE, REFUNDING AND INDEMNIFICATION AGREEMENT** File No. 0000/13

THIS AGREEMENT, made as of the day of , 2016, by and among PETER BEALE, currently residing at 600 East 86th Street, New York, New York 10029, DEBORAH WILKINS, currently residing at 500 West 67th Street, New York, New York 10025, and PAULINE BEALE FOWLER, currently residing at 2000 Sunset Boulevard, Los Angeles, California 90454.

W I T N E S S E T H:

WHEREAS, Louise Beale (the "Decedent") died on July 5, 2013, a resident of 2222 Park Avenue, in the City, County and State of New York, leaving a Will dated March 23, 2000, as amended by a First Codicil thereto dated October 13, 2002 (collectively, the "Will"), a copy of which is attached hereto as Exhibit A, which was duly admitted to probate on August 8, 2013, and Letters Testamentary thereon were issued on the same date to Peter Beale and Deborah Wilkins, the Executors named in the Will (the "Executors"), by the Surrogate's Court of said County; and

WHEREAS, the Executors have duly administered the estate of the Decedent, having (i) taken into their possession or secured all estate assets, (ii) paid the Decedent's debts and funeral expenses, (iii) prepared and timely filed the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) required for the Decedent's estate, paid the federal estate tax determined to be due from the Decedent's estate, and received a Federal Estate Tax Closing Document dated March 5, 2016, (iv) prepared and timely filed the New York State Estate Tax Return (Form ET-706) required for the Decedent's estate, paid the New York State estate tax determined to be due from the Decedent's estate, and received a New York State Estate Tax Closing Letter dated December 26, 2015, (v) paid or reserved funds for the payment of all expenses of administering the Decedent's estate, (vi) distributed the tangible personal property owned by the Decedent in accordance with the provisions of Article SECOND of the Will, (vii) sold the Decedent's cooperative apartment as directed under Article THIRD of the Will, (viii) directed Deborah Wilkins, as Trustee of the Albert Beale Trust under an Agreement dated September 22, 1990, to distribute the remaining principal of such trust in accordance with the Decedent's exercise of her power of appointment under Article FOURTH of the Will, (ix) paid the cash bequests as directed under Article FIFTH of the Will and obtained signed Receipts therefor, and (x) made substantial distributions of the Decedent's residuary estate (the "Residuary Estate") on account to the Decedent's surviving children, as directed under Article SIXTH of the Will; and

WHEREAS, the Decedent was survived by her two (2) children, Peter Beale ("Peter") and Pauline Beale Fowler ("Pauline"), both of whom are adults, there being no predeceased child of the Decedent; and

WHEREAS, Article SIXTH of the Will provides that the Residuary Estate is to be distributed in equal shares to the Decedent's children; and

WHEREAS, the Executors now desire to make final distribution of the principal and income comprised in the Residuary Estate to Peter, individually, and Pauline; and

WHEREAS, an account of proceedings of the Executors covering the period from July 5, 2013 (the Decedent's date of death), to and including September 30, 2016, has been prepared (the "Accounting"), a copy of which is annexed hereto as Exhibit B and made a part hereof; and

WHEREAS, Peter, individually, and Pauline have been advised of their right to require that the Accounting be settled judicially, but because they are satisfied with the manner in which the Executors have performed their duties and, in order to avoid the expense and delay incident to the judicial settlement of the Accounting, Peter, individually, and Pauline have requested, and the Executors have agreed, on the basis of the release, discharge and waiver of judicial accounting contained herein, not to require a judicial settlement of the Accounting; and

WHEREAS, Deborah Wilkins, as Executor, is entitled to receiving and paying commissions in the total amount of $36,250.95, as set forth at Schedules C-1 and J of the Accounting, of which $17,600 was paid on account to her by Order of the New York County Surrogate's Court, as set forth at Schedule C of the Accounting (Peter, as Executor, having waived his right to receive commissions); and

WHEREAS, the sum of $50,000, for legal fees, and the sum of $2,872.25, for legal disbursements, have been paid to Mitchell & Watts LLP, as attorneys for the Executors, for legal services rendered and legal disbursements incurred in connection with the administration of the Decedent's estate, as set forth at Schedule C of the Accounting; and

WHEREAS, each of the parties hereto is of full age and of sound mind and is fully advised of his or her rights in the premises;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto and of the consent of the Executors, and at the request of Peter, individually, and Pauline, to facilitate the settlement of the Accounting without requiring the judicial settlement thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

FIRST: Peter, individually, and Pauline do hereby acknowledge and agree that the Accounting is in all respects just, true, proper and correct, and they do ratify, approve and confirm each and every one of the acts, doings, proceedings, collections and disbursements of the Executors, as set forth in the Accounting, and they and each of them do hereby waive their, his or her right to enforce a judicial settlement of the Accounting, it being the purpose and intent of the parties hereto that the release and discharge hereinafter given and granted to the Executors shall be accepted by the Executors and each of them and shall be binding on Peter, individually, and Pauline and each of them, in all respects as though a final account had been rendered in the course of a judicial proceeding and had thereupon been settled and allowed, as presented and filed, by a judgment, decree or order of a court of competent jurisdiction.

