

Conduct scholarship exam. DISTRIBUTE
EXHIBIT #15.

Not all disbursements of funds are made under a grant program, but most are. I believe that we should use a practical example of an existing grant program to discuss some desirable activities and then discuss alternate methods to accomplish the same or similar goals.

Your foundation is free to accomplish its goals through any of the procedures recommended in this material. As an example, let us set up a grant program with the following characteristics. Let us first create the Hope Foundation Grant program for scientific, educational and literary purposes.

This grant program will authorize disbursement of foundation funds for any bona fide project or reason within the scope of this purpose. Let us also state that the program will authorize any disbursements consistent with the purposes of the foundation. Now, let's give us some objectives.

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EXHIBIT 15

SCHOLARSHIPS AND STUDENT LOANS EXERCISE

Your instructor will appoint several boards of directors among the students in each class. These are the instructions for each board of directors:

1. Your foundation is endowed with \$25,000 which has been earmarked for scholarships and student loans. The board of directors has decided to assume the duties of the scholarship committee and now faces the following tasks:
2. The board of directors must allocate the funds between actual scholarship grants and student loans.
3. The board of directors must decide what area of education and level of education they wish to support.
4. The scholarship committee must decide on the administrative procedures with which they will govern the entire scholarship and student loan fund.
5. The following papers must be drafted:
 - (a) The scholarship or student loan application.
 - (b) The reference forms.
 - (c) The scholarship or loan publicity folders.
 - (d) The foundation letters notifying the applicant of the receipt of the application and their rejection or acceptance as award winners.
 - (e) The follow-up evaluation forms.
6. The board of directors must also decide what standards would be necessary to win a scholarship or student loan and what standards, if any, would be necessary to maintain the loan or scholarship.
7. Finally, if the foundation board of directors decides to award or allow student loans, how should the student repay these loans, at what interest and under what procedures?
8. The board of directors should also consider how much each scholarship would be worth or what is the limit on student loans.

Each of the board of directors should work independently and avoid copying verbatim the illustrative forms supplied to you during the course of instruction. Duties should be delegated to save time. Each form and program should be as realistic as possible

and applicable to the policy decisions of the board of directors. Your instructor will inform you of the time limits and other restrictions placed upon this exercise.

All programs and forms will be compared and discussed following this session.

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1. Let's state that the Hope Foundation wishes to support higher education through (a) scholarships and (b) creation of special activities in certain colleges.
2. The Hope Foundation wishes to promote international relations on a broad plane.
3. The Hope Foundation wishes to promote and develop basic research on economic conditions and economic theory.
4. The Hope Foundation wishes to support a specific religion.
5. The Hope Foundation wishes to support a specific literary collection.
6. The Hope Foundation wishes to promote and support art education (music, or any other cultural art).

With these objectives and the grant program procedures we discussed we can explore in detail how the Hope Foundation will accomplish these activities and what the exact structure might be. We will also discuss alternative methods in some cases.

I. Higher education includes two primary objectives. First, actually educating students in whom

the foundation is interested and, second, actively supporting educational institutions with which the foundation is intellectually in agreement.

A standardized scholarship program containing all the normal standards of any scholarship program could be created. Any high school senior could apply provided he or she qualified under the standardized program. For example, a scholarship program could be created to provide limited scholarships to students from a certain high school or city, or county or state or those intending to go to a certain college or for students who intend to study a certain subject or group of subjects.

Those students who would be qualified for this particular scholarship might be notified of the existence of the program through proper channels, such as the dean or principal of the high school. Then, these students would apply using the foundation's application blanks. The executive director would process the applications and recommend a winner to the board of directors. Provided that standards of the original program are met, any person regardless

of his relationship to the donor, officer or founder of the foundation may win the scholarship. The Treasury only requires that standards be set and maintained in every grant or scholarship program. It is recommended that in the case of scholarships for the purpose of higher education that grade averages be required and "tight" accounting practices be maintained.

The above procedures are the common steps taken where the foundation (REFERENCE TO GRANT PACKAGE EXHIBIT FOR EXAMPLES) both funds and administrates the scholarship program.

There are other ways to accomplish many of the same objectives. Perhaps an easier way would be for the college chosen by the foundation to receive the scholarship to administer the fund and recommend a winner. That is, the applications for the scholarship would go to the college. The college would process the applications and recommend winners to the foundation's board of directors, and then the board of directors would decide to accept or reject the decision of the college.

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Another method that is often used by foundations is joint administration, joint funding, or even cooperative funding. The National Merit Scholarship program is one example. The National Merit Foundation was formed by the Ford Foundation to coordinate scholarship activities of hundreds of businesses and foundations. Many of the scholarships available through the National Merit Scholarship program are awarded only to children of employees of the participating businesses. These scholarships must, however, be awarded on a standardized basis created by the National Merit Scholarship Foundation.

Other smaller cooperative programs can be and have been easily created. Where one foundation is unable to afford the cost of a total scholarship to a particular institution or program, several foundations might cooperate to meet the cost. In such a case all of the foundations would have to agree upon a winner.

A foundation might also simply endow a college or university with scholarship funds and empower the college not only to administer the applications, but

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to declare the winners. General direction of the foundation as to the nature and identities of the initial winners might be discussed by the foundation and the college prior to the grant.

Distribute EXHIBIT #16 and EXHIBIT #17.

The second objective of a foundation in terms of supporting higher education would be to encourage or support particular activities at colleges or universities. A common method is to give a grant for a particular purpose, such as to support religious education at Northwestern University. A grant of any amount may be either a general endowment to a college or university's general educational funds or the grant may have detailed requirements connected with it. For example, a grant was made to Wabash College in Crawfordsville, Indiana at the beginning of the century to create a chair of religion in the college. The grant required that the college make

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EXHIBIT 16

SCHOLARSHIP PROGRAMS FOR ELEMENTARY OR HIGH SCHOOL STUDENTS
(Or Other Programs of Special Education)

Most scholarship programs offered by private and public sources today usually relate to college education, graduate school education, or special programs of training in "Head Start" programs, poverty-stricken areas or other special situations. Although the procedures applicable to college and university scholarships would apply equally to high school or elementary school scholarships, the available information from such procedures upon which a foundation board of directors could decide a winner is usually insufficient.

It is recommended that greater emphasis be placed on reference forms and the views of the parents of students applying for scholarships to high school or elementary private schools. The potential of these students to go on to higher education or the necessity of special training for the individual applicant would be standards upon which a foundation could freely operate.

The primary rule that should guide a foundation in creating a scholarship or grant program to make funds available for elementary or high school educations is to tailor the procedures to the needs and available information of each particular class of applicant; that is, if your foundation were to provide scholarships to a private preparatory school, your scholarship committee would need to know the quality of the student, his aims and ambitions; and the opinion of others, particularly teachers; and possibly other guidance and counselors that have worked with that student in the past, such as scout leaders, boys' club leaders, 4-H club leaders, etc.

Other Special Scholarship Programs

Your foundation may wish to sponsor or create scholarship loan or grant programs in other areas of activity, such as music, art, student leadership, 4-H, YMCA, Boys' Club or other related organizations or activities. Generally, the cost of these programs will be much lower than costs related to tuitions for formal education at the elementary, high school or college level. In addition, many of these programs, such as YMCA student leadership conference, would be a short-term, one-time award that would not involve either a great deal of money or paperwork. Generally, your application, reference blanks and follow-up forms for these types of programs would be much simpler than those necessary for a college scholarship, or even a high school scholarship. Nevertheless, the standard procedures that are applicable to other scholarships and grants should be used, although in simplified

form. Some of the examples that have been presented to you in the prior exhibits on grants and scholarships were, in fact, designed for such simple programs rather than the more complex or scientific grant programs that you might envision. The rule here, as in other cases, is simply to use your common sense. Do not develop a 50-page application reference form and grant procedure for a \$25.00 scholarship to a student leadership camp nor should you create a two-page application and reference blank for a \$3,000 scholarship. The paperwork should conform to the needs and requirements of an objective scholarship committee. Information must be gathered to enable those committees to make an intelligent decision.

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religion a required subject for graduation. The grant even went so far as to specify the two initial courses to be offered by the professor chosen to fill the chair. These courses were a history of religion and bible study.

Your particular grants to a college or university may just as tightly restrict requirements or they may be as general as you wish, depending upon your objectives and those of the college or university. In such cases where you would wish to restrict the use of the funds, negotiations should be completed between the executive director of your foundation and the president of the institution of your choice.

A third method of supporting higher education and simultaneously accomplishing your desires is in the field of academic prizes and awards. You may have a problem facing you in your business or industry or a question that has arisen in your professional practice that could be answered by basic research or academic analysis. Because students often have original ideas and approaches to problems and because

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they have access to some of the finest library and research equipment available to man, they are often in a better position to accomplish this research than any other individuals. If your foundation offers a substantial prize for the "best paper" on any particular subject, you might be the happy recipient of several excellent papers and discussions of a particular problem of interest to you. Your foundation would simply initiate a contest at several colleges and universities of your choice for the best paper on a particular subject or subjects. Prizes of \$250 to \$1,000 are usually considered to be substantial awards to a poverty stricken student.

It is possible to have the administration or faculty of each college or university involved actually screen the applications and only forward the best ones to you. A typical prize or award program might be created as follows:

The Hope Foundation announces the following contest for the best paper on any subject concerned with the development of nutritional science in the United States. Announcements concerning this particular

contest could be mailed to various medical schools, nursing schools, or schools of home economics that you might consider to be qualified to produce these papers

\$100 prizes might be awarded to the best paper in each of five such schools, \$50 second prizes and \$10 third prizes in each of these schools. All three papers from each of the five schools would be forwarded to the foundation for consideration. A \$500 first prize and \$250 second prize might then be awarded on a national basis. The original judging at each school might be made by the professor of nutrition at that school and that professor would control the winners of the various prizes. Your foundation, however, would decide the national winners and all winning papers might become the property of the foundation. For a total expense of about \$1,500 to \$2,000 you might collect fifteen separate and highly original answers to your question on nutrition.

Further incentive to students might be made if your foundation could arrange for the publication of these papers in a national periodical. Such prizes

or awards might also be available to employees of a business, professors at colleges or universities, or any industrial workers in a given field. The scope of the problem that might be offered as a topic has no bearing on the qualifications or validity of the contest.

II. To promote international relations, travel might be required. All of the scholarship and educational grant methods could, of course, be used by the international relations project and this program might also include other activities. Such projects as international correspondence, academic research and international relations supporting or attending international conferences and supporting or advising international cultural relations might be some of the activities your foundation might accomplish. The point is simply that international relations has a broad definition which can justify wide variety of interesting activities.

Distribute EXHIBIT #18.

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EXHIBIT 18

INTERNATIONAL PROJECTS

- I. As the manager of your foundation the scope of your thinking should not be limited to small projects nor limited by the boundaries of the continental United States. In fact, it is advisable to think in terms of international consequences of your projects and the possible effect on international relations and the upgrading of world society, as a whole.

We recommend that your foundation investigate foreign investments, foreign aid, foreign educational projects, and cooperative projects with an international scope.

- II. Foreign Investment - Your corporate foundation is not barred from investing in foreign countries. Your stock broker, however, should be consulted for detailed information on what guidelines he would recommend be considered in evaluating a foreign investment. Investment in new business in underdeveloped countries might, in fact, be considered initially a philanthropic project which would support the growth of that underdeveloped nation.
- III. Private Foreign Aid - In July of 1965 the Advisory Committee on Private Enterprise in Foreign Aid reported to the Agency for International Development in Washington, D.C. Copies of this report are available from the Information Staff, Agency for International Development, Washington, D.C., 20523.

We recommend that your foundation board of directors obtain this publication because it includes many interesting ideas on how a foundation might develop international projects. The report includes an excellent analysis of the needs and possible means of meeting these needs of undeveloped nations and underdeveloped geographic areas. The document, of course, recommends a number of government projects and government cooperative projects. Close working relationships with any government, however, are not required for a foundation to accomplish effective results in "foreign aid." In section 4 of the agency's report they particularly urge the development of educational programs to enable undeveloped nations to develop the necessary, skilled, semiskilled, and unskilled workers to the level of modern technology. In this section the committee devoted an entire page to the role of non-profit institutions.

They stated "we recommend that AID assist in financing the development of appropriate non-profit institutions in the less-developed countries and that they finance the development of links between such organizations and their counterparts in the

United States through which technical assistance could be effectively provided. Assistance of this sort could take many forms from such familiar activities as assisting educational institutions to supporting public forums and discussion groups."

Apart from the committee's obsession with their government's ideas are essentially sound and provide an excellent source of projects and considerations for a private foundation in the United States. Certainly, your foundation board of directors has the talent available to develop an educational program or other cooperative project that could bring meaning and assistance to an undeveloped nation without great cost expended by the foundation.

Such projects will generally take a great amount of time and effort if they are to be completed professionally and effectively, but they could be scheduled for a long-term run, and work could proceed at a realistic pace.

IV. Constructing a Foreign Aid Program - The following steps should be considered by foundation boards of directors in initially creating a foreign aid project:

- (a) The scope of the project and target country should be chosen.
- (b) The amount of funds should be allocated.
- (c) The International Law of that country should be considered.
- (d) The time and personnel of the foundation should be allocated.
- (e) Contact should be made with that foreign nation to determine its needs and available agency help if the foundation effort is to be on a cooperative basis.
- (f) If the foundation desires government aid contact should be made with both the United States Government and the government of the foreign nation involved.

These are only the beginning considerations. Foreign projects generally involve much more detailed work and a greater understanding of management operations than do domestic projects. On the other hand, foreign projects generally provide for great flexibility and operation, satisfaction when the project is completed, and the opportunity to travel to foreign countries. International relations can also be bettered as well as international education and understanding.

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III. The term "economics" particularly when applied to economic conditions or economic theory might seem to be hopelessly academic and impractical in terms of a practical foundation's goal. But economics has been chosen to illustrate the usefulness of any approach based on original or basic research. For example, basic research in economics might include the collection of production data in a certain industry. Comparisons of these conditions, their international effect and an analysis of the reasons behind this effect could justify a large number of varied activities to verify or obtain this data.

Interviews with leading industrialists or government officials who are experts in this industry might be quite enlightening and valuable to the analysis.

Basic research cannot be validly criticized if it is bona fide and attempted by qualified persons. One of the great advantages of foundations to society is that the private foundation is flexible and free to do things that would otherwise not be supported. Governments are notoriously inflexible. Quite often

valuable advancements have been made through foundation activity where government or industry have criticized a project. Usually any criticism of basic research in any field back-fires on the critic. It is recommended that the program of basic research be included in your foundation's activities and grant program. It is also recommended that the area of research be chosen with great care so that the officers and directors of the foundation may pursue the research with personal enthusiasm and qualified ability.

IV. If you personally wish to support a religion there are many advantages in supporting that religion through your foundation. Of course, there are certain limitations. It is recommended that your gifts to churches be made in lump sums, either quarterly, semi-annually or annually. A few dollars grant each Sunday by your foundation is inefficient. Though such a grant program and religious intent the foundation may participate in any church activity, particularly in the academic or organizational level on a basis that usually would not be open to individual.

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Foundations have prestige, and priests, ministers and rabbis have a greater awareness of foundation word than most other people. If a significant donation from a foundation should arrive in his office, that church leader will generally wish to cooperate closely with the foundation that gave it. This cooperation may take the form of invitations to conferences, opportunities to attend special classes, and, of course, the opportunity to give further donations.

In the same way that your foundation supports education or basic research, your foundation may support, and benefit by supporting, religion. The same grant procedures apply.

V. Your foundation may wish to create a library.

Through a grant or special fund your foundation may support any literary activity and a library is among the best. Your foundation can collect books on any subject. It is recommended, however, that a careful plan of collection or a specific subject of collection be maintained. Haphazard collecting of books generally does not provide evidence of proper foundation.

management.

Your foundation's library may be housed anywhere, but it is recommended that the directors and officers of the foundation have ready access to the library. The foundation headquarters or officers are usually the best places. Of course, non-fiction books of any subject may be collected, but fiction may also provide a worthwhile study, particularly if special areas of fiction are isolated or categorized for collection. Analysis of literature is a valid study, where the officers are qualified.

VI. Special types of education, such as art or music, sometimes cause questions in the minds of directors and officers of foundations. Because these special forms of education are only extensions of "traditional" education, the support of these programs should not cause problems. Scholarships may be awarded to support music education or for art training or for any other special training. But just as standards are set and maintained for other educational scholarships, so must they be maintained in music

or art scholarships. Scholarships for music should not be given to a tone deaf child unless the music is prescribed therapy and the grant is considered a medical welfare award and not an educational award.

In the same way a foundation may actually conduct music or art lessons. A foundation may offer music education, art education or religious education or any other type of special education as part of its activities. You should consult an attorney to investigate local state licensing problems, but many foundations conduct these lessons as a normal part of their day-to-day activities. The income from these lessons is, of course, tuition, and tax-exempt to the foundation.

The Training of Employees

A foundation is only as effective or active as its funding and employees allow. The non-charitable foundation is usually only as effective as the training of its employees permits. In other words, a foundation with a small budget may still accomplish a great amount of activity if the officers of the foundation are highly trained and have imagination.

It is in the best interests of the foundation to train the officers and employees of the foundation to develop expertise in the fields in which the foundation is interested. Special training is a valid and justified foundation expense. Rather than issuing a grant from the foundation to an officer it is recommended that an employee training fund be created for the same purpose - (such special funds will be explained later in terms of accounting practices).

It should now be obvious that charity as a foundation activity is a much broader term than most people realize. Grant programs and charitable programs do not necessarily mean the unlimited giving away of funds.

Specific objectives and activities may be most efficiently accomplished through careful use of "charity". Haphazard or general giving often results in inefficient use of available funds. Because most foundations have limited budgets and small endowments, greater thought and care concerning the use of these funds must be made. One of the best sources for new ideas in grant programs or charitable

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programs is the daily newspaper. Giant foundations usually publish grants and programs ~~that~~ they initiated and you may use smaller variations of these same ideas to accomplish your objectives. It is recommended that you keep your eyes open for such interesting articles.

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Section 6Individual BenefitsSalary

The salary of any employee of a non-profit organization must be based on reasonable compensation for services actually rendered; that is, services must be performed. These services are immaterial - but they must be performed. The compensation for these services must simply relate to the reasonable value of the services. Since value is purely subjective, the range of the possible salary for any employee is quite wide but there are ascertainable maximum limits.

For example, if a foundation were structured to do medical research, and if the foundation earned \$100,000 a year after expenses, then it would not be unreasonable depending upon the quantity and quality of his services if he were to receive up to \$70,000. But if the only services performed by an employee were to look up foundation investments in the daily

newspapers and file a report each morning, then it would be obvious that a substantial salary would not be reasonable. However, even in this situation a reasonable salary such as \$2,000 or even \$5,000 a year might be reasonable. ABC does not recommend that you pay a clerk \$5,000 a year for this activity, but the point must be made that what is reasonable involves a wide range of possible compensation.

As long as you and your foundation's other employees actually render services and help the foundation accomplish its purposes any reasonable salary may be paid by the foundation. The foundation, in order to obtain qualified employees and maintain a continuing staff, must be able to compete with the commercial market for talent. In other words, the foundation might offer not only a salary, but also fringe benefits to an employee. These fringe benefits may satisfy many of the living requirements of an employee such as the executive director, and be either tax-exempt or represent considerable tax saving. Because of this, the top employees, such as the

executive director or chairman of the board of directors, may not require or desire a high income, which is taxable at ordinary income rates. These top employees may, in fact, wish to keep their salaries low and enjoy other tax-free benefits rather than subject themselves to confiscatory tax rates.

There is no general rule as to what any executive director might desire as a salary. This amount would depend primarily on each individual's desires. For example, a person who would desire a large amount of personal entertainment would require a larger salary than a person who does not require abnormal amounts of entertainment. Personal entertainment is generally not provided for employees by foundations and ABC does not recommend that your foundation provide you with normal day-to-day entertainment as a fringe benefit. You should instead provide yourself with a salary sufficient to provide for this portion of your standard of living. Use of foundation funds for personal entertainment would usually constitute self-dealing.

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ABC does recommend that you break down your expenditures after taxes to determine what you would require in terms of salary and what otherwise might be provided by your employer.

Distribute EXHIBIT #19.

Fringe Benefits

In properly assessing your requirements for a salary you should be aware of what fringe benefits or other benefits of employment are possible through a foundation and what relation these benefits have to your economic planning.

ABC recommends only those tax-exempt fringe benefits that are well established in tax law and may be accomplished with a minimum possibility of questioning by the Treasury.

A. Insurance - It is recommended that you consult with your insurance broker or agent in properly planning and providing protection that you might obtain from insurance. Your insurable status will

EXHIBIT 19

BREAKDOWN CHART OF PERSONAL EXPENSES

- A. List your categories of expenses after taxes that must be maintained to enjoy your present standard of living.

Housing	_____
Utilities	_____
Furniture	_____
Insurance	_____
Home	_____
Life	_____
Health	_____
Car	_____
Other	_____

Transportation	_____
Recreation	_____
Education	_____
Literature	_____
Retirement	_____
Savings	_____
Investment	_____
Food	_____
Clothing	_____
Luxuries	_____
Other	_____

Total	_____

(over)

- B. What categories might in whole or in part be provided to you as corporate fringe benefits by your foundation employer?
- C. Deduct this amount from the total.
- D. What categories in whole or in part might you be able to provide from your business, trust, or foundation through other methods.
- E. Deduct these from the total at paragraph "C."
- F. Add \$1,000 (for contingencies). This should give you a beginning guide to establish what your taxable salary needs might be. This "salary" may be paid from several sources (trust, foundation, business).
- G. This is only a guideline. You may develop other methods to estimate your salary requirements.

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not change simply because you have used the foundation as an estate planning vehicle, but your needs may be altered. In addition, you may be able to afford more insurance coverage through a foundation than you would as an individual.

Property Insurance and Casualty Insurance

should be maintained for property owned or leased by the foundation. If the foundation has no property interest in the real estate in question, then it must not pay the premiums on the insurance. If, on the other hand, the foundation owns or leases the house, apartment, office or other property, then the foundation should properly insure the property against fire, theft and other liabilities.

The individual should maintain any insurance protection that he may require for his own personal liability. This would include renter's insurance in some cases.

Hospitalization, Medical and Disability Insurance.

The foundation may provide all three of these insurance coverages to an employee and his family with no attributable taxable income to the employee.

In addition, in the event of a disability, insurance payments to the employee are not taxable - these provisions are exactly the same as in the case of any business corporation employer. In addition, your foundation may be able to take advantage of lower rates provided for group coverage or special offers made only to companies and not to individuals.

Life Insurance is obtained by people primarily to protect their loved ones from financial hardship in the event of premature death. Life insurance may also be used as a low-risk means of savings or to fund particular projects that may be accomplished or developed in the future.

Insurance men are aware of literally hundreds of plans that are available to corporations for life insurance coverage on their employees. Many of these involve direct coverage of the employees with a wife or children named a beneficiary. These policies are usually taxable, in part, to the employee either upon payment of the premiums or when the benefits are paid to the employee's family, or both.

Some of these plans provide significant tax savings over more conventional methods of premium payment after taxes. Such plans may be developed through your insurance agent.

However, there is one plan that generally provides "tax-free benefits" and "tax-free coverage" through the foundation - this plan is called "key-man" insurance. Key man insurance provides life insurance coverage on a top employee of the organization with the benefits of the policy returning to the foundation upon the death of the employee. Such insurance provides cash compensation to the organization with a loss of a key individual. Premium payments made by a business corporation employer are not deductible as business expenses and the corporation would pay taxes on this amount, but the benefits returning are tax-free.

Since your foundation is tax-exempt, this would permit your foundation to pay premiums before taxes thus making the entire policy tax-free. Since you might control the foundation as executive director and

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and your wife or children might succeed you, it is possible to provide significant "key" insurance programs and still control the benefits when they are paid to your foundation. Such insurance benefits when they are paid to your foundation are not part of your taxable estate upon your death. The benefits are dedicated, however, to your foundation's tax-exempt purpose and not to your wife and children.

In addition to property, health and life insurance, all varieties of retirement insurance plans are available through the foundation employer. The employee may enjoy deferred compensation, annuities, pension or other compensation benefits in the same way that the employee of a business corporation might enjoy them. Again it is recommended that you see your insurance man to develop the most efficient plan for your organization and family.

Finally, you should be aware that your foundation as an employer may pay up to \$5,000 to a surviving spouse without it being taxable income to the spouse on your death. These funds do not have to come from

an insurance policy nor do they have to be guaranteed by prior contract. The \$5,000 is simply an allowable gift made by an employer to the employee's spouse upon the death of the employee.

Distribute EXHIBIT #20.

We have been discussing types of insurance and insurance plans that would be made available by a foundation employer to its employees. Since you will be the top employee of the foundation and may also direct the flexibility and scope of any foundation insurance program, you must make decisions concerning the precise limits of all foundation insurance. Although at first it may seem profitable, and even economical, to have the foundation own all of your life insurance as key man insurance, it is recommended that a more detailed analysis be completed before you make wholesale transfers of policies.

Remember that all insurance that is owned by the foundation and paid to the foundation as beneficiary must be devoted to the benefit of all mankind. These

EXHIBIT 20

INSURANCE OUTLINE

The following outline is provided to help organize your notes on insurance. The categories will be discussed by your instructor.

I. Life Insurance

- A. Term insurance
- B. Other types of policies
- C. Foundation v. individual ownership

II. Other Personal Insurance

- A. Health insurance
- B. Major medical insurance
- C. Liability insurance
- D. Personal property or renter's insurance

III. Other Types of Insurance

- A. Automobile insurance
- B. Real estate insurance
- C. Mortgage insurance
- D. Other "service" insurance policies

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funds are dedicated to the specific purposes for which your foundation is formed. If it were any other way, the insurance would be taxable.

If the beneficiary of any life insurance policy is a taxable person, then, regardless of who owns the policy, income taxes or estate taxes or both will be paid by someone. For example, if your foundation owned a life insurance policy on yourself as executive director, but the beneficiary was your wife or child, then you would have to pay income taxes each year on the amount of premiums paid by your foundation employer, and your wife would have to pay the Federal Estate taxes on the insurance benefits when they are paid at your death. In the same way, if you owned the insurance policy, but the beneficiary was the foundation, you would still be liable for Federal Income taxes on the amount of premiums paid on that particular policy. However, under the law, if the beneficiary were irrevocable, you might deduct the amount of the premium as a charitable donation to the foundation.

Insurance is a special contract which has special

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tax laws applicable to it. Due to these special laws, you may wish to take advantage of some of the benefits of personal insurance nership, even though you may have to bear certain taxes that might otherwise be avoided.

For example, it is the general law of most states that insurance benefits paid upon the death of the insured do not pass through probate and are not governed by the Probate Court. Since there is no court delay in the payment of insurance benefits, there may be great advantages for particular purposes in both owning an insurance policy and having it paid to your wife or children outside of the foundation. If your family has unusual needs or a high standard of living, then it might be advisable to make some large amounts of liquid capital available immediately after your death to take care of incidental expenses, burial, accelerated debts, and to maintain the family's standard of living during the trying months immediately following your death. Insurance would provide the most secure method of providing such capital. Even

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though the amount would be taxable under State Inheritance taxes or Federal Estate taxes, because of the substantial amount of exemption limits, you might give as much as \$120,000 in insurance benefits to your wife or children without delay and with minimal tax loss.

In Illinois, each heir of a decedent is allowed a certain exemption. Closely related heirs are allowed \$20,000 exemption before taxes are imposed. If \$120,000 in insurance was left to your wife she would actually be taxed on only \$90,000 which under the present tax rate amounts to about a \$4,000 to \$5,000 total taxation. In terms of Federal Estate Taxes, the laws allow a \$60,000 initial exemption and also allow a 50 percent deduction under the marital deduction rule, if the property is left to a wife or spouse without limitation. Insurance qualifies under the particular rule. Since \$60,000 is one-half of \$120,000 and the remainder might qualify under the marital deduction rule there would be no Federal Estate taxes for the \$120,000 amount. This would mean

that out of \$120,000 given to a wife entirely in insurance benefits, the total taxes might amount to less than \$5,000. Nobody likes to give away \$5,000 to anybody, but considering the percentages and considering the fact that your wife would end up with \$115,000 in cash, usually available within the first six months after your death, this might be a sizable benefit without significant tax loss. There would be no delay, no attorney's fees and money would be available for emergency purposes. Such funds would not be dedicated to all mankind, nor would there be any necessity for your wife or children to accomplish actual services to the foundation to be paid a salary. If the rest of your estate were protected through non-profit procedures and trust procedures, then these insurance benefits could accomplish considerably more than funds going directly to the foundation or trust.

If your wife did not need the funds at the time of your death or had any surplus which she did not leave as part of her estate, she could easily donate it to the foundation and then avoid estate taxes.

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Your children might also be satisfied in terms of their expected legacies without involving the foundation or the trust and without serious tax loss.

As you can see, the use of the foundation and the trust procedures gives new meaning and greater flexibility to existing insurance protection plans and actually gives greater freedom to the handling and preservation of your estate. Before you place all of your life insurance in the foundation as key man insurance, it would be best to explore your particular estate needs based upon your understanding of these new procedures with your insurance man so that a more efficient program might be created.

Total tax savings or tax consequences should not dictate all economic planning. In many situations such as the life insurance plan outlined above, taxes might be paid in order to gain other substantial benefits.

* * * * *

Section 7Foundation Business Activities

The accumulated income and capital of your foundation is dedicated to proper foundation business activities. All of these activities must fall within the scope of your foundation's purpose or they will be either taxable or improper. Business activities mean any activity that promotes or develops the foundation's purpose.

The Treasury and the Internal Revenue Code have never placed any limitation on foundation business activity in terms of accomplishing a purpose; that is, neither the Internal Revenue Code nor the Treasury have ever defined the words "education, scientific, religion, literary, charity, testing for public safety, or prevention of cruelty to children or animals" in terms of what subjects or types of activity must be accomplished. Foundations are designed to respond to unusual needs or to explore unconventional procedures and methods to prove or disprove their validity. Because of the desirability of freedom and flexibility for research, welfare, education and charity, no limit will probably ever be placed on these words. As outlined earlier, the Internal Revenue

Code primarily limits a foundation in three areas of prohibited transactions. The Code does not specify what activities a foundation must do.

You can probably think of thousands of proper activities in which foundations, your foundation, might participate. If you can clearly justify an activity in your own mind within the scope of your purpose, it will probably be legally sufficient to satisfy the requirements of the Internal Revenue Code.

Your foundation activities will satisfy two basic requirements of the law and your economic needs. First, your foundation's activities will clearly show that you are operating within the scope of Section 501 (c) (3) of the Internal Revenue Code, and second your foundation will do things of personal interest to yourself and your family.

Let's get down to cases. In other words, let's explore some foundation activities, principles and theories that will qualify under the Internal Revenue Code and will also satisfy personal desires. These

activities, because they are totally in line with the Board of Directors' desires, might be classed as "non-profit fringe benefits", but they will not be found in an employment contract nor will they be offered to every employee of your foundation. Such "fringe benefits" as educational training grants, travel to do research, access to research facilities, libraries and other education benefits have already been explored. All of these activities are clearly proper within the scope of foundation law.

To make the point of foundation business activities clear, let's look at the clearest case of what a foundation can provide for its employees in terms of business activities and business facilities without being improper, illegal, or taxable. Our example will be the president of a large Midwestern university - the University of Illinois. The University of Illinois, located in Champaign-Urbana, Illinois, has tens of thousands of students. It has a campus ~~that~~ sprawls over hundreds of acres and employs a faculty teaching a broad range of subjects. The president of the University has access to all of these facilities and has the benefit of the entire staff. Specifically, the president may play on the University

of Illinois golf course without paying a fee. The president may use the University dining rooms, meeting rooms and classrooms usually without cost for whatever purpose he desires. (University presidents are seldom accused of illicit activities.) If the president had chemistry as a hobby he could use the University laboratories, chemicals, equipment and other supplies without cost to him, and without any criticism of acting improperly. The president could sit in on any lecture of any course being taught at the school without tuition charges without being criticized. He could use all of the athletic facilities, swimming pools, tennis courts, gymnasiums, training equipment, and the first aid equipment. He would be able to take flying lessons at the University airport. He would be able to borrow any book in the gigantic University library. He would have at his disposal some of the world's top authorities on almost every subject and would be able to use their advice for his own personal benefit. The president enjoys the finest seats at football and basketball games, concerts, plays, and other forms of entertainment occurring at the

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University. The president is not taxed one penny on any of these activities. Of course, with all this opportunity for personal benefit, the president of the University of Illinois bears a substantial amount of responsibility for the entire operation, but it is easy to see that even though he may own very little, he certainly could enjoy a high standard of living.

As Executive Director of your foundation, you would be able to enjoy the benefits of any and all of your foundation's activities, perhaps not directly, but certainly indirectly; and you would choose only those projects in which you had a personal interest. A foundation is not forced by the law to accomplish any particular thing - only to accomplish things. What these things might be is entirely up to the Board of Directors.

It should be clear at this point that the first principle of proper foundation business activity is that the foundation's staff and Board of Directors take a personal interest in the project. The second principle has been emphasized before and will only be stated here without further discussion. The second

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principle is that the foundation business activity be fully within the scope of the foundation's stated purpose.

Examples of proper foundation activity should be developed here for an extensive exhibit which might include an outline of other foundation business activity principles relating to prior discussion, as well as local state law. Considerable time should be devoted to discussion of these activities to (a) train the member's mind to think of such activities in the proper sphere, (b) to give the member some idea of proper activities that have already been accomplished in the middle-income bracket, and (c) to create an outline to be considered to test the propriety and value of every proposed business activity to avoid government questioning.

Hobbies

Among the first activities that a board of directors might consider as proper foundation activity would be the hobby interests of the various members of the board; that is, what are they most interested in in terms of their avocation. Generally, many hobbies can be so structured that they will clearly fall within the scope of education, science or

literature. For example, a person interested in gardening might classify his or her activities as horticultural and actually do research in gardening methods or develop new strains of plants. A model airplane builder is certainly in a position to contribute to the science of aeronautics or, even more specifically, model airplanes, which is a worthwhile field in itself. Those interested in literature could contribute through the building of libraries, the assembling of critical reviews, the assembling of bibliographies, or, if the employees of the foundation are creative, through writing articles, books, stories, plays, etc.

Expenses relating to an individual's hobby are not deductible for income tax purposes, but expenses of an activity pursued properly by a foundation, even though that activity may have been a hobby of one of the members of the board, is justifiable for tax exemption purposes, and there would be no tax loss.

If you intend to transfer your personal interest

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or hobby from your individual list of activities to the list of activities of your foundation first justify the activity in terms of your foundation's purpose. If you find that this causes you to stretch your imagination or if you have difficulty in such justification, consult an attorney immediately to provide either a proper structure in which to operate or advice as to the propriety of the activity. If no such stretch of imagination occurs, then you might look for existing foundation, particularly the famous ones which have pursued a similar activity. Even though they might have spent millions on this activity and you only have hundreds or thousands to spend, you may structure yours identically with that of the larger organization. For example, if you are an attorney and criminal law is one of your side interests (from an academic point of view), then you might structure part of your foundation's activities in the same way as the Vera Foundation of New York. The Vera Foundation, as you may know, has done extensive research and development in criminal law leading to the release of indigent criminals without bond

where their background has shown that they would appear for trial. This has allowed many poor persons to avoid staying in jail for 30 or 40 days simply because they could not raise bond money, even though they might later be acquitted while wealthier criminal defendants were often freed within hours of their arrest even though they had incriminating reputations and were, in fact, found guilty at their trial. The Vera Foundation has also promoted substantial benefits for indigent criminals which have resulted in such decisions as the famous Gideon vs. Wainwright case.

Reference might be made at that point to the prior outline on proper foundation activity.

Retirement

A foundation employer may provide him with the standard retirement programs that other employers also provide. For example, a conventional pension program of any nature and of any amount commensurate with the services actually rendered may be provided to an employee by a foundation. This pension plan

may be based upon length of service, quality of service, or any other standard normally employed by such an employer. The pension plan may be funded by an independent insurer or may also be funded by a self-insurance program of the foundation, although this second alternative might not be practical in the long run. There is no law preventing a foundation employer from creating a pool of funds to be used for a pension program, but there is reason to believe that criticism might result because such funds are being tied up for non-foundation purposes, where an insurance alternative might be cheaper in the short run.

In addition, a foundation may provide an annuity to an employee or a contributor under a large variety of plans. A foundation might, for example, purchase an annuity insurance policy from an insurance company and given the annuity to a contributor in return for certain properties and other funds transferred to the charitable organization. This is a complex alternative and should be thoroughly explored with your attorney, accountant and business manager. Federal income tax law allows a contributor to retain a life interest

in the income derived from the property contributed to the foundation. Such income is, of course, taxable to the individual as ordinary income, but the individual may take a charitable deduction for the value of the property so transferred to the charity or foundation. Other retirement plans are also possible along conventional contractual procedures. Of course, profit sharing is not allowed in the classic sense, but certainly an annuity or life interest type of plan is a form of "profit sharing" and variations on these plans might be employed to meet specific situations. The tax consequences of any innovation should be considered prior to its use by a foundation employer for its employees, but generally, you will find that income going to an employee as a retirement benefit will be fully taxed as ordinary income to the employee, except in the case of a true annuity. Usually capital gains tax rates do not apply to retirement.

The definition of retirement, however, has changed considerably over the past years. Retirement today does not mean that an individual will suddenly

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stop all business activities and isolate himself in a hammock for the remainder of his days. Retirement today generally indicates only a change of pace or a change of activities, or both. Retirement may also indicate a change of location or a change of standard of living, but retirement does not mean that one drops out of the human race or devotes himself entirely to frivolous purposes. Active executives today often deteriorate rapidly after retirement because of a lack of something to do. The loss of the services and experience of such men is a serious loss to our country as a whole. A foundation may be used to prevent this loss and to accomplish significant benefits for all concerned through a continuation of activities accomplished by that executive.

For example, an executive or professional might build up a large fund within a foundation for a particular purpose such as scientific research, education, or literary developments. Such projects would have a large scope and would generally entail a broad purpose. These projects would be accomplished on a reasonable schedule by the "retired" executive or

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professional. A Doctor of Medicine might retire from the treatment of patients to a more leisurely investigation of a pet research project. An executive or other self-employed professional might also engage in research in his particular field of expertise, or might launch himself into a new "career" in an avocation or hobby. Such activities would not have to be carried on at the frenzied pace of modern commercial activities, and because the foundation is already funded with the necessary capital to carry on such projects, income requirements to the foundation and to the executive director would not force frenzied activity to bring in more funds. In other words, a large fund within a foundation could be drained for research purposes. Mankind would benefit through the research developed by an experienced and able individual. The individual would be able to accomplish a worthwhile project, keep busy and at the same time change his pace or scope of activities to meet his desires. If an individual desires to retire within a foundation rather than retire from a foundation he should give the same consideration to proper scope of

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his proposed activities or projects as he would to any foundation business activity. Proper economic funding, a realistic statement of objectives and methods of accomplishing the goals should be stated in detail in order to accomplish the project most efficiently and to preserve capital for long-term use for "retirement".

Advertising

A foundation may advertise its services or activities in any way that is normally used by commercial enterprises. However, foundations generally do not advertise except for lectures, seminars or literature that might be available. Certainly, a foundation involved in a professional activity such as medicine, law, optometrics, chiropractic, or related fields, would conform to the advertising prohibitions in the individual code of ethics for each field. In other words, a Doctor of Medicine, even though employed by a foundation, would not have that foundation advertise his services, because it would be a breach of the code of ethics of the medical profession.

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The name of the foundation, however, should be prominently displayed where the foundation is conducting activities or operating a clinic that is providing services to the general public.

If the Smith Foundation is operating the Smith Medical Clinic and the Medical Director is Dr. A. Smith, then the Smith Foundation's name should certainly appear on the building and the stationery of the clinic and should also appear in the listing of the offices in the building in which the Smith Clinic is operating. Dr. Smith's name may also appear but should be subordinated to the foundation's name on all billing and stationery.

Foundation stationery may include the names of all the directors or officers or may not use these names at all. The foundation may list one address or several addresses on its stationery. In all cases of foundation stationery, the name of the foundation should appear prominently and not be obscured or diminished in anyway by the names of individuals. You have probably received letters from foundations which contain a long list of prominent names in the

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margin. These names have usually been listed as advisers or directors. If you wish, you might solicit such names for use with your foundation, although it is not generally necessary or advisable unless you are intending to solicit funds from the public at large.

Other Normal Related Expenses

Your foundation will have a number of expenses that may not seem proper in terms of their direct connection with the purpose of your foundation, but are nevertheless proper in terms of normal business expenses - such things as normal office equipment, office supplies, travel expenses and other similar categories are, of course, necessary in the operation of any business, and a foundation does not vary from normal business practices. Where a foundation spends money that is clearly related to the foundation as to its justification, but a clear record of the expenditure should be maintained. Normal accounting practices for foundations are discussed below, and once a system is begun it should be maintained for

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a substantial period to avoid confusion. If you should have any question about the propriety of any class of expenses you should ask a competent lawyer or accountant for an opinion.

Continuing Management

1. Accounting Practices - If your economic situation presently requires the constant services of a Certified Public Accountant, the mere changing to a non-profit structure would probably not alleviate the situation, but if you only need an accountant for year-end review or monthly statements you would probably not need additional work in a foundation structure. If you do not now use an accountant or trained bookkeeper, it is advisable to look for such a person to handle at least year-end accounting procedures. It is recommended in addition that such an accountant be questioned as to his loyalty to his clients. Some accountants are more than willing to waive their client's constitutional rights and give up information to the IRS that their client is entitled to keep private in absence of judicial order. In other words, it is

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advisable that your foundation retain an accountant or bookkeeper if only for year-end fiscal review, but it is also advisable to keep tight control over your records and over your accountant's activities.

Two general methods of accounting are commonly used by foundations. The first is the normal corporate accounting procedure used for small business; that is, items allocated to various categories as they are received or as expenditures are made. This type of system is common knowledge to all accountants and should present no problems.

Two additional bookkeeping categories might be added to the normal corporate accounting system. These additional categories are contributions and charity.

The second method is much preferred and is called the "fund accounting system". It is analogous to the type of systems used by government agencies to handle their budget each year. The system works as follows:

Various accounts or funds are created at the beginning of each fiscal year to cover the individual projects involved in foundation activities. An

amount is budgeted to each fund. Unattributable expenses are gathered in an "overhead" fund. At the end of each fiscal year, each expense fund will either have a surplus or a deficit. Surpluses are transferred to the foundation general fund and deficits are satisfied from the foundation general fund. New budgeting is then made for the succeeding fiscal year. This type of accounting system is also generally common knowledge to most accountants, but is seldom employed in small business. It is recommended, however, for foundations because it presents clear evidence that the foundation is operating in a non-profit structure rather than as a commercial enterprise. For a more detailed explanation of the foundation fund accounting system, you should consult with a Certified Public Accountant or business management adviser.

Distribute EXHIBIT #21.