SECOND: Peter, individually, and Pauline do hereby acknowledge that the Accounting constitutes a full and complete disclosure to them of all the acts, doings and proceedings of the Executors during the period from July 5, 2013, to and including September 30, 2016; and also, that the Executors have put at the disposal of Peter, individually, and Pauline all papers, documents, memoranda, records, tax returns and other information in any way related to or connected with the acts, doings and proceedings of the Executors during said period.

THIRD: Peter, individually, and Pauline do hereby approve the payment to be made to Deborah Wilkins, as Executor, of the balance of receiving and paying commissions due her in the amount of $18,650.95, as set forth at Schedules C-1 and J of the Accounting.

FOURTH: Peter, individually, and Pauline do hereby approve the payments made to Mitchell & Watts LLP in the total amount of $52,872.25, for legal services rendered and legal disbursements incurred in connection with the administration of the Decedent's estate, and consent and agree that the additional sum of $15,000 be paid to said Firm for the balance of its fee for legal services rendered, plus such additional legal disbursements as shall be incurred (in an amount to be determined), in connection with the administration of the Decedent's estate, including the preparation of this Agreement and the Accounting and the settlement thereof, as set forth at Schedule C-1 of the Accounting.

FIFTH: Each of Peter, individually, and Pauline does hereby acknowledge receipt from the Executors of the cash and other property heretofore distributed and remaining on hand (after payment of Executor's commissions and the balance of legal fees and disbursements, as described in paragraphs THIRD and FOURTH of this Agreement), as set forth at Schedules E, G, E-1 and G-1 of the Accounting, and does hereby accept such cash and other property in full satisfaction of his or her respective interests in and to the principal and income of the Residuary Estate through September 30, 2016, the closing date of the Accounting.

SIXTH: Peter, individually, and Pauline do hereby jointly and severally release and discharge the Executors, individually and as Executors, and their, his and her respective heirs, legal representatives, successors and assigns, of and from any and all manner of action or actions, cause or causes of action, suits, debts, dues, sums of money, damages, claims and demands whatsoever which any of Peter, individually, and Pauline now has or hereafter may

have against the Executors or either of them, for or by reason of any act or omission, collection or disbursement, cause, matter or thing whatsoever, recited, contained, appearing or set forth in the Accounting or reasonably to be inferred from anything therein contained, or for or by reason of any payment, distribution or transfer made, or of anything done or omitted to be done by the Executors in connection with their administration of the Decedent's estate during the period from July 5, 2013, to and including September 30, 2016.

SEVENTH: Peter, individually, and Pauline agree to reimburse, promptly upon demand, indemnify and hold harmless the Executors, to the extent of his or her respective share of the property received, for, of and from any and all claims, demands and liabilities which the Executors may at any time sustain, incur or become liable for by reason of the administration of the Decedent's estate by the Executors during the period from July 5, 2013, to and including September 30, 2016.

EIGHTH: Each of Peter, individually, and Pauline does hereby represent, certify and warrant that he or she has not assigned, transferred or encumbered, in any way, either voluntarily or involuntarily, his or her interest in the Residuary Estate or any part thereof.

NINTH: This Agreement shall inure to the benefit of the Executors as to all matters contained in the Accounting for the period from July 5, 2013, to and including September 30, 2016, and to his, her and their respective heirs, legal representatives, successors and assigns, and shall be binding on Peter, individually, and Pauline and his, her and their respective heirs, legal representatives, successors and assigns.

TENTH: This Agreement may be executed in one or more counterparts, but all such counterparts shall together constitute but one and the same instrument.

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

_____[L.S.]
PETER BEALE, as Executor of the Will
of Louise Beale, and Individually

_____[L.S.]
DEBORAH WILKINS, as Executor of
the Will of Louise Beale

_____[L.S.]
PAULINE BEALE FOWLER, Individually

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

On the day of in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared PETER BEALE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public
(SEAL)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the day of in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared DEBORAH WILKINS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public
(SEAL)

STATE OF CALIFORNIA)
:ss.:
COUNTY OF LOS ANGELES)

On the day of in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared PAULINE BEALE FOWLER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public
(SEAL)

Outline of Online Coursebook's Chapter on "Formal Settlement of Estates"
Submitted by Elizabeth H. W. Fry, Esq.

FORMAL SETTLEMENT OF ESTATES

A. DUTY TO ACCOUNT

B. VOLUNTARY ACCOUNTING PROCEEDINGS

1. Prerequisites to Commencement of Proceeding

2. Commencement of Proceeding
3. Necessary Parties

4. Pleadings and Other Necessary Documents

5. Service of Citation

6. Alternatives to Service of Citation

7. Issues to be Resolved as Part of Accounting Proceeding

8. Proceedings On and After the Return Date

C. COMPULSORY ACCOUNTING PROCEEDINGS

1. Who May Seek a Compulsory Account

2. Related Relief

3. Commencement of Proceeding

4. Proceedings On and After Return Date

D. ACCOUNTING BY FIDUCIARY OF DECEASED FIDUCIARY

1. Death of Fiduciary Prior to Commencement of Account

2. Death of Fiduciary During Accounting Proceeding

3. Compensation to Estate of Deceased Fiduciary and his Fiduciary

4. Distribution of Estate Funds Following Account on Behalf of Deceased Fiduciary