Continuing Control

Your family may continue in control of your

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EXHIBIT 21

FOUNDATION ACCOUNTING SYSTEMS

A SPECIAL EXHIBIT ON FOUNDATION ACCOUNTING IS PRESENTLY BEING PREPARED BUT WAS NOT AVAILABLE AT THE TIME OF THIS SEMINAR. IT WILL BE FORWARDED TO YOU AS SOON AS POSSIBLE.

Two basic accounting systems can be employed by foundations to accurately reflect their economic positions for management evaluation of the foundation's efficiency and for tax purposes.

The first system is that used by normal business corporations. Almost any accountant or CPA can establish a corporate accounting system that would accurately reflect your foundation's income, outgo, and assets and liabilities. If your foundation is relatively small, then your accounting review might be accomplished on a semi-annual basis and the rest of your accounting reflected in your corporate bank account.

WE RECOMMEND THAT AN ACCOUNTING BE ACCOMPLISHED EVERY YEAR OF THE FOUNDATION'S OPERATION.

The second accounting system that is often used by foundations is one that not only reflects the expenditures made by a foundation, but also provides evidence of philanthropic operation. This is the so-called fund accounting system which is employed by governments and other non-profit institutions. Most accountants can explain this system to you in some detail.

Under the fund accounting system a foundation would budget certain amounts to various funds which would be created to manage the individual foundation operations. First, there would be a general fund. Out of the general fund would come the various other smaller funds which would typically cover all the foundation's activities. For example, there might be an educational fund, a scientific research fund or a student loan fund. Finally, there would be an overhead fund. Various amounts would be allocated to all of the funds from the general fund with the exception of the overhead fund. Nothing would be allocated to the overhead fund. As expenditures are made during any year, the amounts are allocated to the fund for which the expenditure was made. If no such allocation can be made for any particular expenditure this bill is placed in the overhead fund.

At the end of any fiscal year, the deficit in the overhead fund is usually proportionately distributed over the rest of the smaller funds. Upon review of each of the smaller funds it will be found that there is a deficit or surplus in each account or the

(over)

fund ended with a zero balance. Deficits are made up by the general fund and surpluses are returned to the general fund. At this point the foundation creates a new budget and reallocates to the funds for the coming year.

Due to the widespread use of this accounting system in government and other non-profit organizations it provides evidence of philanthropic intent through normal institutional-type accounting.

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foundation for as long as they desire. The passing of control of a foundation from generation to generation is accomplished through normal corporate legal methods. It should be kept in mind, however, that regardless of who controls a foundation the funds are dedicated to the benefit of all mankind. When one passes control of a foundation to his son or daughter that person is not passing property for the use of that son or daughter, but merely passing administrative power to decide how these funds or properties will benefit all mankind. Property owned by a foundation is not property owned by an individual whether that individual is an officer, director or contributor of that foundation.

If the husband in a family is the executive director it is quite common for the wife to be the assistant executive director. Either by corporate minute of the board of directors or by corporation bylaw, the assistant executive director would normally assume the duties of the executive director, or upon the death or resignation of the executive

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director, if the assistant executive director assumes the duties of the executive director, a new assistant is then elected.

In your initial board of directors, there will normally be yourself and your wife. A third, fourth, or fifth member of your board might be a parent, brother or sister, or child who has reached the age of competency in your state. As each of your children reach the age of 21 they might be elected to the board of directors of your foundation. There is no maximum limits to the number of people that may be on a board of directors. (This is not to encourage large families but merely a statement of fact.) Such election to the board of directors may be accomplished as each child reaches his or her twenty-first birthday or may be provided for in advance by a corporate minute to that effect.

Exhibits of corporate minutes with a clear warning that they are not to be used word-for-word and they are to be read only as educational material.

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In some states it is proper to elect children, regardless of age, to membership in your foundation and to further isolate these children in a special class of membership with voting power apart from all other classes of membership. Thus an elite voting class could be created which would have sole power to elect officers and directors and prevent outsiders from gaining control of your foundation. Election to this class of membership could be strictly limited to members of your family or their blood relations. Such strict control on membership, however, is usually not necessary if the board of directors understands the principles of election and of the propriety of an irrevocable minute in the meeting of the board of directors and acts accordingly. In other words, the board of directors will generally decide the succession status of other individuals connected with the foundation. The board of directors alone will decide who will control what in the foundation. Knowing that it has this power the board may now create a long line of succession which may not take effect for years.

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In the event of an unexpected death or resignation by a member of the present board, the future directors would be already elected irrevocably.

The activities and funds of a foundation may also be divided in the future to satisfy the desires of a large number of individuals. For example, suppose one son decides that he wishes the foundation to support athletic activities, while your daughter decides that art and music are better activities for the foundation to pursue. The board of directors would simply decide to split the funds of the foundation to both of these proper purposes and let the son manage the funds devoted to the development of athletics while the daughter manages the funds devoted to the development of art and music. Reports would be made from each of these subsections of your foundation and separate accounting systems would also be used. The board of directors would ratify the actions of each of these co-executive directors. Depending upon the amount of funds involved and the number of divergent purposes that may be developed by

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a family, a foundation can be "divided" into as many sections as desirable. Each individual section, however, must maintain the overall purpose of the foundation and each section must be self-sufficient in terms of satisfying the legal purpose. In other words, Johnnie can't use his funds devoted to athletics solely to pay his way to professional football games and baseball games, while Mary is awarding art scholarships and music scholarships. Both spheres of activity must qualify under the law if they are going to be actively pursued without criticism.

An alternative to this subsidiary effect of the division of funds within a foundation would be to create a separate foundation for one or more of the children and fund this separate foundation through a grant, and then let the second foundation chart its own course. Thus, delinquency in terms of activities of the second foundation would have no effect upon the validity or propriety of the parent foundation. The directors of the second foundation would also have complete freedom and would not be limited by the

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purposes of the first foundation. There are many examples of this second type of diversification that have been accomplished among famous foundations. The Rockefeller Foundations, in fact, do not hesitate in incorporating separate smaller foundations for particular purposes.

Foundation control should be maintained by careful structure of the legal framework of the foundation and by judicious use of the minutes of the board of directors of the foundation to assure a consistent irrevocable plan of succession.

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SECTION 8
FOUNDATION TAX AND REPORTING LAW

Exhibit #22 not prepared - to come later

Federal and State Regulations

Each of the subjects in this section should be prepared and delivered by a local attorney, depending upon state law. Statements as to the interpretation of the statutes involved in this section would be clearly the practice of law and should not be accomplished by anyone other than a licensed attorney. Distribute EXHIBIT #24.

1. Social Security and Federal Withholding

Your foundation must file for an employer's identification number of Form SS-4 from the Social Security Department of the U.S. Treasury if it employs one or more persons. This number is to be used when reporting the withholding of Federal Income Tax from any salaries paid to an employee by the foundation. The executive director of a foundation is considered to be an employed individual and if this executive director is receiving a salary it is considered to be taxable income and subject to Federal withholding requirements which should be reported on Form W-2. A tax-exempt foundation is not, however, required to

EXHIBIT 22

SPECIAL MANAGEMENT PROCEDURES

Special management problems common to most foundations are being presently reviewed, and alternative solutions to these problems are being prepared by the research staff. At the time of this seminar this exhibit was not yet prepared. It will be forwarded to you as soon as possible.

* * * * *

EXHIBIT 24

ATTORNEY PRESENTATION OUTLINE

The following material should be discussed by the associate attorney at your seminar. The outline that follows was prepared to help you take notes and to enable you to develop intelligent questions to ask the attorney at this time.

- I. Federal and State Regulations
 - A. Social security and federal withholding
 - B. State reporting requirements
 - C. State membership requirements
 - D. Federal reporting requirements
 - 1. Form 1023
 - 2. Form SS-4
 - 3. Form SS-15
 - 4. Form 990-A
 - 5. Form 990-T
 - 6. Forms 1096 and 1099
 - 7. Census Bureau reports
- II. State Tax Requirements
 - A. Sales taxes
 - B. State income taxes
 - C. State and county real estate taxes
 - D. State unemployment taxes
 - E. State licenses
 - F. State personal property taxes
 - G. Other local taxes

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pay Federal Unemployment tax or Social Security tax unless it elects to do so.

An employee may accept or waive Social Security benefits at the time the foundation is initially formed or initially receives tax-exempt recognition. If the employee elects not to contribute to Social Security then the foundation employer is also exempt from the Social Security contribution. If the employee decides to elect to take Social Security then the employer (foundation) is subject to all the normal tax requirements. If one employee out of several decides to elect to take Social Security then all employees subsequently hired must take Social Security. In other words, once someone decides to pay Social Security all new employees must take Social Security. This election is filed on Form SS-15 with the Internal Revenue Service. IN ALL CASES IT MUST BE NOTED THAT WITHHOLDING OF FEDERAL INCOME TAX MUST BE MADE FROM ALL SALARIES PAID TO ALL EMPLOYEES.

Employees of foundations may be paid under any system convenient to the foundation. Payroll checks and accounting procedures would be the same for a

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foundation as for any organization.

2. State Reporting Requirements

This section should be developed for each individual's state by a local attorney.

In Illinois a not-for-profit corporation must file an annual report each year with the Secretary of State which lists the present officers, directors, registered agent and office of the not-for-profit corporation. A brief statement as to the nature of activities accomplished during the preceding year must also be made and the form must be filed with the Secretary of State with a two dollar fee between January 15 and February 28 of each calendar year. The Secretary of State usually supplies the required forms to the Registered Agent of each Illinois not-for-profit corporation and unless you lose the supplied form you would not have to write the Secretary of State for the proper form. Every foundation in Illinois should comply with this requirement because delinquency might result in severe penalties.

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Theoretically, the Secretary of State could dissolve your foundation against the will of its directors for failure to file such reports or forms. Since the fee is so small and the information required is so simple and does not disclose any embarrassing or private information, we can see no reason for failure to comply with this law.

In some cases a foundation may have to register with the Attorney General of the State of Illinois under the Illinois Charitable Trust Act. Where the organization is formed essentially for charitable purposes and is holding property for specific charitable purposes, registration with the Attorney General is required. An annual report is also required to the Attorney General for organizations so registered.

In addition, any organization soliciting funds from the general public is required to register under the Solicitation Act relating to charitable organizations. Such registration is with the Attorney General and normally requires an annual report to be filed. It

is not recommended that your organization solicit from the public at large, and if your organization does not so solicit but gains its funding through other methods, your foundation will not have to file under this law. If you receive any correspondence from the Attorney General or Secretary of State which raises doubts in your mind as to the propriety of such correspondence or the applicability of any law cited by the Attorney General or Secretary of State, contact local counsel for an opinion.

3. State Membership Requirements

In Illinois a foundation may have as many members or classes of members as it desires or it may have no members whatsoever. If there are members they may have equal voting rights, limited voting rights, discriminatory voting rights or no voting rights. It is generally recommended in Illinois that if you do have members that they have no voting rights. There is no requirements in the State of Illinois to have any membership whatsoever nor any requirement to charge dues, nor any prohibition against charging dues.

4. Federal Reporting Requirements

The Internal Revenue Code requires reports of various natures from foundations. The Treasury

Department, through the Internal Revenue Service or the Social Security Department, supplies all the necessary forms that would have to be filed by the individual foundation. All of these forms are assigned a number or code letter and the references and identifications of these forms should be kept in mind.

(a) Form 1023 - This form is called the application for recognition of the tax-exempt status of a private foundation organized and operated under Section 501 (c)(3) of the Internal Revenue Code. If this report is filed it must be filed only once and generally should be filed within the first 24 months of the foundation's existence. This report should be completed with the help of an attorney and is normally filed within the first two years of operation. Under the strict terms of Section 501 of the Internal Revenue Code, the determination of the tax-exempt status of any organization is not allocated to any court or government agency, even the Internal Revenue Service. Due to this lack of direction on the

part of the Internal Revenue Code, it is not legally necessary to apply to any court or agency for prior determination of tax-exempt status. In the opinion of many attorneys such determination of tax-exempt status may be made by the organization's officers or directors. The primary test to be kept in mind if the organization desires self-determination is whether the organization has met the legal requirements of proper operation and organization within the terms of Section 501 (c)(3) of the Internal Revenue Code.

Official or government determination of tax-exempt status may be obtained from one or more of four primary sources. The first source is the state court through a probate proceeding or tax proceeding. The second source is determination by a state agency, for example, the State Treasurer, the Attorney General, or the Secretary of State or from a federal court, usually in an action by the Treasury Department, and finally, from the U.S. Treasury (the only Federal Government agency that has the procedures available for tax-exempt determination).

Since determination by state courts or agencies is usually inefficient or partially ineffective, the best source of government recognition of tax-exempt status is through a federal court or federal agency. Federal court proceedings are often expensive and time-consuming, or although if determination is favorable, it is usually considered to be the "strongest" determination. The fastest determination is through the use of Form 1023, an application to the U.S. Treasury for determination.

The disadvantages of Form 1023 applications are the large amounts of information that must be disclosed in the application and then filed publicly, and the sometimes arbitrary actions of a federal agency in either "delaying the determination" or simply asking irrelevant questions. Generally, however, the exempt organization section of the Internal Revenue Service has been most cooperative with those organizations who earnestly desire to meet the standards and qualifications of Section 501 (c) (3). Their primary concern is to help structure the organization so that it may be properly tax-exempt and may carry on the operations to benefit all mankind.

Form 1023 can generally be completed, filed, and a determination made within a matter of months and without any excessive costs. On the other hand, court proceedings generally take years and do involve a great deal of expense. In addition, there is an indeterminable wait before the Treasury may decide to bring action against the organization (foundation). In the opinion of many attorneys, Form 1023 offers the most efficient means of obtaining recognition of tax exempt status. Since attorneys familiar with the ABC program have been trained in the proper completion of Form 1023, it is not necessary to explain this application in detail. To help an attorney complete the application, however, it would be wise for you to consider the goals of your foundation and to compile some information that is required by the form.

Distribute Exhibit #23

On page 2 of Form 1023, question 10 f, g, h and j, ask for detailed discussions about the actual purposes of the foundation; how it intends to be funded; what it intends to accomplish with the funds; and in what direction the foundation intends to move. You would speed the completion of this application and begin an efficient work-

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EXHIBIT #23

R-4

FORM 1023
(Rev. April 1965)

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

EXEMPTION APPLICATION

(To be made only by a principal officer of the organization claiming exemption)

To be filed in duplicate
with the District Director
for your District.

For use of organizations applying for exemption under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code, which are organized and operated (or will operate) exclusively for one or more of the following purposes (check purpose(s)):

- ☐ Religious ☐ Charitable ☐ Scientific ☐ Testing for Public Safety
☐ Educational ☐ For the prevention of cruelty to children or animals ☐ Literary

Every organization that claims to be exempt must furnish the information and data specified in duplicate. If any organization fails to submit the information and data required, this application will not be considered on its merits and the organization will be notified accordingly.

This application shall be open to public inspection in accordance with section 6104(a)(1) of the Internal Revenue Code. See separate instructions for Form 1023 to properly answer the questions below.

1a. Full name of organization _____ b. Employer identification number _____

2. Complete address (number, street, city or town, State and Postal ZIP code) _____

3a. Is the organization incorporated? ☐ Yes ☐ No b. If "Yes," in which State and under which law (General corporation, not for profit, membership, educational, eleemosynary, etc.)? Cite statutory provisions. _____

4a. If not incorporated, what is form of organization? _____ b. Date incorporated or organized _____ c. Month and day on which the annual accounting period ends _____

5a. Has organization filed Federal income tax return(s)? ☐ Yes ☐ No b. If "Yes," form number of return filed and Internal Revenue District where filed. _____ c. Year(s) filed _____

6. After July 1, 1950, did the creator of your organization (if a trust), or a contributor to your organization, or a brother or sister (whole or half blood), spouse, ancestor, or lineal descendant of such creator or contributor, or a corporation controlled directly or indirectly by such creator or contributor, enter into any of the transactions (or activities) enumerated below? NOTE: If you have any knowledge or contemplate that you will be a party to any of the transactions (or activities) enumerated in 6a through 6f, check "planned" in the applicable block(s) and see instructions.

	Yes	No	Planned		Yes	No	Planned
a. Borrow any part of your income or corpus?				d. Purchase any securities or other property from you?			
b. Receive any compensation from you?				e. Sell any securities or other property to you?			
c. Have any part of your services made available to him?				f. Receive any of your income or corpus in any other transaction?			

7. Have you issued or do you plan to issue membership, stock, or other certificates evidencing voting power in the organization?

Yes	No
-----	----

8a. Are you the outgrowth or continuation of any form of predecessor(s)?

Yes	No
-----	----

b. Do you have capital stock issued and outstanding?

Yes	No
-----	----

c. Have you made or do you plan to make any distribution of your property to shareholders or members?

Yes	No
-----	----

d. Did you receive or do you expect to receive 10 percent or more of your assets from any organization, group of affiliated organizations (affiliated through stockholding, common ownership, or otherwise), any individual, or members of a family group (brother or sister whether whole or half blood, spouse, ancestor, or lineal descendant)?

Yes	No
-----	----

e. Does any part or will any part of your receipts represent payment for services of any character rendered or to be rendered by you?

Yes	No
-----	----

- | | |
|---|--|
| f. Are you now, have you ever been, or do you plan to be engaged in carrying on propaganda, or otherwise advocating or opposing pending or proposed legislation? | |
| g. Do you participate or plan to participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office? | |
| h. Have you made or do you plan to make any payments to members or shareholders for services rendered or to be rendered? | |
| i. Does any part or do you plan to have any part of your net income inure to the benefit of any private shareholder or individual? | |
| j. Are you now or are you planning to be affiliated in any manner with any organization(s)? | |
| k. Do you hold or plan to hold 10 percent or more of any class of stock or 10 percent or more of the total combined voting power of stock in any corporation? | |

Page 2

9. Has any State or any court (including a Court of Probate, Surrogate's Court, etc.) ever declared whether you were or were not organized and operated for charitable, etc., purposes? ☐ Yes ☐ No. If "Yes," attach copies in duplicate of pertinent administrative or judicial decisions.

10. You must attach copies in duplicate of the following:

- a. If incorporated, a copy of your articles of incorporation, or if not incorporated, a copy of your constitution, articles of association, declaration of trust, or other document whereby you were created setting forth your aims and purposes, a copy of all amendments thereto, and any changes presently proposed.
- b. A copy of your bylaws or other similar code of regulations, all amendments thereto, and any changes presently proposed.
- c. A complete statement of assets and liabilities as of the end of each annual accounting period (or as of the date of the filing of this application, if you were in existence for less than a year).
- d. A statement of receipts and expenditures for each annual accounting period of operation (or for the period for which you were in existence, if less than a year).
- e. A statement which clearly indicates what State statutes or court decisions govern the distribution of assets upon dissolution. (This statement may be omitted if your charter, certificate, or other instrument of organization makes provision for such distribution.)
- f. A brief statement of the specific purposes for which you were formed. (Do not quote from or make reference to your articles of incorporation, constitution, articles of association, declaration of trust, or other document whereby you were created for this question.)
- g. A statement explaining in detail each fund-raising activity and each business enterprise you have engaged in or plan to engage in, accompanied by copies of all agreements, if any, with other parties for the conduct of each fund-raising activity or business enterprise.
- h. A statement which describes in detail the nature of each of your activities which you have checked on page 1, activities which you sponsor, and proposed activities.
- i. A statement which explains fully any specific activities that you have engaged in or sponsored and which have been discontinued. Give dates of commencement and termination and the reasons for discontinuance.
- j. A statement which describes the purposes, other than in payment for services rendered or supplies furnished, for which your funds are expended or will be expended.

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1. A schedule indicating the name and position of each officer, director, trustee, etc., of the organization and the relationship, if any, by blood, marriage, adoption, or employment, of each such person to the creator of the organization (if a trust), to any person who has made a substantial contribution to the organization, or to a corporation controlled (by ownership of 50 percent or more of vote, stock, or 50 percent or more of value of all stock), directly or indirectly, by such creator or contributor. The schedule shall also indicate the time devoted to position and compensation (including salary and expense account allowance), if any, of each officer, director, trustee, etc., of the organization.

1. A copy of each lease, if any, in which you are the lessee or lessor of property (real, personal, gas, oil, or mineral) or in which you own an interest under such lease, together with copies of all agreements with other parties for development of the property.

SIGNATURE AND VERIFICATION

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date

Signature of officer

Title

U.S. GOVERNMENT PRINTING OFFICE: 1953-O-764-147

FORM 1023 (REV. 4-35)

R-1b

FORM 990-A
U.S. Treasury Department
Internal Revenue Service

Return of Organization Exempt From Income Tax
Section 501(c)(3) of the Code

For the year January 1-December 31, 1966, or other taxable year beginning

1966, and ending 19
PLEASE TYPE OR PRINT

1966

Name

Employer Identification Number

Number and street

City or town, State, and ZIP code

Enter the name and address used on your return for 1965 (if the same as above, write "Same"). If none filed, give reason.

PART I Part I (pages 1 and 2) information required pursuant to sections 6001, 6033, and other applicable sections of the Internal Revenue Code. NOTE: One copy of Part I and two copies of Part II must be filed.

- 1 Gross sales or receipts from business activities
- 2 Less: Cost of goods sold and/or of operations (attach schedule)
- 3 Gross profit from business activities
- 4 Interest
- 5 Dividends
- 6 Rents
- 7 Royalties
- 8 Gain (or loss) from sale of assets, excluding inventory items (See Instruction 8)
- 9 Other income (attach schedule)—Do not include contributions, gifts, grants, etc. (See line 17)
- 10 Total gross income (lines 3 to 9, inclusive)
- 11 Expenses of earning gross income from column 3, Schedule A

DISBURSEMENTS MADE WITHIN THE YEAR OUT OF CURRENT OR ACCUMULATED INCOME FOR PURPOSES FOR WHICH EXEMPT, AND ACCUMULATION OF INCOME

- 12 Expenses of distributing current or accumulated income from column 4, Schedule A
- 13 Contributions, gifts, grants, scholarships, etc. (See Instruction 13)
- 14 Accumulation of income within the year (line 10 less the sum of lines 11, 12, and 13)
- 15 Aggregate accumulation of income at beginning of the year ()
- 16 Aggregate accumulation of income at end of the year ()

RECEIPTS NOT REPORTED ELSEWHERE

- 17 Contributions, gifts, grants, etc., received (See Instruction 17)
- 18 Less: Expenses of raising and collecting amount on line 17, from column 5, Schedule A
- 19 Net contributions, gifts, grants, etc., received

DISBURSEMENTS MADE OUT OF PRINCIPAL FOR PURPOSES FOR WHICH EXEMPT

- 20 Expenses of distributing principal from column 6, Schedule A
- 21 Contributions, gifts, grants, scholarships, etc.: (a) Paid out in prior years ()
(b) Paid out within the year (See Instruction 21)

Schedule A.—Allocation of Expenses (See Instructions for Attachments Required)

1. Item	2. Total	3. Expenses of earning gross income	4. Expenses of distributing income	5. Expenses of raising and collecting principal	6. Expenses of distributing principal
(a) Compensation of officers, etc.					
(b) Other salaries and wages					
(c) Interest					
(d) Taxes					
(e) Rent					
(f) Depreciation (and depletion)					
(g) Miscellaneous expenses (attach schedule)					
(h) Totals		Enter on line 11	Enter on line 12	Enter on line 13	Enter on line 14

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Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE
SEAL

Date

Signature of officer

Title

Date

Individual or firm signature of preparer

Address

16-50000-1

Form 990-A--1955

Schedule D.—BALANCE SHEETS (See instructions)

Page 2

	Beginning of Taxable Year		End of Taxable Year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
ASSETS				
1 Cash				
2 Accounts receivable (see instructions)				
(a) Less allowance for bad deb'ts				
3 Notes receivable (see instructions)				
(a) Less allowance for bad deb'ts				
4 Inventories				
5 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
6 Investments in nongovernmental bonds, etc.				
7 Investments in corporate stocks (see instructions)				
8 Mortgage loans (number of loans _____)				
9 Other investments (attach schedule)				
10 Depreciable (and depletable) assets (attach schedule)				
(a) Less accumulated depreciation (and depletion)				
11 Land				
12 Other assets (attach schedule)				
13 Total assets				
LIABILITIES AND NET WORTH				
14 Accounts payable (see instructions)				
15 Contributions, gifts, grants, etc., payable				
16 (a) Bonds and notes payable (see instructions)				
(b) Mortgages payable				
17 Other liabilities (attach schedule)				
18 Capital stock: (a) Preferred stock				
(b) Common stock				
19 Membership certificates				
20 Paid-in or capital surplus				
21 Retained earnings—Appropriated (attach schedule)				
22 Retained earnings—Unappropriated:				
(a) Attributable to ordinary income				
(b) Attributable to gains from sale of assets				
23 Less cost of treasury stock				
24 Total liabilities and net worth				

- 1 Date of current exemption letter
- 2 Attach a detailed statement of the nature of your charitable, business, and all other activities.
- 3 Have you attached the information required by:
- (a) Instruction 1? ☐ Yes ☐ No
- (b) Instruction 3? ☐ Yes ☐ No
- 4 Have you filed a tax return on Form 990-T for this year? ☐ Yes ☐ No
- If "Yes," where filed?
- 5 In what year was your organization formed?
- In what State or country?
- 6 If successor to previously existing organization(s), give name(s) and address(es) of the predecessor organization(s)
- 7 If you have capital stock issued and outstanding, state with respect to each class of stock:
- (a) The number of shares outstanding
- (b) The number of shares held by individuals
- (c) The number of shares held by organizations
- (d) The number of shareholders at end of year
- (e) Whether any dividends may be paid ☐ Yes ☐ No
- 8 If you acquired capital assets out of income, attach itemized list and amount thereof.
- 9 Have any changes not previously reported to the Internal Revenue Service been made in your articles of incorporation or bylaws or other instruments of similar import? ☐ Yes ☐ No
- If "Yes," attach a copy of the amendments.
- 10 Have you had any sources of income or engaged in any activities not previously reported to the Internal Revenue Service? ☐ Yes ☐ No
- If "Yes," attach detailed statement.
- 11 Did you hold any real property for rental purposes with respect to which there is an indebtedness incurred in acquiring the property or in making improvements thereto or which was acquired subject to a mortgage or similar lien? ☐ Yes ☐ No
- If "Yes," attach detailed statement.
- 12 Have you during the year advocated or opposed (including the publishing or distributing of statements) any national, State, or local legislation? ☐ Yes ☐ No
- If "Yes," attach a detailed description of such activities and copies of any such statements.
- 13 Have you during the year participated in, or intervened in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office? ☐ Yes ☐ No
- If "Yes," attach a detailed description of such activities and copies of any such statements.
- 14 After July 1, 1910, did: the creator of your organization; or a contributor to your organization; or a brother or sister (whole or half blood), spouse, ancestor, or lineal descendant of such creator or contributor; or a corporation owned 10 percent or more of voting stock or 10 percent or more of value of all stock) directly or indirectly by such creator or contributor—
- (a) Borrow any part of your income or corpus? ☐ Yes ☐ No
- (b) Receive any compensation for personal services from you? ☐ Yes ☐ No
- (c) Have any part of your services or assets made available to him? ☐ Yes ☐ No
- (d) Purchase any securities or other property from you? ☐ Yes ☐ No
- (e) Sell any securities or other property to you? ☐ Yes ☐ No
- (f) Receive any of your income or corpus in any other transaction? ☐ Yes ☐ No
- If answer to any question is "Yes," attach detailed statement unless previously reported. If previously reported, give year(s).
- 15 Do you hold 3 percent or more of any class of stock in any corporation? ☐ Yes ☐ No
- If "Yes," you must submit the information required by the instructions for Schedule B.

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FORM 55-4 (1-65)

PART 1

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE
APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER

PLEASE LEAVE BLANK

1. NAME (TRUE name as distinguished from TRADE name.)

2. TRADE NAME, IF ANY (Enter name under which business is operated, if different from item 1.)

3. ADDRESS OF PRINCIPAL PLACE OF BUSINESS (No. and Street, City, State, Zip Code)

4. COUNTY

5. CHECK (X) TYPE OF ORGANIZATION (If "other" specify, such as "Estate," etc.)

☐ Individual ☐ Corporation ☐ Partnership ☐ Other (Specify)

5a. Ending month of accounting year

6. If individual, enter your social security account number

7. REASON FOR APPLYING (If "other" specify such as "Corporate structure change," "Acquired by gift or trust," etc.)

☐ Started new business ☐ Purchased going business ☐ Other

8. Date you acquired or started business (Mo., day, year)

9. First date you paid or will pay wages (Mo., day, year)

10. NATURE OF BUSINESS (See Instructions)

11. NUMBER OF EMPLOYEES

Agricultural

Non-agricultural

12. If nature of business is MANUFACTURING, list in order of their importance the principal products manufactured and the estimated percentage of the total value of all products which each represents.

1

%

PLEASE LEAVE BLANK

R

DO

TA

2

%

3

%

FR

FRC

13. Do you operate more than one place of business?

☐ Yes☐ NoIf "Yes," attach a list showing for each separate establishment:
a. Name and address.

b. Nature of business.

c. Number of employees.

14. To whom do you sell most of your products or services?

☐ Business establishments ☐ General public ☐ Other (Specify)

PLEASE LEAVE BLANK

Geo.

Ind.

Class

Size

Reas. for Appl.

Bus. Bkr. Date

FORM 55-4 (1-65)

PART 2

DO NOT DETACH ANY PART
OF THIS FORM. SEND ALL COPIES TO
THE DISTRICT DIRECTOR OF INTERNAL REVENUE

PLEASE LEAVE BLANK

1. NAME (TRUE name as distinguished from TRADE name.)

2. TRADE NAME, IF ANY (Enter name under which business is operated, if different from item 1.)

NAME
AND
COMPLETE
ADDRESS

3. ADDRESS OF PRINCIPAL PLACE OF BUSINESS (No. and Street)

(City, State, Zip Code)

4. COUNTY

5. CHECK (X) TYPE OF ORGANIZATION (If "other" specify, such as "Estate," etc.)

☐ Individual ☐ Corporation ☐ Partnership ☐ Other (Specify)

5a. Ending month of accounting year

6. If individual, enter your social security account number

7. REASON FOR APPLYING (If "other" specify such as "Corporate structure change," "Acquired by gift or trust," etc.)

☐ Started new business ☐ Purchased going business ☐ Other

8. Date you acquired or started business (Mo., day, year)

9. First date you paid or will pay wages (Mo., day, year)

10. NATURE OF BUSINESS (See Instructions)

11. NUMBER OF EMPLOYEES

Agricultural

Non-agricultural

12. Have you ever applied for an identification number for this or any other business? ☐ No ☐ Yes

If "Yes," enter name and trade name (if any). Also enter the approximate date, city, and state where you first applied and previous number if known.

DATE

SIGNATURE

TITLE

INSTRUCTIONS

WHO MUST FILE THIS APPLICATION? Every person who has not previously secured an identification number, and who (a) pays wages to one or more employees, or (b) is required to have an identification number for inclusion in any return, statement or other document.

Only one application for an identification number should be filed, regardless of the number of establishments operated. This is true even though the business is conducted under one or more business or trade names. Each corporation of an affiliated group must be treated separately, and each must file a separate application. If a business is sold or transferred and the new owner does not have an identification number, he should not use the identification number assigned to the previous owner, but must file an application on Form SS-4 for a new identification number.

WHERE MUST THIS APPLICATION BE FILED? With the U.S. District Director of Internal Revenue with whom the Federal tax returns are filed.

WHEN MUST THIS APPLICATION BE FILED? (a) By those who pay wages, on or before the seventh day after the date on which business begins. (b) By others in sufficient time for the identification number to be included in return, statement, or other document.

HOW THIS APPLICATION SHOULD BE FILLED IN. All answers should be typewritten or printed plainly with ballpoint pen in black or dark blue ink.

Items 1 and 2. Enter in Item 1 the true name of the applicant and enter in Item 2 the trade name, if any, adopted for business purposes. For example, if John W. Jones, an individual owner, operates a restaurant under the trade name of "Busy Bee Restaurant," "John W. Jones" should be entered in Item 1 and "Busy Bee Restaurant" in Item 2.

NOTE—If created by statute, court order or decree, charter, oral or written agreement, will, declaration of trust, or other legal instrument, enter in Item 1 the full name recognized thereunder. If a corporation, enter in Item 1 the corporate name as set forth in its charter or other legal document issued by the Government creating it. In the case of a trust, the name of the trust estate should be entered in Item 1, and the name of the trustee in Item 2. In the case of an estate of a decedent, insolvent, etc., the name of the estate should be entered in Item 1 and the name of the administrator or other fiduciary in Item 2. If the true name is unusually long, it should be shown in a statement attached to this form. In such case, a short version of the name should be adopted for purposes of this form and entered in Item 1.

DO NOT DETACH

Item 10. Describe the kind of business carried on by applicant in Item 1.

The following examples illustrate the type of information needed.

- (a) **MINING AND QUARRYING:** State the process and the principal product; i.e., mining bituminous coal, mining bauxite, contract drilling for oil, quarrying dimension stone, etc.
- (b) **CONTRACT CONSTRUCTION:** State whether general contractor or special trade contractor and show type of work normally performed; i.e., general contractor for residential buildings, general contractor on streets and highways, electrical subcontractor, plumbing subcontractor, etc.
- (c) **TRADE:** State the type of sale and the principal line of goods sold; i.e., wholesale dairy products, manufacturer's representative for mining machinery, wholesale petroleum-bulk station, retail hardware, retail men's clothing, etc.
- (d) **MANUFACTURING:** State type of establishment operated; i.e., sawmill, vegetable cannery, by-product coke oven, steel cold-rolling mill, etc. In Item 12, Part 1, list the principal products manufactured.
- (e) **GOVERNMENTAL:** State type of governmental organization, whether a State, County, School District, Municipality, etc., or relationship to such entities, i.e., County Hospital, City Library, etc.
- (f) **NONPROFIT (OTHER THAN GOVERNMENTAL):** State whether organized for religious, charitable, scientific, literary, educational, or humane purposes and state the principal activity; i.e., religious organization — hospital; charitable organization — home for the aged, etc.
- (g) **OTHER ACTIVITIES:** State exact type of business operated; i.e., advertising agency, dry cleaning plant, farm, labor union, motion picture theater, real estate agent, steam laundry, rental of coin-operated vending machines, etc.

RETURN ALL FOUR PARTS OF THIS FORM TO THE DISTRICT DIRECTOR OF INTERNAL REVENUE.

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FORM **990-T**
U.S. Treasury Department
Internal Revenue Service

**Exempt Organization Business
Income Tax Return**
(Under Section 511 of the Internal Revenue Code)
For the year January 1-December 31, 1966, or other taxable year beginning

1966

1966, and ending

19

PLEASE TYPE OR PRINT		Employer Identification Number (In case of employees' trust described in section 401(a) and exempt under section 501(c), give the trust's identification number.)
NAME OF ORGANIZATION		Nature of unrelated trade or business activity
ADDRESS (Number and street)		
(City or town, State, and ZIP code)		
NAME OF TRUST'S FIDUCIARY		Date of current exemption or determination letter and code section under which you are exempt.
ADDRESS OF TRUST'S FIDUCIARY		

TAX COMPUTATION**ORGANIZATIONS TAXABLE AS CORPORATIONS (See General Instruction A(1))**

1	Taxable Income (line 31, page 2)	
2	Surtax exemption (line 1, \$25,000, or amount apportioned under section 1561, whichever is lesser)	
3	Line 1 less line 2	
4	(a) 22 percent of line 1	
	(b) 26 percent of line 3	
	(c) If multiple surtax exemption is elected under section 1562, enter 6 percent of line 2	
5	If alternative tax computation is made in separate statement, enter such tax here	
6	Total income tax (line 4 or 5, whichever is lesser)	
7	Less: (a) Foreign tax credit (attach Form 1118)	
	(b) Investment credit (attach Form 3469)	
8	Balance of income tax	
9	Tax from recomputing prior year investment credit (attach statement)	
10	Total income tax (line 8 plus line 9. Enter here and on line 18)	

TRUSTS TAXABLE AT INDIVIDUAL RATES (See General Instruction A(2))

11	Tax on line 31, page 2 (from Tax Rate Schedule, page 4)	
12	If alternative tax computation is made in separate statement, enter such tax here	
13	Total income tax (line 11 or 12, whichever is lesser)	
14	Less: (a) Foreign tax credit (attach Form 1118)	
	(b) Investment credit (attach Form 3469)	
15	Balance of income tax	
16	Tax from recomputing prior year investment credit (attach statement)	
17	Total income tax (line 15 plus line 16. Enter here and on line 18)	

TOTAL INCOME TAX

18	Total income tax (from line 10 or 17, whichever is applicable)	
19	Credits: (a) Credit from regulated investment companies (attach Form 2435)	
	(b) Tax paid with Form 7004 application for extension (attach copy)	
	(c) Credit for U.S. tax on nonhighway gas. and lub. oil (attach Form 4136)	
20	If tax (line 18) is larger than credits (line 19), the balance is TAX DUE. Enter balance here	
21	If tax (line 18) is less than credits (line 19). Enter the OVERPAYMENT here	

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Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE
SEAL

Date

Signature of officer

Title

Date

Individual or firm signature of preparer

Address

Form 990-T (1995)

Page 2

UNRELATED BUSINESS TAXABLE INCOME COMPUTATION

UNRELATED TRADE OR BUSINESS GROSS INCOME		
1	Gross sales (where inventories are an income-determining factor)	Less: Returns and allowances
2	Less: Cost of goods sold (Schedule A)	
3	Gross profit from sales	
4	Gross receipts (where inventories are not an income-determining factor)	
5	Less: Cost of operations (Schedule D)	
6	Gross profit where inventories are not an income-determining factor	
7	(a) Net capital gain from cutting timber (attach statement)	
	(b) Net ordinary loss from cutting timber (attach statement)	
	(c) Gain from disposition of depreciable property under sections 1245 and 1250 (attach statement)	
8	Income (or loss) from partnerships (attach statement)	
9	Business lease rents (Schedule C)	
10	Total unrelated trade or business income on lines 3, and 6 to 9, inclusive	
DEDUCTIONS		
(Except contributions, deductions must be directly connected with the unrelated business)		
11	Compensation of officers or trustees (Schedule F)	
12	Salaries and wages (not deducted elsewhere)	
13	Rents	
14	Repairs (do not include cost of improvements or capital expenditures)	
15	Bad debts (Schedule F if reserve method is used)	
16	Interest (Schedule H)	
17	Taxes (Schedule I)	
18	Contributions (attach schedule—see instructions for limitation)	
19	Losses by fire, storm, shipwreck, other casualty, or theft (attach schedule)	
20	Depreciation (Schedule G)	
21	Amortization (attach schedule)	
22	Depletion (attach schedule)	
23	Advertising	
24	(a) Pension, profit-sharing, stock bonus, annuity plans	
	(b) Other employee benefit plans	
25	Other deductions (Schedule J)	
26	Total deductions on lines 11 to 25, inclusive	
27	Unrelated business taxable income before net operating loss deduction (line 10 less line 26)	
28	Less: Net operating loss deduction (attach statement)	
29	Unrelated business taxable income before specific deduction	
30	Less: Specific deduction	
31	Unrelated business taxable income	1,000.00

R-23

Schedule G—DEPRECIATION (See instruction 20)

Taxpayers using Revenue Procedure 62-21: Make no entry in column 2, enter the cost or other basis of assets held at end of year in column 3, and enter the accumulated depreciation at end of year in column 4.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)						
Buildings						
Furniture and fixtures . . .						
Transportation equipment . .						
Machinery and other equipment .						
Other (specify)						
2 Totals						
3 Less amount of depreciation claimed in Schedule C and elsewhere on return						
Balance—Enter here and on line 20, page 2						

Form 990-T (1955)

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Schedule H—INTEREST ON INDEBTEDNESS (See Instruction 1G)[illegible]**Schedule I—TAXES (See Instruction 17)**[illegible]**Schedule J—OTHER DEDUCTIONS (See instruction 25)**

ing relationship with your attorney if you could assemble some of the information prior to your initial conference on Form 1023.

First, you should think about the detailed purposes of your foundation. In other words, why was your foundation formed; what do you want to do with it; what do you want it to do in the future. Second, how will your foundation obtain the funds with which it will operate? Will it provide services to the general public or to other foundations? Will it invest funds? Will it receive contributions? Will it manage real estate or will it merely purchase and sell securities? Third, what are some of the projects that your foundation will initially attempt? For example, will your foundation do scientific research? Will it create a grant program or a scholarship program? Will it create a library? Will it educate persons either through formal schools or seminars or lecture or distribution of literary material? Simply, what will your foundation do? Fourth, once you have decided what your foundation will do, you must set out some of the detailed structure of these projects. For example, if your foundation intends to award grants or scholarship, you will need to prepare the standards

which will guide the board of directors in determining the winners of such grants or scholarships. You will need to prepare the applications for such grants or scholarships. Also, the reference blanks, the follow-up questionnaires and perhaps, even the accounting procedures. You should also prepare a detailed explanation of such a program. If your foundation decides to accomplish scientific research, you might prepare a detailed outline or discussion of the purpose of the research, the methods, and personnel for obtaining data, the methods of determining results, and then what will be done with the results and who will have access to them.

Form 1023, in other words, asks why you think your foundation is charitable, scientific, religious, literary, educational, etc. You will answer this question only in those categories that directly apply to your foundation. You will not discuss charity if your foundation does not intend to be charitable, nor will you discuss testing for public safety if your foundation does not intend to test for public safety. The preparation of this material and some clear consideration of what your foundation will do will greatly speed the preparation of Form 1023 by your attorney.

Many of the remaining questions involve the answering of certain questions that contain a number of technical

legal terms. To prevent delay in processing and to avoid mistakes in answering these questions, you should consult with an attorney.

Upon a favorable determination by the Internal Revenue Service, based upon the information submitted on Form 1023, your foundation will receive a letter recognizing the tax-exempt status of your foundation. This letter is extremely valuable and, depending on local law, might be used to obtain exemption from State Unemployment Tax, some state sales taxes and other state and local taxes and regulations. The presentation of the federal Treasury letter is the best evidence to be used in such proceedings. This letter will also be of possible use in obtaining advantageous prices or services from private sources, such as discounts from major retail firms, possible savings in book stores or from publishers, and may also be useful in other legal proceedings as bona fide evidence of tax-exempt status recognized by all. At the top of each letter of determination issued by the Treasury Department, there is a code number. This is the so-called "tax exemption number" that some people may mention. This number might be used to some advantage in correspondence with state or federal government agencies who may be concerned with your foundation's activities. The value

of this letter is solely limited to dealings with third parties. In other words, a determination by the Treasury is valuable only if your foundation intends to deal with independent, unrelated persons or organizations frequently.

Since ABC recommends that your corporate foundation be used as the vehicle for public operations, it is recommended that your corporate foundation obtain recognition of its tax exempt status from some government source (one or more of the four sources named above).

The mechanical details of obtaining recognition from state courts, federal courts or state agencies varies from locale to locale. If you are not interested in using Form 1023 and wish to obtain recognition of your foundation's tax exempt status from one of the other three governmental sources, you should consult with your attorney for the most efficient course of action.

(b) Form SS-4. If your foundation pays a salary to any employee or is required to file a federal report to the Treasury, then your foundation must file for an employer's identification number on Form SS-4. You may obtain this form from the local Internal Revenue Service or Social Security office. Form SS-4 is very simple to complete and you do not need any special consultation with your

attorney to complete it. Unless your foundation is an agricultural research farm, it will probably not have any agricultural employees. Generally, your foundation will be a new business. Your foundation is a category "F" organization. Category "F" is a non-profit organization devoted to one of the seven permissible purposes in Section 501 (c) (3) of the Internal Revenue Code. You would explain this on Form SS-4.

If you intend to submit a Form 1023 shortly after the incorporation of your foundation, you should not submit Form SS-4 prior to submission of Form 1023. Form 1023 allows you to file Form SS-4 with Form 1023. The Social Security office usually takes two weeks to two months to issue an employer identification number. To avoid holding up your Form 1023 application while you are waiting for an employer identification number, you should file Form SS-4 and 1023 together.

Once you receive an employer identification number, you must file withholding tax returns using that identification number for the income tax due and owing on the salary of any employee. You will file and keep records for Forms W-2, etc. Depending upon the number of employees and the amounts involved, you will file monthly or quarterly just as any other employer.

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(c) Social Security - As discussed earlier, your foundation employees may elect or refuse Social Security coverage. If your employees refuse Social Security coverage, you do not have to deduct this amount or contribute the employer's share for these employees. If your employees choose to be covered by Social Security you will file Form SS-15 with your local Social Security office and then you must deduct the employees' contribution and make the employer contribution for each of these employees. If any employee chooses to be covered by Social Security, then all employees subsequently hired must be covered by Social Security.

(d) Form 990-A - This form is not a tax return. The Internal Revenue Code calls it an Annual Information Return for an Organization Tax Exempt under Section 501

(c) (3). It is a two-page simple information return which must be filed in triplicate before the fifteenth day of the fifth month after the end of the foundation's annual accounting period. It consists of a financial report coupled with about 20 questions which are similar to those asked on Form 1023. Under the Internal Revenue Code every 501 (c) (3) organization, with a few exceptions, must file this return. The statutory penalty for failure to

file this return is \$10,000 fine plus one year in jail for the responsible officer. This penalty has never been enforced. In the opinion of some attorneys, it is seriously questioned whether this penalty, as a practical matter, could ever be enforced. Technically, to avoid harassment or any future changes in the law or its enforcement, it seems to be advisable to file Form 990-A. A major disadvantage of filing Form 990-A is that all the information becomes public record on file in the local District Director's office and any citizen of the United States may request that information and use it.

(e) Form 990-T - This report is a tax return. As explained earlier, a foundation may have taxable income. A foundation is taxed at corporate rates on unrelated business income for any amounts over the original \$1000 deductions. If your foundation earns any funds which may be classed as unrelated business income, you must report these funds if they total more than \$1000. You must also pay taxes at corporate rates on these amounts after you have deducted normal business deductions, exemptions and credits related to those earnings. In other words, because you are taxed at corporate rates, you are entitled to take all normal business and corporate deductions, etc,

on the activities that produced the unrelated business income.

Since this is a tax return, if you are unfamiliar with detailed accounting or business tax returns, it would be advisable to obtain expert help on the initial returns. If you have filed several business tax returns for your own business activities in the past, and feel that you have no need for an accountant or bookkeeper under normal circumstances, then you will probably not need an accountant or bookkeeper for this return. If you have any questions, you should see your attorney or accountant.

Remember that Form 990-T is a tax return and is subject to all the other penalties and regulations pertaining to tax returns. Form 990-A is an informational tax return and should not be confused with Form 990-T. You must file Form 990-T by the fifteenth day of the third month after the end of the foundation's annual accounting period. If your foundation has a calendar fiscal year, you would file this report by March 15. In most cases, however, a foundation will not have unrelated business income.

In the opinion of some attorneys it has been suggested that Form 990-T might be filed even though a founda-

tion does not have unrelated business income. It has been suggested that as a point of legal strategy that Form 990-T might be filed with a lot of zeroes, thus invoking the three-year statute of limitations on possible actions by the Internal Revenue; that is, unless the Internal Revenue Service acts within three years after the filing of Form 990-T it is barred by law from further action as to that taxable year, except in the cases of fraud. This idea is one of legal strategy and is not a requirement. It is only an idea and should be discussed thoroughly with your attorney.

(f) Form 1096 - Exempt Organizations. Exempt organizations must report payments of rents, salaries, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains or income aggregating over \$600 a year to any individual or organization who would normally be a taxpayer. This is to be filed on or before February 28 in the year following the year of payment. These reports aid the Internal Revenue Service in reviewing the returns of other taxpayers. They do not reflect upon the foundation's activities or operations, nor do they invoke any liabilities upon the foundation. They might be referred to as "stool pigeon

reports".

(g) Occasionally, a foundation may also have to file a census report with the U. S. Census Bureau. The Census Bureau often asks businesses of all kinds to supply the information for their records so that they may compile their information pamphlets and maintain up-to-date statistical records in their offices. The Census Bureau has the power to enforce various penalties for failure to file these returns. Very few foundations are ever asked to file such returns, but you should be aware of their existence. It is not recommended that you volunteer to file a census return. Your foundation should only do so if requested.

(h) Your foundation will not file corporate tax returns, individual tax returns, fiduciary tax returns, or other forms relating to other types of organizations. If the Internal Revenue Service should request your foundation to file any of these other returns, you should inform the service that your organization is a 501 (c)(3) organization and is only required to file on form 990-A, 990-T, or 1023. If the Internal Revenue Service persists in erroneous or harrassing action, consult your attorney.

Furthermore, your foundation is not under any requirement to show its books or records to any person without sufficient cause. Your foundation enjoys the same constitutional rights as other corporations of the United States. In other words, you should not be upset or pressured by the appearance of an Internal Revenue Service agent or other government agent. You should inquire politely for proper identification by the Internal Revenue Service agent or other government official and should politely request the reasons for the investigation and under what authority they are acting. It is your constitutional right to have proper advice and counsel whenever a government takes action. If you are so questioned, you should call your attorney for further advice. You, as executive director of your foundation, are responsible for the activities and operations of your foundation and any disclosures made by you as executive director, may be used as evidence in any action against the foundation. If the foundation is operating properly under all the recommended procedures you have learned today and at other times, you should not be concerned by any investigation by anyone.

ABC firmly believes, however, in the right of privacy of the individual and our suggested methods to maintain this privacy are offered for your protection.

STATE TAX REQUIREMENTS

(This portion of the material should be prepared by each consulting attorney for the state in which the seminar is being held or states in which the attending membership resides). (The following material is an incomplete summary of Illinois State tax requirements as they relate to 501 (c) (3) organizations).

Foundations in the State of Illinois are required to pay State Sales Taxes on all purchases and charge State Sales Taxes on all sales of merchandise unless expressly exempted under the Illinois State Tax Codes. To obtain sales tax exemption either from payment or charging of sales taxes, the foundation must apply to the state treasurer's office on forms provided by the State of Illinois. Normally, foundations cannot be exempted from charging sales tax (use or occupation tax) on the sale of merchandise in the State of Illinois, but many classifications of foundations can obtain some relief in the payment of sales tax on certain purchases. Such relief will either take the form of an absolute exemption from payment or through the rebate of sales taxes paid during the fiscal year.

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Normally day-to-day purchases might be exempted from state sales tax for educational, charitable or research organizations, but sales tax on gasoline purchases would be rebated at the end of each year. Forms for rebate may be obtained from the state treasurer's office.

Since there is no state income tax for individuals or corporations in the State of Illinois, foundations do not have to apply for exemption from these taxes. If the Illinois legislature ever passes a state income tax bill, the foundation should apply for express exemption from these income taxes.

Property owned by a 501 (c) (3) organization in being actively used by that organization for tax exempt purposes (this normally does not include property held for rental or investment purposes) may be exempt from real estate taxes under Illinois law. You should apply to your local county assessor for such exemption. Normally, county assessors are very difficult to convince and it may take some reeducation on your part to accomplish tax exemption for property qualified as real estate. If your real estate taxes are high and your property is being used for exempt purposes then the reluctance of the tax assessor should not deter you from your lawful right. If further action in the courts is necessary to enforce

your rights you should consult with your attorney to determine the economic advisability of such further action.

If you are operating an agricultural research farm, it is highly recommended that you pursue exemption from real estate taxes.

All employees of a 501 (c) (3) tax exempt organization are exempt from contributing to the Illinois State Unemployment Tax. Likewise, all foundation employers are exempt from payment of employers' contributions to the State Unemployment tax.

Foundations must generally pay all licenses or filing fees within a state although special rates are often obtainable. Before paying any license or filing fee you should inquire for special rates available only to foundations.

Property owned by a foundation is not subject to personal property tax. Such property is also not considered to be the property of the officers or directors of the foundation and should not be included in assessments for personal property tax of an individual. In some cases, special rulings may be necessary to exempt the foundation from payment of personal property tax. If

court action is considered you should consult with your attorney as to the economic advisability of such action.

Foundations often make "in lieu of" payments to various government agencies for services actually rendered to the foundation, e.g., fire and police protection. Such payments often reflect the foundation's opinion of the value of such services rendered and usually replace the real estate or personal property taxes formerly assessed on foundation-owned property. Such payments should only be considered or made if the foundation has been expressly exempted from real estate and personal property taxes. ABC firmly believes that one should pay for services received and recommends such "in lieu of" payments where the foundation has been exempted from a great burden of local taxes. If a foundation seriously considers "in lieu of" payments, the amount is solely at the discretion of the Board of Directors of the foundation.

In some locales it may be possible to obtain tax exemption for real estate held by the foundation for investment purposes. This is often accomplished for medical service organizations, some churches or religious organizations and some educational organizations. This

preferential treatment should not be expected for all foundations.

If you have any questions concerning any state tax situation you should consult an attorney.

Distribute Attorney's
Exhibit

- V. Review of foundation
material using struc-
tural charts.

If time allows, it would be very valuable for the instructor to review the organization and operation of the foundations as a whole. No detail should be developed at this point in the program, but references to earlier material might be made to refresh the memories of the students. Such a review would help place each of the various details that have been covered into the overall organization and perspective of the foundation. The foundation is a new concept to most people and some of ABC's ideas are wholly new in the field of foundation activity. If the student can put together the pieces of the foundation puzzle in an organized fashion, then he will probably be able to operate quite efficiently without continued advice of counsel and without fear of harassment or charges of evasion from the Internal Revenue Service. In addition, if the student can understand the scope and purposes of his foundation and carry through with the proper operations, both he and society in general will greatly benefit through the development and progress made by his foundation in the foundation's chosen field. The foundation examination might be administered at this point.

* * * * *

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Section 9FOUNDATION REVIEW, LIMITATIONS AND ALTERATIONS

The organizational structural chart and the economic flow chart would best be used at this point to conduct this review. These should be prepared as exhibits and not merely used on a blackboard. At this point, each of the members should be reminded that he or she will be wearing several hats simultaneously and that the duties and powers of each of the positions represented by these hats should be be clearly understood. For example, one person might be a director of the foundation, president of the foundation, and executive director of the foundation. Each of these offices has different rights and duties. **DISTRIBUTE #25 & #26.**

VI. Inspirational talk on the virtues of the ABC program and how support of the ABC program will help fund the individual foundation for the various beneficial projects that each member might develop. All the details of the program should be discussed and other ideas should be used to motivate each student member to increase the ABC membership. If any member at this time desires to begin the formation of another class, it would be advisable to aid him in this direction in every way possible. If a new class should be formed through that member's contact, such information should be immediately forwarded to the ABC Executive Secretary. The details of this particular part of the program should be carefully developed with consideration for time and motive.

Up to this point we have discussed the basic principles and information necessary to conduct the operations of a private foundation. You will probably develop many questions concerning detailed projects, wording of various minutes and detailed management questions that

occur in the starting of any new business. Your foundation is a new business for you. You have probably never operated one before and some of the procedures may be completely unfamiliar to you. As you gain experience, you will be able to handle small problems with great ease, but until you do, you should rely on the advice of experts. Your associate attorney will be a good source of information. If you feel you understand the principles well enough to operate you need not retain or refer to any attorney. We believe that the information developed in this course, coupled with more detailed procedures which will be taught at a later time, will enable any person of reasonable intelligence to operate a foundation on a day-to-day basis without constant consultation with an attorney.

If you have any questions at this point, you should ask them. If the instructor has time and knowledge to answer them, he will be more than glad to answer them at this time. If not, your question will be answered by either the attorney or the instructor by letter at a future date.

The benefits of the foundation can only be enjoyed to the extent that a person is willing to devote his en-

ergies to the foundation and gain the knowledge necessary to function properly. Here is a list of published literature which may be of some help in some situations to those of you who are learning foundation management for the first time.

Include the standard bibliography of foundation management material. Exclude all references to legal form material. Distribute EXHIBIT #27

Conduct Foundation Management Exercise EXHIBIT #28.

Conduct Foundation Examination before proceeding to Section 10.

Your foundation may provide you with a great many benefits at the same time that it is benefiting mankind. You will be able to accomplish personal philanthropic desires, employ your energies most efficiently and generally save money. But the foundation is not the sole answer to an individual's economic problems. There are several shortcomings to total dependence upon foundations for the structuring of your personal estate. Foundations are potentially subject to restrictive government scrutiny and in some states, to government management. All property owned by the foundation and all income received by the foundation is technically devoted to public purposes.

Unless you truly wish to dedicate all your property and energies to the public good, then the foundation is not the sole answer to your family's needs. It is highly valuable but must be used with other instruments and vehicles to gain maximum efficiency and protection to an individual's estate. In other words, you may own property which you would not desire to dedicate to the benefit of all mankind. Such things as your family's jewelry, heirlooms and other similar property would be best controlled by non-foundation owners.

In addition, the foundation is subject to disclosure requirements which make public such information as officer's salaries, property holdings and persons doing business with the foundation. ABC firmly believes in the privacy of the individual. Because of this belief, ABC does not want to leave you with the impression that the foundation is the best way to protect this right of privacy.

Finally, the foundation may be of limited use to many people due to the inability of these persons to transfer 100 percent of their income into the foundation. Many individuals may only be able to initially transfer 20 percent of their income or estate into the foundation, thus leaving 80 percent unprotected. Since this is not

conducive to absolute protection of an individual family's property, other instruments and vehicles should be employed to overcome these "deficiencies" of the foundation.

It is not recommended that an exhibit be prepared on this material, but it is suggested that the instructor could lead a discussion on some of the disadvantages to individuals of foundations. For example, a discussion of the whims and vagaries of some of the state administrators of foundations and the possible frequent changes of state law on foundations. In addition, the arbitrary nature of the Internal Revenue Service with regard to foundations might be discussed. The discussion on these points should clearly relate only to the possible action, since, in most cases, such action is not probable.

To enjoy maximum benefits of the not-for-profit procedures and yet minimize their disadvantages, another organization is required. For example, should a person feel that the wide range of conduct permissible within the tax exempt sphere of activity is not as broad as he might like, he might seriously consider holding property or operating under a non-exempt, tax-paying arrangement which might be connected with a foundation in such a way that substantial benefit of tax-exemption could be enjoyed without being subject to the prohibitions imposed upon tax-exempt foundations. Certain securities, if purchased by a foundation, might be considered highly

risky investments and would thus be subject to the rule against endangering foundation funds. If, on the other hand, these securities were held by a tax-paying corporation, there would be no prohibitions against such ownership regardless of the risk of the venture. Taxes would have to be paid, but if deductible contributions or expenses were made to the foundation, some savings would result.

We should not confuse the means with the end. If our purpose is tax savings, then we should be alert to alternate uses of the foundation to achieve that end. The device of holding property in a taxable entity, yet eliminating the tax burden through deductions whether for operating expenses or contributions, not only eliminates all the restrictions on an individual's use of the funds, but also makes it unnecessary to file public information returns on these activities.

To illustrate alternate uses of the foundation, let's create a hypothetical case and apply some foundation theory. Imagine an individual with income-producing property (real estate or securities) yielding \$50,000 per year. Allowing for no deductions, the individual maximum tax rate on \$50,000 is presently \$23,940. If

we assume that the property producing the income was held by the individual and that the \$50,000 also represented the basis on which the individual's 20 percent deduction was figured, his taxable income could be reduced by a charitable donation to his foundation to \$40,000. This would reduce his taxes to a maximum of \$17,690 or a savings of \$6,000.

On the other hand, if all the property were owned and administered by the foundation, there would be no taxes on the income to the foundation. All the property, however, would be dedicated to benefiting mankind in one of the tax-exempt purposes for which the foundation was formed.

If the \$50,000 of income were produced by a corporation owned or controlled by an individual, then five percent could be deducted from the corporation's income and donated directly to the foundation. The remaining \$47,500 might then be paid to the individual as a salary and he would then donate 20 percent of this amount, or \$9,000 to the foundation. His taxable income would be \$38,000, and the foundation would enjoy \$12,000 of tax-free income. The individual would have to pay a maximum of \$14,600 in income tax. This would be \$8,700 less than

the maximum tax rate on \$50,000.

Note that in the cases where the individual received a gross of \$45,000 or \$50,000 in income, he retained after taxes and contributions, \$23,000 to \$24,000 for whatever purpose he wished. He could use this money for frivolous purposes, risky investments, completely personal benefits and expenses without criticism and without limitation. At the same time, the foundation received \$10,000 to \$14,000 in income for purposes beneficial to mankind, while only \$12,000 to \$17,000 was lost to the federal government.

Thus, we see that there are many alternate applications of the foundation to the simplest of situations. If we add other types of organizations and legal instruments, we multiply the number of alternate applications of the foundations to any particular situation. Our flexibility increases as we use other organizations and our freedom of choosing where each dollar is to go is also increased.

ABC suggests the use of a second instrument with your foundation to provide for the continuing support of that foundation, and incidentally, to maximize the protection for your estate. A second organization should then be

formed as part of your family organization to enable you to have complete choice of the use of your property. The characteristics of your organization are quite different from those of the foundation. Of course, the second organization should be controlled by the same persons or family as the foundation, to insure consistency of management. The second organization should have complimentary tax advantages when compared to the foundation. The second organization should be able to contract with the foundation and yet remain legally independent and separate. The second organization should be of a different nature than the non-profit corporation so that it might be unaffected by any changes or disadvantages in state or federal law applicable to non-profit corporate procedures. The second organization should be relatively uncomplex so that the foundation and the second organization may be managed as simply as possible. The second organization like the foundation, however, should be created and managed on a long-term basis. The creation of the second organization like the foundation, should indicate a perpetual type of management.

There are many types of alternate organizations that could be used. ABC research has investigated most of

these alternates and has discarded or rejected all but one. Before we discuss the single organization that we believe is best suited to compliment the activities of the foundation and the protection of your estate we should briefly discuss some of the rejected alternates so that you will not be misled by suggestions of others as to the efficiency of these rejected alternate solutions.

First, partnerships, stock corporations, sole proprietorships, and other common profit-making business forms have been rejected because they are subject to maximum regulation by both federal and state governments. These organizations do not, by themselves, preserve assets from taxation or protect the longevity of an individual's estate tax laws and other regulations.

Tax laws and other regulations have inhibited the freedom and flexibility of these profit-making organizations so that their original advantages have been all but lost.

A second foundation is a useful concept but to go beyond two foundations would create a very complex organizational problem. It is true that many prominent families have used multiple foundation systems to protect their assets. For example, the Rockefeller family has interests in two giant foundations. The Rockefeller

Foundation and the Rockefeller Brothers Fund. Both of these giants have formed countless small, related foundations to receive and disburse funds for particular projects. A few years ago the Rockefeller Brothers Fund allocated nearly \$200,000 to rehabilitate and operate a "slum tenement apartment house". They wanted to prove that a properly run, low-rent apartment could be operated healthfully, pleasantly and profitably. A smaller foundation was created, qualified and endowed by the large foundation. This small foundation was separately chartered from the giant Rockefeller Brothers Fund. This was to enable the small foundation to operate without creating legal liability for the giant foundation.

Incidentally, the smaller foundation failed to accomplish its purpose due to the destructive nature of the tenants. The foundation-run apartment ended up with almost as many building code violations as its non-charitable neighbors.

The Ford family has 20 or more foundations and H. L. Hunt reportedly has over 35 foundations. Each of these families can afford the staff of attorneys, counselors and managing directors to properly operate each of the foundations. You, as an individual, may not have the

funds or resources or time to manage more than one or two or three foundations. Each foundation must be maintained separately with complete records and proper activities. If you do not have considerable resources this is not an easy task. ABC does not recommend that you incorporate 40 or 50 foundations simply because it seems like a good idea.

Other exotic types of business forms, such as associations, labor unions, limited partnerships, special corporations, etc. generally do not apply to most individual's interests or property holdings. Consequently, ABC does not recommend them.

* * * * *

SECTION 10TRUST INTRODUCTION

If you have not conducted the Foundation examination conduct it at this time.

The one complimentary organizational form that ABC does recommend is the trust. The trust is one of the oldest legal concepts in history. Trusts were formed in England 400 years before the first corporation was formed. The oldest continuous trust on American soil was chartered nine years before the United States declared its independence. This trust is still in operation. We have chosen the trust as the second organization because of its historical stability and because it has all of the desired characteristics which we discussed earlier.

The term "trust" is widely used today to describe a wide variety of legal instruments. You have probably heard the term from insurance men, bankers, real estate brokers, accountants, as well as lawyers. Each of these professions dealing in trusts have one variety or another of trusts, but all of these variations stem from a basic concept which was developed in Germany and which traveled to England with the Norman conquest.

These early English trusts were modeled after the

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ancient German legal receiver called the "salman". The "salman" was a person to whom land was transferred in order that he might make a conveyance according to the former owner's wishes. Although this might seem a devious and inefficient way of transferring property, a review of the conditions in medieval times should show the reasons for this procedure. In England many burdens and conditions fell upon the holder of legal title to real estate. For example, the lord of the land was entitled to relief or money payments when the land was passed to an heir of full age. The lord was entitled to wardship fees when the son of the former owner was a minor. The lord was also entitled to aid or tax money to pay for the marriage of the lord's daughter or the knighting of the lord's eldest son.. In addition, the owner of the land was usually prohibited from selling the land or dividing the land among his children or grandchildren.

If the owner of the land was convicted of a crime he forfeited all he owned to the lord or king, thereby leaving his family impoverished. These were the major restrictions. There were nearly 100 other taxes and limitations on the owners of lands.

To avoid these restrictions under the 1 w, the trust was developed. It works as follows. The owner contracted

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with two trustees to convey the property for the beneficial use of another person or beneficiary. This fourth person was generally the owner's son or the person to whom the owner wished to sell the land. The trustees were literally trusted with the proper use of the property. In the twelfth and thirteenth centuries there were no legal methods to enforce the trust contract. If the trustees during these years decided to use the property for themselves there was nothing the former owner could do. Eventually, however, the courts began to enforce these contracts. Because the contracts were not sales they were not illegal transfers of land. Because the contracts were not wills they were not improper transfers to children or grandchildren. The trusts had many advantages. They could be kept secret. The king did not have to know of the transfer, but by law the taxes and other limitations could be ignored.

For example, if the grantor of property placed in trust were convicted of a crime, he would not forfeit the property since he no longer owned it. His family as beneficiaries of the trust would continue to enjoy the property. Since beneficiaries of a trust were not limited in number a man might distribute the benefit of the property to all of his children while under the law

he could only pass it by will to his eldest son.

The trustees and beneficiaries in each of these trusts controlled the land, planted it, reaped the harvest, sold or used the results for profit and by law could ignore almost all other restrictions on the use of the land. The trustees usually did not participate in this use but allowed the beneficiaries to do as they wished. The beneficial or equitable interests in these trusts could be sold at will with no change in the trustees and usually without taxation. Normal sales of property had to be made public and were usually accomplished by elaborate procedures. Beneficial interests in trusts could be created and transferred secretly.

Early in the fifteenth century the king's chancellor began to enforce such trusted contracts and agreements in the king's own court. The relief offered by the chancery court was usually in the form of an order to refrain the trustees from doing some act, such as evicting the beneficiary or laying waste to the land. By the sixteenth century the concept of the trust was well developed.

The king having lost many of the former rights to lands held in trust, publicly criticized them. There were probably many abuses of the trust which led to this

criticism but since the nobility was being severely pinched with respect to their traditional rights and powers, their criticism is more understandable. For example, religious orders which had pledged themselves to poverty often held hundreds of thousands of acres of land in trust and enjoyed their use, even though the priests themselves did not "own" a thing.

In 1535 the Statute of Uses was passed to prohibit the use of certain trust instruments. The law required that the beneficiary of certain trusts would be considered the legal owner whenever such a trust was made and that the trustees would be considered to be mere conduits or passive parties. The preamble of this law set out the "evils" that had been possible through the use of the trust.

Among these "evils" were privacy of transfer, legal avoidance of taxes and other regulations, preservation of the estate of convicted criminals, and most significantly, the loss of revenue to the lords.

The common law judges of England who had sole jurisdiction over legal estates were faced with the task of interpreting the Statute of Uses. They had to determine what trusts were legal and what were dissolved. The

judges decided to restrict the application of the Statute of Uses to limited circumstances. Only one trust out of five was found to be illegal and the rest were enforced. Within five years, the Statute of Uses was all but out of use.

Suffice to say that the Statute at the hands of the common law judges did not achieve what the king and his nobles had hoped. A large number of trusts were left unaffected by the statute and were recognized and enforced by the Court of Chancery. It is these interests and trusts which were preserved in spite of the Statute of Uses which traveled to America with the English Colonies and which formed the very base of our modern trust.

The advantages of the ancient trust are obvious. The trust enabled a person to enjoy privacy under a system that usually demanded disclosure. The trust enabled a person to avoid some of the burdens of special taxes. The trust enabled individuals to "sell" land and to pass it to those they wished. Obviously, the same goals are desirable today. The present tax system, however, has imposed certain burdens and restrictions on the citizens of our country that are comparable to the burdens and restrictions that limited the citizens of ancient England.

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For example, if we own real estate and we wish to sell it, then we must disclose ourselves as the owners, pay license and stamp taxes and filing fees. All of these costs are taxes on the right to own and sell property. Although we may pass ownership of property to anyone we choose and any number of people we choose, upon our death there are often heavy taxes to be paid where the amounts range above stated limits. In addition, we cannot even give away sizable amounts of property without paying taxes or reporting the gift to some agency. Just as the lords of England had the right to appoint the guardians of minor heirs of property, so our government has the right to appoint guardians of minor heirs in modern courts. It is easy to see that many of the conditions today are not too different from those of medieval England. The solution remains the same also. The trust can provide relative privacy in a system that demands disclosures and the trust can avoid some of the burdens of estate taxation. This, of course, enables an individual to have more control over property even though he may not own it.

Before we examine the modern ownership or equity trust in detail, it should be distinguished from other modern

trusts that are prevalent. These other trusts are legally special trusts which exist for specific short terms with limited purposes and special duties and limitations placed upon the trustees.

1. Real estate trusts - Many states allow creation of land holding trusts for various purposes. The Illinois Passive Land Trust is one example. This trust is a special temporary trust created solely for the holding of title to land for a limited period. This trust has limited tax and control advantages.

2. Insurance Trusts - A trust may be made the beneficiary of a life insurance policy upon the death of the insured. The fund will then be administered for the benefit of the beneficiaries of the trust. These beneficiaries are usually the wife and children of the insured. Upon the death of the original trust beneficiary, usually the wife, the remaining trust funds are then distributed to designated parties, usually children. Tax savings are possible in the transfer from the husband to the wife, but the children must often bear the full brunt of taxation, when the remaining assets of the trust are transferred to them. Trustees of insurance trusts are almost always either banks or insurance companies.

These organizations are often under tight state regulatory control and may only invest funds in a certain way.

3. Bank Trusts - Bank trusts like insurance trusts are primarily created to preserve assets from shrinkage. They are usually involved with special pre-drafted wills which create a trust upon the death of the individual. The banks act as trustees. Substantial savings in estate taxes are possible through the proper use of the marital deduction and certain trust advantages.

One of the advantages of the bank trust is that the trustees are usually conservative and employ experienced persons to manage the trust funds. This same advantage, however, is also a disadvantage. Most of the funds held in trust by a bank are mixed together in one large fund for mass management; that is, your trust funds are not handled any differently from other trust funds held by the bank in most cases.. Due to the usual conservative management of most banks, your trust earnings will not be great. In fact, the management fee paid to the trustees will often take a sizable percentage of the annual earnings. In addition, the beneficiaries have little or no control over the management of the trust fund properties.

These factors are often great disadvantages in the

eyes of persons who wish to preserve their families' property, but do not wish to give up control. Most banks have found great value in these trusts and "advertise" their use continually. You may have heard some of these advertisements. They say "trusts can save significant amounts of state taxes" and "trusts can provide your family with security through sound financial management". In fact, a large bank in Chicago has stated "Trusts should not be created solely for tax purposes, but nevertheless, large amounts of taxes can be saved through their proper use".

All of these statements are true but we believe that the ownership or equity trust is far more efficient than the trusts the banks offer.

4. Escrow Agreements, etc.- Whenever you entrust a person with valuable property and place conditions on its future use, you create a trust. Escrow agreements are short term trusts. So are street account securities transactions with your broker. In each of these trust situations, the individual places definite limitations on the powers of the trustees and the individual retains the equitable and taxable interest in the property. These short term limited trusts are useful but they should not

be confused with the type of trusts we are about to discuss.

Trust Purposes - We will use the term "ownership or equity trust" in talking about the type of organization suggested by ABC. Although we will discuss the principles of management applicable to this organization alone, these principles and rules of thumb are applicable to many other business situations and to most other trusts; that is, even though you may never form or create an ownership or equity trust you may be able to apply this information to other activities and businesses with which you work.

The purpose of the modern ownership equity trust is to preserve control in property in an organization that is perpetual in nature and yet retains its flexibility. The modern ownership equity trust is not a vehicle which will save in income taxes. The trust itself is liable for income taxes (we will discuss this liability in some detail later), and must usually file tax reports each year. The trust, however, is not subject to probate nor is the property owned and used by the trust taxable in the estate of any individual however closely related to the trust. In order to gain these benefits an individ-

ual who creates such a trust must do so in the proper fashion, and like the foundation, must continue to operate it within the proper terms and principles that we will discuss in this seminar.

By now you should be familiar with the concept that ownership is not necessarily desirable, if control of property may be otherwise maintained; that is, even though you do not own any property which is actually owned by your foundation you do control it. Your control is limited by the purposes for which your foundation is formed, but it is control, nonetheless. In the same way, you will not own any property which is owned by a trust. Many individuals are reluctant to give up complete title or ownership of property to a trust without retaining some "strings". This is a normal reaction.

The citizens of this country have historically wanted to own property. Pioneers moved West in order to claim and work a piece of land that they could call their own. This tradition has been passed down through the years from generation to generation and is part of our inbred culture. Yet today, ownership does not necessarily mean control.

You may own large amounts of property and yet be taxed so heavily or restricted by government regulations so as

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to be out of control of the actual use and values of the property. If, on the other hand, you control the owner you may not personally bear the burdens of taxation and regulation and may enjoy some of the important benefits of the remaining values of the property. This idea of control, rather than ownership, is what we have stressed in the foundation and what we will continue to stress in the trust.

The trust is a self-perpetuating legal organization. It is completely independent and separate from you as an individual. You may, however, at the discretion of the trustees, acquire some control over the properties and activities of the trust. This is only a possibility and is not a mandatory limitation upon the trustees. If, however, you do acquire control of the trust properties it may be complete control. You will be able to use the trust properties in ways that are beneficial to the trust and to the trust beneficiaries and you will be able to develop the trust properties to increase their worth and utility.

In review, the trust purpose is quite simple. The trust will own and use property to increase and preserve values for the benefit of those individuals or organizations who hold the beneficial interest in that trust. The properties

and energies of the trust are not dedicated to all mankind nor are they dedicated to government action nor are they dedicated to public good. The trust is set up for the sole benefit of the trust itself and the holders of the beneficial interests in that trust.

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SECTION 11
BASIC TRUST OPERATIONS AND DEFINITIONS

Organization of the Trust - As with the foundation, your understanding of the devices and procedures used to create the trust is not as vital as your understanding of continuing management principles. Your attorney is the man to organize your trust. He will prepare your trust's initial documents, explain them to you and show you where to sign. Once these initial documents are signed and, if necessary, recorded, your trust is in existence. You should have some understanding, however, of some of the initial creating documents so that you will be able to pass this knowledge on and refer to these documents by name.

Trusts are created through simple step by step procedures. These steps must be in chronological order, however, or the organization is not legally complete. This order is quite simple to follow. First, an individual whom we will call the creator, contracts in writing with two or more other individuals, the trustees, to create a business organization to own property and conduct activities for the benefit of other individuals or organizations. These other individuals or organizations are not his beneficiaries in most cases. The written contract known as

the trust agreement sets out the powers and limitations of the trustees, clearly indicates the identity of the beneficiaries (the trust agreement usually describes the characteristics of the beneficiaries rather than identifying these parties by name), and designates the duration of the contract and other minor details of management. The initial life of a trust may be any duration consistent with state law. Most state laws allow trusts to be formed for a maximum of 15 to 30 years. When trustees of a trust take title to the property they often take title through deeds in trust which state that the individual trustees hold title for the trust. Where personal property alone is involved (any property except real estate) the trustees usually take title through acceptances of bills of sale which convey the title to the personal property into the trust itself. The deeds in trust and the bills of sale are called transfer documents or conveyance documents. Since trusts are not usually required to register under state law, and since the public should be aware of the creation of the new business organization, trusts often publish legal notices of their existence. These are usually published in daily newspapers and are called legal notices."

Once these original organizational documents and procedures are completed, the trust is empowered to begin operations. From that point on the trustees conduct all business for the trust and channel benefits to the beneficiaries.

This is the general picture of the organization of the trust. You should next have a detailed understanding of the various elements we have just reviewed.

(1) The Trust Agreement - The trust agreement is the initial contract and the most important document involved in trust procedures. The trust agreement is actually "the trust". The trust agreement generally sets out all the general rules and principles by which the trust is governed. The agreement, however, usually does not attempt to supply detailed management rules for every situation. The trust agreement is analogous to the Articles of Incorporation and the state statutes which govern your corporation foundation.

In the modern ownership or equity trust, the trustees are empowered with ultimate control over all the activities of the trust. They have been given the right to act with all the powers of any citizen of the United States. The trust is given an initial lifetime of between 20 and 30 years and is given the power to renew this life

at the discretion of the trustees. The powers of the trust to accomplish activities, buy and sell properties and make contracts is usually set up in the trust agreement. These powers are usually supplied by statutes in the case of the corporate foundation. Since few state statutes govern these trusts it is necessary to prepare more extensive wording in trust agreements. The trust agreement is a contract between the creator and the trustees. Since it is often awkward to prove that you contracted with yourself, an individual is usually not both a creator and an initial trustee of any trust organization. Depending upon local law, the trust agreement would be signed, dated, notarized and possibly recorded with a local government office. In most states, however, the trust is not required to file with a state officer.

2. The Trustees - The trustees of the trust may be compared to the board of directors of the corporate foundation. The trustees have the ultimate authority to conduct the foundation's activities. The trustees are also responsible for the efficiency of the organization. Unlike the board of directors of most corporate organizations, the trustees of a trust generally participate directly in the trust activities rather than delegate

the authority to accomplish activities to other officers. The trust, however, may have other officers, such as, a trust manager, secretary, treasurer or administrator. These other officers are elected by the trustees and are responsible to the trustees for their actions. The trustees generally sign all contracts, draft all checks and represent the foundation in all activities. The officers are generally assistants to the trustees to provide efficient management.

3. Transfer Documents - The transfer documents are highly valuable and should be respected just as you would respect bearer bonds or valuable insurance policies. Transfer documents are usually signed only by the "seller" unless a long term agreement is created. Transfers may be made through sales contracts, bills of sale, conditional sales agreements, installment sales agreements, lease sale agreements, contribution agreements, and any other forms of transfer that are prevalent in the law. Each of these methods of transfer involve different tax consequences and will be discussed later in some detail.

4. Minutes of the Meetings of the Board of Trustees. - These minutes are of greater importance than the minutes of your corporate foundation. Where the foundation's

board of directors may meet monthly or quarterly or semi-annually to ratify or authorize the activities of the corporate officers, the board of trustees of a trust might meet daily or weekly in order to accomplish the business activities of the trust. Where the minutes of the foundation are usually afterthoughts to authorize what has already been done, nothing should be done in the trust without the minutes of meetings of the board of trustees having been executed. Furthermore, the minutes of the trust should be numbered and set out in the proper chronological order. The trust minutes cannot show that you accepted property until your trust minutes show that such property was offered. Your trust cannot sell property until the trust minutes show that such property was for sale. Care must be taken not to accomplish any activity in the minutes of the trust in an improper order. More discussion about the minutes of the trust will be developed at a later time.

In review, the creation of your trust is accomplished through a contract which is signed by the creator and the trustees. The trust is funded through conveyances of property to the trust either by deed in trust, bill of sale, exchange, or combinations of these transfer

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methods. Your trust operates through the trustees; their activities are recorded in chronological order in minutes. Your trust is a legal citizen of the United States, recognized by the courts and operated as a separate legal entity.

The purpose of the trust is simply to protect the property involved, from the ravages of succession and death taxes which are assessed against property owned by individuals at their death.

* * * * *

SECTION 12
PROBATE AND ESTATE TAXES

Perhaps you are wondering whether this protection is really necessary. We believe that a few moments spent in discussing potential losses through death taxes is valuable time to understand the conditions and potential losses that you and your family may face upon death. First, we must consider federal estate taxes. These apply in every state of the Union and are assessed by the U.S. Government upon the death of an individual. If the value of a property owned by that individual exceeds \$60,000, then the estate is potentially liable for some federal estate taxes. Federal taxes begin at three percent of the first \$5,000 of the taxable assets of an estate and presently go as high as 77 percent on all property over \$10,000,000. The maximum federal estate tax on an estate of \$10,000,000 is \$6,886,200. Your estate may not exceed \$10,000,000, but most families in the middle income bracket have estates whose total assets easily exceed \$60,000 or \$100,000.

On an estate of \$1,000,000 federal taxes may total \$320,000 or more.

In addition to federal taxes, upon your death, your personal fortune will also be taxed by the state or

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states in which the property is located. In Illinois, for example, this tax is levied against all recipients or heirs of an individual's estate. This tax starts at two percent of all property over the exemption limits and may run as high as 30 percent.

The attorney general of Illinois estimated in 1966 that \$106,296 might be assessed against an estate of \$1,000,000 in Illinois. Some of the state taxes are deductible against federal taxes, but it is easy to see that 30 to 40 percent of a \$1,000,000 estate might go to taxes alone upon your death. The amount of tax liability may be reduced significantly through conventional estate planning practices, but in no case will conventional practice eliminate sizable amounts of taxation from substantial estates.

In addition to taxes other expenses will crop up. For example, upon your death all of your creditors must be paid off within a reasonable time. Income taxes are still due and owing on income earned during the last year of the decedent and on income earned by the estate. For major expenses and debts you probably have paid for credit life insurance; that is, in most cases, if you die, your mortgage will be paid through life insurance. However,

for most other debts, you will not have provided any automatic payments. All of these debts, regardless of the contracts, will generally accelerate and become due and owing against your estate upon your death. These debts often demand great amounts of cash. Many estates do not have this much cash available. Quick sales of property and securities might be necessary to pay off these accelerated debts. These sales are usually at less than the true value and are generally accompanied by high income taxes.

If your estate is probated and an administrator of your estate or executor of your will is chosen, then probate fees and/or probate taxes and fees for the executor and administrator must also be paid. These amounts are separate from federal and state inheritance taxes.

Finally, you must consider the costs of legal services. Your attorney is entitled to fees for the proper planning of your estate and the proper execution of that estate plan. Proper planning, using conventional techniques and procedures under ordinary circumstances can reduce tax liability significantly. In other words, a \$1,000,000 estate may eventually lose as little as \$100,000 to \$200,000 in taxes. This is still a sub-

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stantial amount, but is a great savings over the \$400,000 maximum loss. The attorney is entitled to a reasonable fee for his services which might also include management of the estate for the bereaved widow, who is too upset to sensibly handle all of the thousands of details necessary in settling an ordinary estate. The attorney is, of course, entitled to reasonable compensation, but sometimes minds differ as to the amount. Attorney's are on record as receiving as high as one-half of the estate. This is, of course, an extraordinary amount and in most cases is not even approached. But fees are generally significant and often run about 10 to 20 percent of the gross estate. Other problems connected with the death of a man with a valuable estate are primarily related to the time required to settle the estate. For example, on August 29, 1966 the Chicago Daily News published an article concerning a man who died in June, 1964. The man died with an estate of \$75,000 which by his will was to go to his five children in equal shares. As of August, 1966, more than two years after the man had died, the estate had not been settled; no money had been distributed to the heirs and expenses, taxes and fees had reduced the estate by \$12,000. The attorney's fee was a reasonable \$1600.

These are just some of the economic problems that families face upon the death of the breadwinner. There are other emotional problems which always accompany a death and these cannot be avoided in any situation. However, if there are methods available by which the economic losses can be minimized then certainly these methods should be used. There is no good reason to multiply the problems of a family situation upon the death of a family breadwinner, when these problems can be avoided.

You may have noticed that these problems concerning inheritances and succession taxes only occur when the estates are above certain values. If what you own is of relatively low value, then many of the economic problems simply can be avoided.

Distribute Exhibit #29

Ownership and Non-Ownership: At this time you should have enough understanding of the foundation and a good idea of what the trust is and what it might be used for. Before we discuss the principles of trust management and operation and the principles of cooperative activities

EXHIBIT 29

SPECIAL EXHIBIT

YOUR ESTATE IS PROBABLY LARGER THAN YOU THINK

"Estate planning" is not just for the wealthy. As the accompanying table shows, families of modest means can be hit with substantial tax.

More important, there is a general tendency for families in all brackets to underestimate the size of the estate and the amount of tax that will be due. For example, a great many husbands overlook the full value of goodwill in listing their business assets when making an "inventory" of their wealth.

The following summary will help you approximate your estate bracket.

Include not only property which you own separately but also jointly-owned property (joint-tenancy, tenancy by the entirety, joint bank accounts) to the extent that you furnished the purchase price or bank deposits. If you have substantial mortgages on your property, or other liabilities, deduct them from your total.

	Now	In 10 years	Now	In 10 years
Cash			Expected inheritances	.....
Bank Accounts			Business interests	.....
Checking			Corporation (closely held	.....
Savings			Partnership	.....
Savings bonds			Proprietorship	.....
Other bonds and notes			Other	.....
Stocks			Home furnishings	.....
Stock options			Personal possessions (auto, boat, jewelry, art objects, etc.)	.....
Mortgages			Other assets (including survivor annuities, employee benefits, payable after death, etc.)	.....
Residence (house and lot)			Total	.....
Summer home				
Other real estate				
Life insurance (including employee insurance)				
Trust Interests				

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between the trust and the foundation, a brief review of your personal estate and economic situation should answer several questions you may have. I don't think there is any doubt that legal avoidance of probate and estate and inheritance taxes is desirable. Your next questions, however, might be "What activities and property might I place in a trust or foundation?" "Which properties go where?" "What effect does this have on my family and my financial situation?" "What are the tax consequences?" "What control will I have over the eventual use of my property?"

These questions will be discussed in their proper order. I think we should start with your present situation and discuss what it might become.

As we said before, major economic losses in terms of estate taxes and inheritance taxes, lawyers' fees and other "shrinkage" of an estate at the death of the owner only occur if the value of the owned estate is high. The smaller the estate the smaller will be the actual losses both in amount and percentage. One possible way of avoiding major losses is obviously not to own very much property. This does not mean that you could not control it through various other legal means, but you must not own it or retain such control that it is the same as personal

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ownership.

- First, let's discuss the foundation. We are all familiar with the structures of colleges and universities. We discussed the benefits available to the president of a university. Does anybody in this seminar feel that the president of the University of Illinois or the University of California or any college or university actually owns that college or university? The answer is obviously "No". The trustees of these various institutions likewise do not own these institutions. In fact, no private person actually owns the college or university in most cases. It is clear, however, that the president, the trustees, and the other officers of the university do, in fact, totally control the activities, finances and philosophy of that school. They have complete access to the facilities and have great freedom provided that they keep the university on its chosen course of providing educational benefits to all mankind. Private schools are essentially operated along the same legal lines as any state university. Of course, private schools often select their own trustees through elections held by the alumni, where public school trustees are elected by the general public, but the control aspects are the same.

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Your foundation is analagous to the college or university. Just as the private college or state university is dedicated to doing good for mankind and is not owned by the board of trustees or officers, your foundation is also dedicated to the good of mankind and is not owned by the board of directors or the officers. If a legal "owner" could be found, it would be the foundation itself as defined by its purpose. You may ask "Can the foundation own itself"? Philosophically, the answer would have to be "yes". The foundation "owns" itself just as you "own" yourself. The foundation, however, is strictly limited to activities and operations for the benefit of all mankind in accordance with its purpose.

You as an individual, even though you may be a director of a foundation, or president of the foundation, or executive director of the foundation, do not own any of the foundation's properties. Your control may be total, but at no time could anyone claim that you own the foundation property. Since you do not own it, it is not included in your estate.

As you will recall, when we formed the trust, we gave total rights of control and ownership to the trustees. If you were to give your property to a trust, you would

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not own it. The trust would. The trustees are merely officers of the foundation. The trustees of the trust may, in fact, have title to properties owned by the trust but the trustees have the title for the use of the beneficiary or beneficiaries of the trust; that is, the trustees cannot use the property for their own purposes, but only for the purposes of the trust. Because of these legal limitations the trustees' type of "ownership" is certainly not the same as ordinary personal ownership.

You are probably using a pencil or pen to take notes on this seminar. You probably own that pencil or pen. You, as owner, are not restricted in what you write with that pen or pencil, nor must you only use it for specific purposes or at specific times of the day. Without anyone else's permission you might break the pen or pencil, burn it, melt it, use it to stir your coffee, or employ it in any other personal activity. Of course, you couldn't attack another person with it or spray ink on someone else, or toss the pen into the gears of a complex machine owned by another person, but as far as your personal use is concerned, that writing instrument is yours; you own it and there are no legal restrictions on its use. However, if that pencil or pen were owned by the

trust, technically you could only use it for trust purposes. It could only be used, for example, in writing trust minutes or in accomplishing trust business. If the foundation owned that pen or pencil, technically it could only be used to accomplish foundation business in the same way that a foundation-owned typewriter, laboratory or library might be used. Although this analogy is a simple one, I think it points out the differences between foundation or trust ownership which has a great deal of limitation, and the ordinary personal ownership with which we are more familiar.

The main point of all this discussion is simply that you as an individual do not own property owned by a trust or a foundation. Even though you might be a trustee or a director of these organizations, the property owned by these organizations would not be included in your estate provided these organizations were properly created and operated. The proper creation and operation is the key. Your attorneys or other counsel can certainly create the proper legal words and instruments to meet the definitions of trusts and foundations, but it is solely your responsibility to operate these organizations correctly. If you do operate these organizations correctly, you will have total control over the property owned by the trust

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or foundation, but you will never own it.

The conclusion is obvious. If you don't own it, you can't be personally taxed for it. At this time one might conclude that he should put all of his property into either the trust or foundation and own nothing. A few persons might, in fact, do this, but because the trust and the foundation cannot provide every detail and aspect of an individual's standard of living, that individual must own something to provide for these other details. For example, most of your food will be paid for by yourself. Although the foundation will of course reimburse you for your meal expenses while on foundation business and your trust may reimburse you for meal expenses while you are on trust business, you will not always be on either trust or foundation business. You will be paid a salary by either the foundation or the trust, or both, for services rendered, and you would use this salary just as you would use any salary for personal expenses, such as food. Personal entertainment, clothing, toiletries, and so-called frivolous expenses would also probably be provided out of your salary. Even though this income may be a comparatively small amount, it might still be quite substantial and might, over a period of years,

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create a taxable estate.

As an illustration, let us consider an individual with a family of three children and an estate of one-half million dollars. He might decide to place \$400,000 in trust and \$100,000 in the foundation. He might decide to earn a salary of only \$4,000 from the foundation and have \$16,000 from the trust. This is an annual income of only four percent of the total value of the estate. If the estate were all cash and were placed in a bank or savings and loan, the interest there alone would be more than four percent. Naturally, all the estate is not cash or liquid assets, but the activities of the foundation and the earning capacity of the liquid assets of the trust would certainly bring in a steady and substantial return - probably in excess of the \$20,000 the individual is earning as a salary. This family would have a very comfortable standard of living. Through fringe benefits and other procedures, this family might enjoy most of the elements of its standard of living through the trust or foundation. The \$20,000 annual income would provide the rest.

Obviously, after individual deductions (5) for the husband, wife and three children, the maximum federal

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income tax on a \$20,000 income is \$3,540.00. This would leave over \$16,000 of funds, for personal use by this family. Over a ten-year period, if tax rates were to remain at about the 1966 level, this family would have about \$160,000 for its personal use. Even if the family spent \$10,000 a year on food, clothing and personal entertainment, they would still have \$6,000 a year for other purposes. Over a ten-year period, that would be \$60,000.

By today's standards, \$60,000 is not a major fortune but it is a substantial amount. If placed in a savings account at 4-1/2 percent interest, after ten years, the total amount saved would be over \$70,000.* This would qualify as a taxable estate for both federal and state inheritance purposes. The point is simply that because of your salary from your trust or foundation, or both, you may accumulate a personal estate that is not owned by your trust or your foundation. Of course, you might give some of this money to your foundation or to your children or to other people and this would keep your accumulation low, but it is not necessary to do this. There

*Nine year interest, compounded annually at 4.5% would bring the total saved to \$73,741.71 - the tenth year of interest (eleventh year of saving) would total \$83,060.09 (or interest of \$17,060.09).

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are many alternate methods that are available for the employment of funds either through investment, special projects or hobbies. You might decide to start another foundation or you might decide to start another trust at the end of ten years. Regardless of what you might use this "second accumulation" of property for, you should be aware that you will own some other property in the future as part of your personal estate even though you might totally divest yourself of all your holdings today.

Some people might question whether \$10,000 is sufficient to provide food, clothing and entertainment for an average family of five persons. First, if our family were to spend \$60.00 per week on food, they would still only spend \$3,120 for the year. Our research has further shown that few families spend more than \$2500 a year on ordinary clothing. (Special furs, jewelry and most men's suits are useful over more than a single year and therefore must be depreciated over their useful time period. Jewelry is usually an investment where the costs are high. Costume jewelry has been included as part of the clothing expense). This leaves \$4,380.00 for personal entertainment, toiletries and other minor expenses. This is about \$350 per month or \$70 per person per month. By today's standards a whale of a lot of entertainment and toiletries can be purchased with this amount.

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Now that we have discussed what you don't own what you may come to own from your foundation salary, I think it is clear that we have opened up a number of choices for the placement of your property.

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SECTION 13POSSIBLE APPLICATIONS OF FOUNDATIONS AND TRUSTS TO
INDIVIDUAL ESTATES.

A brief glimpse into alternate uses of foundations and trusts to most efficiently create a productive estate will give us an overall view of some of the possibilities and freedom of choice that is now available to you. If we can suggest the various possible methods that might apply to a common situation and discuss the benefits and disadvantages of the use of each alternate solution, then this should give us greater understanding of the objectivity of efficient estate planning. Once we have discussed some of the overall plans then the management details of either the trust or the foundation will become more logical in relationship to your own goals.

Let us again create a fictional family with a common economic condition. Our family's name will be the Riches family and we will give Mr. Riches lovely wife and three lovely children. The eldest child is 18 and about to enter college. The next child is 15 and involved in high school. The youngest

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child is eight years old. The Riches own their home and are carrying a mortgage of about half the value of the house. The Riches are fairly substantial individuals and own two cars and three television sets. Mr. Riches is a sales manager for a large manufacturing company in his home town. Mr. Riches is 45 years old and has the following properties in his estate. In addition to the home and cars, Mr. Riches owns a small portfolio of securities and mutual funds, valued at about \$5,000. Mr. and Mrs. Riches have saved about \$3,000 which they plan to use for their eldest child's first year in college. Mr. and Mrs. Riches have believed in the values of insurance and he is insured for \$100,000 and Mrs. Riches is insured for \$50,000. The Riches have a reasonable amount of clothing and other incidental properties that enable them to live quite comfortably.

The Riches have had a desire to help society for many years, but due to the high tax rate and the necessity to first secure the welfare of their children, they have been unable to devote either substantial time or funds to philanthropic purposes. Now that their youngest child is becoming more self sustain-

ing in his individual activities and the two older children are able to manage their own affairs without total dependence upon their parents, and because Mr. Riches has recently enjoyed a raise in income they have decided to investigate foundations and trusts in an effort to channel their energies into broader fields of activity.

Mr. Riches joined ABC through local attorneys and created his foundation and trust. He now faces a decision. What properties that he owns should go in which organization? He has many alternate possibilities. For example, he could place his home in either the trust or the foundation. He could place his securities in either the trust or foundation or split them up and give a portion to each organization. He could put his and his wife's insurance policies into either the trust or foundation, or provide that either organization, or both, be beneficiaries. He could transfer title to his cars and other personal property to either organization or maintain ownership himself. His savings account could be distributed to either the trust or foundation and finally, Riches could have a

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substantial portion of his salary directed to the foundation from his employer, if the employer agrees. The path that Mr. Riches will choose for his family's estate will depend entirely upon what he intends to do with the funds and which alternate will provide the most efficient means to obtain that objectively. If Mr. Riches sole concern is for estate protection without preservation or protection from income tax and without intent to accomplish any significant philanthropic activity, then he would probably place most, if not all, of his wealth in a trust. If, on the other hand Mr. Riches and his family were totally dedicated to accomplishing significant philanthropic contributions to society, he would probably direct almost all of his energy and properties to the foundation. Few people have objectives in either of these extremes. Most people, in fact, pleasantly combine self-seeking motives and philanthropic motives.

It is natural and moral in today's society for men to seek security for themselves and their family. One must be certain of a comfortable material life for one's family and self, usually before one is willing to seek to help others. On the other hand, it is also a natural

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desire for most people to seek methods, procedures and projects which will contribute significantly to their fellowman, whether or not any personal gain is achieved. Many philosophers, historians and observers have been amazed by the willingness of people in this country to help their fellowman.

Combining the best aspects of the trust and the foundation and allocating properties between the two in realistic proportion to the individual's intent, is the primary guideline for estate planning.

Let us assume that Mr. and Mrs. Riches have a healthy combination of security interests and philanthropic desires. First, we would want to protect the Rich family in terms of their present standard of living and future comfort. Their home would certainly be placed in the trust. It would not contribute much to foundation growth or activity, and in fact would probably be a heavy expense to the foundation. Because expenses are connected with home ownership, we would have to put some income-producing property in the trust with the home. Let's split Mr. Rich's investment portfolio down the middle and place half of it in the trust and half in the foundation. Mr. Rich

further desires to provide some vehicle other than insurance which will protect his wife in the event of his death. He has requested of his employer, and his employer agreed, to pay \$5,000 a year to the Riches Foundation. The employer is entitled to take a charitable deduction. Mr. Riches is not charged with attributable income and the Riches Foundation is funded to accomplish its proper purposes.

Mr. Riches' insurance policy has been amended so that a part-beneficiary be the Riches Foundation and the remainder would go to his trust. One of the Riches' automobiles was purchased by the foundation. The other automobile remained in Mr. Riches' ownership and control.

Since the \$3,000 the Riches had saved was already tax-free money, that is, taxes had already been paid to produce the savings, it was decided that the funds would remain in the Riches' personal savings account. However, all earnings from the securities or insurance policies that the Riches had transferred to their foundation and trust, would remain in the organizations themselves and would not be paid to any one of the family.

Because Mr. Riches was still earning a substantial salary from his employer, he decided not to take any particular salary or compensation from either the trust or foundation which he controlled.

Let us review this common allocation of properties. Mr. Riches has protected his home and some substantial income-producing properties through the use of a trust. No income-tax savings would accrue to this portion of his estate, but because he neither owns the property nor has incidence of ownership, it would not be probated or taxed upon his death. His family could receive the benefits of this property long after his death.

On the other hand, he has provided for working income to the foundation that could be used to accomplish the various projects and activities that the foundation's board of directors determines from practically the time the foundation was created.

Let us assume that Mr. Riches is chairman of the board and president of the Riches foundation. Mrs. Riches is also involved as a director and officer of the Riches Foundation. The projects that they would develop as controlling parties of the Riches Foundation would be financed by the contributions from Mr.

Riches' employer; from the securities that were owned by the Riches Foundation; and in the event of Mr. Riches' death, from the insurance benefits. At the discretion of the board of directors of the Riches Foundation, the Riches' children would be elected to the board of directors upon reaching a certain age.

We have so far briefly reviewed two extreme possibilities of estate planning and a common middle-of-the-road possibility. There are many alternate plans falling on either side of this middle-of-the-road type of plan that could have been used. There are also other various plans that could accomplish the same thing as the middle-of-the-road plan. For example, all of the property could have been placed in a trust and half of the income from these properties could have been directed to the foundation, either through donation, contract or for services rendered. On the other hand, all of the income-producing properties could have been placed in the foundation and only the home and motor vehicles placed in the trust. The trust would have created income by leasing office space to the foundation and renting a car to the foundation. The foundation and would

pay reasonable rent to the trust thereby creating income to the trust. At the same time, the foundation would enjoy the remainder for philanthropic activity.

Economically, each of these alternates would provide about the same result. The use of these alternates, however, would be determined solely by the management desires of the individuals involved and their overall objectives.

I think it is clear by now that the methods and procedures that would be used in your own estate pattern would be determined solely by your own desires. We hope that these desires have become clearer through the discussion we have had on the foundation, and that your decision will be based on all the available information once you have been exposed to the trust management procedures. Once this basic seminar has been completed, you will be familiar with three fields of management - individual economic management you have learned through experience prior to this seminar; foundation management which has been discussed in basic principles in earlier sessions; and trust management which we are about to discuss. You can then determine your own desires and direct your property to those entities which will be most efficient in reaching your goals.

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Wills

Up to now, we have completely avoided discussion of the most common tool in estate planning. You have probably heard more about wills in school and since you graduated from formal education than any other legal device, with the possible exception of the contract. Almost every attorney insists that you need a will to properly plan your estate. Attorneys and economic advisors state that it is impossible to properly direct your properties without a will. This is true in part.

On the other hand, many of you are probably familiar with the book that was published recently entitled "How to Avoid Probate" by Mr. Norman Dacy. Mr. Dacy seriously indicted the probate system of three states and castigated estate planning by will in every state of the Union. His primary criticism was leveled against the potential fantastic delays before estate property was passed to the heirs and in the actual and potential scavenger actions of the attorneys and public officials who might have access to the estate funds prior to their distribution to the heirs. Mr. Dacy thoroughly stated that because all wills must be validated by some agency of the government (usually a state probate or surrogate court) that

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the will allows predators to ravage substantial estates and disenfranchise the rightful heirs.

Mr. Dacy suggested trust techniques to avoid probate. Mr. Dacy's comments, however, had no respect to the ravages of state inheritance or federal estate taxes. In fact, his methods could impose maximum liability on estates that use them even though probate might be avoided. Trust companies, banks, insurance companies and estate planning attorneys usually direct their procedures, which involve both wills and trusts, toward monetary savings of taxes and providing liquidity for settling an estate.

I believe that both of these factions are correct, but only half correct. In properly planning an estate, one has to look at all of the potential obstacles to getting the property in question to the intended parties. Very few individuals desire their attorneys or unrelated judges or state officials to share in the fruits of their labor. In addition, most individuals desire their heirs to have the full use and benefit of estate property as soon as physically possible. (It is true that in some families the husband has little or no confidence in the wife's ability to manage the estate and therefore provide

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outside management advice or control over large sums of money. Nevertheless, husbands still desire their wives to have the full benefit of these properties even though they have no confidence in the wife's management ability.)

Trusts do avoid probate. Under the law, property placed in trust by an individual prior to his death is not governed by probate courts unless the will so provides. Wills do direct property toward the persons expressly intended to receive them by the deceased owner. Starting the property towards these persons does not necessarily mean that it will get there. Neither does avoidance of probate insure that the properties will arrive in the hands of the intended parties. Without proper procedures, federal and state laws may intervene or mismanagement may cause an estate to be directed by government officials. All contingencies should therefore be considered.

ABC heartily endorses the use of trusts where they are properly created and managed to effect the preservation of an individual's estate. ABC also recommends that a will be used to provide for either unusual occurrences or incidental properties.

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We discussed earlier the possibility of an individual having substantial properties held outside of either trusts or foundations even though that individual might initially place all of his properties in trusts or foundations. A simple will would provide for such "excess" property holdings. ABC recommended procedures will certainly minimize the amount of property that would be controlled by a will and would thus have to go through probate, but in large estates or in rapidly growing economic conditions, the initial instruments that are recommended by ABC would not provide for all circumstances. Clothing and other incidental properties are seldom transferred to either trusts or foundations, although in most families, clothing has very little value in comparison to the overall value of the estate. Nevertheless, it does have some value and should be considered in estate planning. Therefore, all those other incidentals, knickknacks, sentimental items, etc., that may in fact have more considerable value, would not be placed in trusts or foundations.

Man has also been found to be an acquisitive animal; that is, a being that desires to acquire material objects and possess and control them. If you are among

the majority, you also have this desire and will continue to acquire properties of various natures. Many of these, in fact, most of these properties, you might acquire through your trust or foundation. On the other hand, you might acquire some highly valuable properties as an individual. If a distant cousin or your aunt or your grandmother, or even your father and mother, or sisters and brothers, should die, they might leave part of their property, if not all of it, to you. They would not leave it to your trust or foundation, but to you as an individual. Some people, in fact, shortly after divesting themselves of all their properties to trusts or foundations, suddenly find themselves holding considerable sums of money that were left to them from unexpected sources.

Trust procedures and foundation procedures usually take a considerable amount of time to complete, at least initially. Thus, an individual receiving or purchasing or acquiring a large amount of property as an individual, may actually hold that property for sometime before transferring it to a trust or foundation, even though he pursues such transfer at the fastest possible pace. Considering the worst possible event that could occur,

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if that individual died without a will while holding considerable amounts of property as an individual, then the state laws and the probate courts would control those properties 100 percent, and without a will, there would not even be evidence of what the owner's intentions were toward that property. It is conceivable that individual might have desired to transfer the property to his foundation, but without a will, the probate court will seldom, if ever, accept outside evidence of that intent.

In other words, a will is the best possible way to provide the evidence of your intentions as to who should share in your property upon your death. ABC recommends a will even though your estate may be valued at only a few thousand dollars. In the event of unexpected or unusual occurrences, there would at least be some provision and some evidence of what action should be taken, apart from state and federal law. If you fully concur, however, in the whims and directions of a state or federal officer, then of course, you would not need a will. Few people, however, are so inclined.

If you are employing part or all of the ABC recommended procedures and instruments in regard to your

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affairs, you should, upon completion of those procedures, review your estate plan and will, and redraft the will to meet your present and probable future needs. If you have had a complex will structure prior to your employing trust and foundation techniques, you may find that your will has absolutely no relation to the new status of your affairs.

Your new will might be quite simple. It might, for example, leave all of your property to your wife or your children or your foundation without any particular specific provisions or complex structures involved. On the other hand, it might provide for traditional marital deduction trusts or educational trusts, or a series of owners of your property. Your will, however, will only apply to the property that is held in your name or that you control. It will not apply to property owned and used by a properly created trust or foundation.

You would probably provide for insurance benefits from policies you own as an individual to go into an "insurance trust" to avoid probate. Since insurance benefits do not have to go through probate, there is no reason to send them through. Again, your attorney and insurance man and any other economic advisors that

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you may presently employ should review your estate to adjust its need for liquid assets.

Trusts and foundations certainly minimize the need for a will, but two things must be stressed. First, your present will structure should not be changed or thrown out until you have completed all the necessary procedures which make that will inapplicable, unrealistic or unnecessary. Your estate should be protected at all times. Your intention should be clear at all times, otherwise you will subject your heirs to the whims of government officials and the ravages of maximum taxation.

Second, the trust and foundation procedures do not minimize or override the values of a will as an estate planning device nor do the trust and foundation procedures eliminate the necessity for a will in an intelligently planned estate. Trusts and foundations do, however, significantly minimize the amount of property that is controlled by a will.

If your present estate and potential future estate (that is, property you hold as an individual) is extremely small after you have completed trust and foundation procedures, then you might fall under some of the

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state laws which govern a "small estate". In many states, if the deceased person's estate is less than \$5,000 or \$6,000, probate and tax procedures are usually completed within a matter of days or weeks. In these cases, quite often wills might be superfluous or involve disadvantages and procedures. Nevertheless, the will should be considered and perhaps even drafted. In these cases, it is suggested that small estates might be given entirely to foundations to avoid any federal or state inheritance taxes. Remember that in most states no inheritance taxes are owed if the estate is worth less than \$20,000. No federal taxes are ever due if the estate is valued at less than \$60,000. The only other concern of your administrator or your executor would then be with payment of income taxes during the last year of your life. Under the present tax system, it seems that these income taxes are more certain than death.

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SECTION 14TRUST BUSINESS ACTIVITIESOperation of the Trust

The trust is like a business organization. It may not sell anything to the general public nor will it generally manufacture anything or provide a service, but it is a business entity in that it requires sound business management. The success of any organization is directly traceable to the experience, intelligence and ability of the persons who manage it. If we treat both the trust and the foundation as business organizations in this light, then our primary concern would be toward finding, learning and using the proper management techniques in conducting the operations of the trust and foundation.

We have discussed some of the basic principles of foundation management. In future meetings or seminars or discussions with attorneys, accountants or business advisors, you might go into greater depth on some of these basic principles, and perhaps learn some ideas and secrets of more detailed management operations. This system will be continued in our discussion of trust methods. We will review basic trust management principles and give some examples and details of how these are applied. It is hoped that they will generally apply to most of the con-

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ditions that exist in this country, but if our details do not directly apply to your situation, it is hoped that you will apply the principles directly to your individual affairs.

Trust Clerical Work

The most important evidence of proper operation that any organization maintains is the paper work related to its organizational structure and accounting. In the foundation, the articles of incorporation, bylaws, and the minutes of the board of directors' meetings were the basis for the operations of the foundation. These papers reflected the powers and limitations placed upon the board of directors and also reflected the decisions and operation of the board of directors. Next in importance were the papers that related to the properties and contractual interests that involved the foundation. For example, the deeds to land, the certificates of securities that the foundation owns, the leases in which the foundation was involved, and the employment contracts between the foundation and its employees. In addition to these papers, the foundation has maintained receipts and accounting books and systems that would reflect its economic position at any time during its operation. These are the same papers essentially that would be kept by any business

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organization. Correspondence, reports, memoranda, brochures, etc., are merely evidence of the details of what is reflected in these first three categories of paper work. The paper work involved in trust management is exactly the same.

In the case of the trust, however, the first category of papers includes the trust agreement and the minutes of the meetings of the board of trustees. The minutes of the board of trustees are the bylaws of the trust - the rules governing the operation of the trust, as long as they conform to the trust agreement, will operate as the bylaws of the trust. They may be amended or changed at the discretion of the trustees. The trustees have the sole power and authorization to conduct the trust business. They may delegate this power and authority but no one may supersede them. Trusts do not have shareholders which vote on any matter and most trusts do not even allow beneficiaries to have a right in management.

Thus, the trustees form the supreme authority for the management of all trust business.

The trust minutes are therefore of great importance. Once the trust agreement has been signed, this agreement is generally inflexible and may not be revised or changed in any way. Only the trust minutes are flexible.

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The trust minutes are written in similar style to foundation resolutions. Although trust minutes do not have to start off with the word "Resolved" as most corporate foundation minutes do, they must accurately and concisely reflect the business of the trust either through ratifying business already completed or authorizing business to be completed. Trust minutes may be very broad in nature or be quite specific. Examples of a broad minute would be:

1. The Main Street Trust hereby authorizes the trustees to own such bank accounts as may be necessary to accomplish trust business, or
2. The Main Street Trust hereby authorizes the trust manager to establish securities accounts for investment purposes with such brokers or dealers as may be necessary, and to do all things necessary to conduct a prudent and profitable investment program.

On the other hand, a trust minute may be quite specific.

For example:

1. The Main Street Trust hereby authorizes John Smith, Trustee, to open a checking account with the First National Bank of Chicago, Illinois, to provide for funds to repair and maintain the trust-owned real estate located at 100 North La Salle Street in Chicago, Illinois. Such trust account would not exceed at any time the amount of \$10,000 nor would such trust account fall below a balance of \$100. If at any time this account requires funds to maintain its proper balance, the trust manager is authorized to request such amount from the board of trustees, or
2. The Main Street Trust hereby authorizes John Smith, Trust Manager, to open an account with A. G. Becker Inc., a Chicago securities dealer, to maintain a

securities account which would consist of "blue chip" securities with an initial valuation of \$10,000. The trust manager is hereby authorized to do all things necessary to maintain said minimum valuation or such other minimum valuations as may later be set concerning this securities account.

As you can see, the first two general minutes accomplish essentially the same thing as the more specific minutes that follow. The differences are that the details of operation are clearly set out by the trustees in the second minutes where general carte blanche authorization is given to the trustees in the first two minutes. It is recommended that general minutes be used more often than specific minutes. General minutes provide greater flexibility and enable the authorized parties to react to unusual circumstances that may occur.

DISTRIBUTE EXHIBIT #30

The property interest documents a trust would keep are exactly the same as any other business organization; that is, deeds, stock certificates, insurance policies, leases, employment contracts, etc., should be kept in

EXHIBIT 30

TRUST MINUTES

The minutes of the meetings of the board of trustees of any trust are among the most important documents drafted for that trust. Initially, the minutes of the meetings of the board of trustees constitute both the bylaws and the resolutions of the trust.

Unlike corporate minutes the resolutions passed by your board of trustees have full force and authority of contracts and of bylaw-type guidelines. In other words, the minutes of your board of trustees will not only ratify and authorize specific acts but also create guidelines for all future actions unless overcome by a subsequent resolution or minute.

Mechanically, trust minutes look different from corporate minutes. Trust minutes are numbered and the numbers in each meeting begin where the prior meeting ended. For example, if 14 minutes are passed at the first meeting of the board of trustees, then the first minute of the second meeting of the board of trustees will be numbered 15.

Trustees should consider and vote on all minutes. If any trustee dissents from the majority he should sign the individual minute and write "Dissenting" after his name; otherwise it will be assumed that the trustee does not object to any particular minute.

Trust minutes, like the minutes of the board of trustees of your corporate foundation, need not be written by an attorney but may be drafted by the secretary of the organization and still be proper, provided the minutes are clear and concise.

Some Examples of Trust Minutes

It is recommended that you refer to the corporate minute Exhibit No. 4. Trust minutes and corporate minutes often use the same language. Trust minutes, however, do not require that a vote be counted on each minute nor that the word "Resolved" be used prior to recordation.

The following are some examples of trust authorization minutes:

1. The trustees of the Light Bulb Trust hereby authorize A. J. Light Bulb, trustee, to make the purchase of 100 acres of real estate in Westchester County in the name of the trust. The trustee so designated has full authority to do all things necessary to complete this transaction.

2. The trustees of the Light Bulb Trust hereby elect Jane Light Bulb as the fourth trustee. She is hereby authorized to conduct all necessary acts required of trustees subject only to the limitations set forth in prior minutes and in the trust agreement.

3. The trustees of the Light Bulb Trust hereby authorize A. J. Light Bulb and Jane Light Bulb, trustees, to open a checking account at the Light Bulb National Bank in the name of the trust and to conduct all trust business through this account. The designated trustees are hereby empowered to do all things necessary to accomplish said acts.

4. The trustees hereby elect A. J. Light Bulb as managing trustee and appoint him with all powers to preserve and protect trust property for the coming year. Mr. Light Bulb, the designated managing trustee, will be compensated for all expenses incurred in said management duties and will be authorized to do all things necessary to carry out his duties.

From the above examples it is clear that the trustees can authorize much more sweeping and significant acts for the trust in one minute of few words than a corporation can through its board of directors. The trustees are not subject to many state laws. Of course, the board of trustees must conform to state criminal laws; that is, they cannot accomplish anything that is illegal, but except for the trust agreement there is nothing that prevents a board of trustees from authorizing any legal or proper act.

Most trust minutes should be authorization minutes rather than ratification minutes; that is, contemplation of most transactions should be accomplished prior to the act rather than reflection after it.

Some transactions, however, are accomplished by trustees without actual authorization. In these cases, ratification by the board of trustees is important and should be accomplished as soon as possible. Some examples of ratification minutes are as follows:

1. The board of trustees of the Light Bulb Trust hereby ratify the actions of A. J. Light Bulb, trustee, in purchasing the Empire State Building two weeks prior to this meeting. The actions of Mr. Light Bulb, trustee, are expressly ratified and approved and the trust assumes all liabilities and responsibilities for these acts.

2. The board of trustees of the Light Bulb Trust hereby approve and ratify the filing of income tax return Form 1041 for the fiscal year 1966 by Arthur Andersen & Associates, Certified Public Accountants.

(The above resolution is only an example of the ratification and would probably not be necessary for the particular act used as an illustration.)

3. The board of trustees of the Light Bulb Trust hereby ratify and approve all the acts of A. J. Light Bulb, trust manager, accomplished during the past fiscal year. The board of trustees expressly assumes all liabilities and responsibilities connected with these transactions.

As you can see, the language in each of these ratification minutes is about the same. The board of trustees merely says everything that was done in the past was correct, proper and approved. When this happens, the trust assumes all the liabilities and responsibilities for acts that were accomplished by trustees in the name of the trust without prior authorization from the trust.

Your trust minutes should be preserved in as safe a spot as possible and perhaps duplicates kept elsewhere. If duplicates are kept, however, one should make clear which is the official copy and which is the duplicate. Notarized copies of some of your trust minutes might be used in certain cases to accomplish the opening of stockbroker accounts, bank accounts, and to ratify or approve contracts for sale or other similar instruments.

Always keep your trust minutes near, up-to-date, and properly signed. The validity of your trust depends upon such record keeping. Do not, under any circumstances, place a minute in the trust that would seem to say something other than what you want to do. If this happens, unnecessary taxes or invalidation of contracts might result.

If you can clearly state whatever you want your trust to do or approve what your trust already has done there is probably no reason for you to consult an attorney in drafting proper trust minutes. The following rules should be kept in mind.

1. The trust minutes should be clear and concise.
2. Trust minutes should be numbered in consecutive order regardless of the meeting.
3. Trust minutes should generally authorize acts rather than ratify them.
4. Where ratification is necessary it should be accomplished as soon after the act as possible.
5. In creating general rules governing the trust behavior flexibility should be considered.
6. In creating lines of succession for trust managers or trusteeships one should not go beyond 21 years in the future.
7. Trust minutes should be kept in a safe place.

* * * * *

a safe place in proper order and in proper files. No time will be spent discussing what these proper methods involve, since all of you have had experience in keeping important papers in proper places. We can only suggest that if you have been remiss in providing proper storage space for such papers in the past that you attempt to cultivate a better habit.

Experts have told us that there are well over 150 possible filing systems that are available in standardized forms to properly organize correspondence, reports, receipts, billings, etc. Since the trust is not tax-exempt or limited by any special rules in the scope of its activity, probably any one of these standard systems, or even one that you might personally devise, would do quite well to provide some organization to your trust's detailed paper work. Again, we must emphasize the necessity for proper organization in conducting the affairs of any business organization. Neatness does count, not only in efficiency and economy, but also in terms of providing proper evidence if and when it is necessary to present it.

Distribute EXHIBIT #31

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EXHIBIT 31

BASIC FILING SYSTEMS

Trusts and foundations have five major areas of filing for which to provide:

1. Billings and other accounting functions.
2. Correspondence.
3. Scientific research reports.
4. Scholarship examinations.
5. Research reports based on scholarship.

Billings and accounting records are filed according to the accounting procedures you are using. The various systems of filing are described later and can be adapted to your accounting system.

For your scholarships, you will want to maintain a record of all applications received and rejected as well as those awarded. The rejected applications may be important in many ways, and should be kept for several years and not discarded too soon without legal advice. Why an applicant is rejected should be carefully noted, avoiding reference to racial, ethnic or religious aspects. The reasons for this should be obvious.

The scholarships awarded become rather dormant until a particular time at which they should be followed up. For instance, insure that grade standards are being maintained or regular reports submitted. A follow-up system using index cards can be maintained chronologically so that when the date in question arrives, you will see immediately what action you should take. The follow-up for research reports can also be provided for in this way. A suggested type of index card is a part of the discourse.

In conjunction with your trusts and foundations, a great deal of literature, scientific reports, reprints, brochures, and assorted documents will be received which must be maintained for many purposes. Included in this will be the research reports based on the scholarships awarded.

To keep this material filed by subject matter is possible, but somewhat cumbersome at times. It might be more advisable and much more flexible to make a subject index card for each matter as it is received. The documents will be numbered and filed in numerical order. The index cards will keep the related subjects together for finding purposes even though the documents themselves are widely separated.

The index card may contain a simple heading for the subject matter involved, but in many cases it may have to contain a summary of the document. This may prove a little difficult and in some

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cases almost impossible unless the person creating the document also furnishes the summary for reference purposes. This is especially true in scientific matters.

NEW CLIENT RECORD

Client Name		Transfer File No.
Client Address	Phone	<u>Location</u>
File Title		Date
		File
		Closed
		Date
		Client
Cross Ref.		Papers
		Returned
		Date
Service to Be Performed		File
		Reopened
		Date
Partner in Charge	Initial Work To	Ret'd to Transfer
Billing Attorney	Fee Memo Filed In Fee File?	
Source of Business		
Date Issued	Issued By	

A good example of a multipurpose index card is exhibited here. It can be adapted to a great many uses in the filing operations of trusts and foundations. While it was used for a large legal firm and is presented in its original form as they used it, you can see the variety of information contained therein which is very much the same as used in your work.

It was printed in sets of four, each copy being of a different color. The original became the main index copy and the others were used for secondary index locations or for cross-reference purposes. For instance, a scholarship could be awarded to a person and the other copies used for follow-up on progress, or grade maintenance. Another copy could show the nature of his research and the titles or subject matter or any reports submitted.

The form itself could be used for a multitude of purposes including a capsule file of the rejected applicants. Cards like this are useful in compiling reports that might someday be called for as to your activity and its results if they are properly maintained.

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Incidentally, there is no law against using the back of an index card if more space is needed.

In the event of the formation of a complex or even a very simple foundation, it is often good to give it a master file number which will be its permanent identity number for filing and accounting purposes. A decimal number should be used with that basic number to identify additional developments within or under that main foundation. The number 254 could be given to a particular foundation. Everything under that main heading could be 254.1, 254.2, etc. This helps tremendously in the accounting process, as well as enabling everything to be filed and referred to by number.

The criteria for any filing system is "can you find something when you want it." This sounds so simple, but keep it in mind whenever you consider the type of filing system you should have.

There are a great many concepts to take into account. Some of them are:

What are the expansion possibilities or problems if your operation becomes a great deal larger or more complex than it is now?

If a paper is worth filing at all, it is worth filing properly. Otherwise throw it away.

Is the system designed for a real pro at filing or is it something that a girl fresh out of school can cope with?

Is the system dependent on someone's memory, possibly your own? If it is, it is probably not a good system.

Are you indulging in short range expediences at the risk of long-range efficiency?

Is the system and the way you maintain it a reflection of your overall business efficiency and attention to detail? Or is it a hodgepodge in which you can find something eventually if you look long enough and hard enough?

Volumes could be written about the eventual problems that have developed because this rather mundane and low priority subject was glossed over lightly in the development of your business. Some of these problems have proven disastrous for firms of all sizes. Most of these situations can be traced to lack of intelligent planning or plain sloppy filing. Let us consider the basic filing systems: alphabetical, geographical, numerical and decimal. Systems such as terminal digit or Dewey decimal systems are only for certain types

of large complex trusts or foundations that can afford trained records supervisors. If your operation is as complex as an insurance firm or an engineering organization, then professional file help should be consulted. This is not always expensive. Filing equipment vendors, commercial school teachers, and public librarians can give considerable guidance. We will concern ourselves with systems other than these two.

Alphabetical filing is almost self-explanatory. It consists of merely heading up the file folders and arranging them in alphabetical order. This is extremely simple, up to a point. It requires no separate index card setup and can be changed to a more sophisticated system rather easily at a later date. However, extensive cross filing and/or making of additional copies for various related files may be required.

The point at which it becomes more complicated occurs when the files become somewhat voluminous. Several manuals have been written on how to file alphabetically. A good reputable booklet on this subject should be purchased and made the basis of your system so that succeeding clerks won't inject their own ideas into this fairly simple system. This is especially true when you are dealing primarily with names of persons or business firms as opposed to academic subjects.

Numerical filing systems are used a great deal in legal firms, trusts and foundations and others. Such a system requires an alphabetical index card system which will refer you to a properly numbered file. The files are maintained in numerical order so that the final search for a file is relatively simple. One theory being that it is easier to rearrange index cards than it is to rearrange the files.

This system can be expanded indefinitely and makes for accurate and rapid filing.

Geographical filing is used primarily for trusts and foundations having extensive operations or widespread activity on a continuing basis throughout a large geographical area.

Each geographical location can and usually does have alphabetical or numerical sub-files. In your initial search you find the area in which you are interested and then the subject matter within that area. This system should also be used with a good index card system and possibly a rather extensive cross-index system.

In many trusts and foundations the various systems are usually combined when they have a sophisticated file system. There is a time and place for all of them. However, keep the system simple and accurate until experience dictates the appropriate route for you to follow.

Name files are used in obvious situations. In the early stages, dividers listing the letters of the alphabet are sufficient, but as the volume increases, such as in the case of student records, the basic letters can be further broken down to expedite filing and searching.

Every segment of a file will probably require a miscellaneous folder for one or two page items under that category. However, don't wait too long before making a separate folder for any item that begins to accumulate papers. Usually when a subject filed under miscellaneous gets up to about five or more items, it should get its own folder.

Correspondence files for the same person or firm that have no readily discernible breaking point should be broken down into time segments.

In most file folders the material is arranged in chronological order. In the miscellaneous file the material is arranged in alphabetical order according to subject. A main file may have several sub-files or inserts when the work can be broken down into specific functions which are related but not a part of other sections.

Color coding of files can be very useful to expedite filing and information retrieval. Sometimes the file tab can be color coded or the entire folder can be of a specific color to attract attention or to identify the material. For instance, in one foundation all the correspondence files of the clients had a blue tab. In another case, a red tab cautioned the searcher or file clerk to be aware of the fact that this material was also cross filed elsewhere or merely that this file had something special about it. If red and black typewriter ribbons are used, the main heading of a folder can be typed in black and the subheading in red.

A card index for subject files is highly desirable to prevent filing material under a new heading when you already have a folder for the subject and to enable other workers to locate material in the file.

Make an index card for each subject heading and subheading. Show for each subheading the main heading under which it is classified. When a subject is not self-explanatory, describe on the card the material covered by it. Also, make cross-reference cards for subjects on which there is insufficient material to justify a separate folder and for subjects under which material might logically have been classified, but for which you chose some other heading. A small firm with unknown growth potential may find it very worthwhile to start a card index very early in its existence.

Name and subject files can or must oftentimes be combined to make the information more functional, but this is an easy variation of the basic systems. Keep in mind the basic criteria of a file system.

Physical Aspects of Files

When typing index tabs and labels, use the briefest possible designations. Abbreviate whenever possible, omitting punctuation marks whenever possible. Index tabs should be legible only at normal reading distance. Guide labels should be legible at two or three feet. File drawer labels should be legible at six to ten feet.

All of the labels and tabs should be uniform and present an air of efficiency. There is a temptation to put things together rather hurriedly in the early stages of a business. Some files will have neatly typed labels, while some created in a hurry will be penciled or written in ink. Some files will not be labeled because "anyone can see at a glance what they are." Soon a rather ragged looking file drawer begins to show results. Misfiles and lost files become a little too routine and disharmony is created needlessly.

Do not always buy the least expensive equipment or file folders. Lightweight file folders have a tendency to curl under and slide under other files, becoming lost for all practical purposes. File guides come loose and are lost, or snag fingers and documents if they are metal rimmed. Not an important point, but just the source of more disharmony.

It is highly recommended that a good filing equipment vendor be selected and consulted. He can advise you a great deal on proper filing systems and equipment. Almost any experienced vendor is required to become knowledgeable about filing systems in order to attract your goodwill. It is a little trite to remind you that his time is also valuable. There is something a little dishonest about milking a vendor of his information and then buying from your "in-law" to save a few dollars.

Working with the same supplier can assure you of standard filing equipment over the years rather than the weird assortments you see in some offices that indicate that the cheapest available equipment was purchased each year with no regard to continuity.

One of the poorest investments you can make is to buy cheap file cabinets. They are fine sitting in a showroom, but once they are weighted with records, things start to happen. If your firm grows with resultant moves to larger quarters, the file cabinets deteriorate quickly. The appearance they present in your office is very important. Once again, it is good to deal with one supplier to maintain a uniform appearance throughout your offices, especially in regard to color and file cabinet height. Not all four-drawer file cabinets are the same height.

Serious thought and consultation with vendors should occur to consider the feasibility of five-drawer file cabinets or open-shelf

filing. Open-shelf filing is very desirable because of the ease of handling large bulky files and the minimum amount of floor space required. Despite the term "open-shelf" they do come with doors that can be locked for security if necessary.

Whether you use file cabinets or open-shelves, the filing system can remain the same. With some open-shelf filing, the tabs are placed on the end of the file folder, but not always if proper file guides are adapted to your use.

The matter of fire protection as well as protection from other hazards may indicate the need for fire resistant, locked file cabinets. These are relatively expensive and very heavy. Their weight may be a factor considering the floor-load capacity of your building. The expense is relative to the risk. What would happen if your building was destroyed by fire? Possibly there is a need to keep duplicate copies of vital files at an alternate location. This is relatively inexpensive and a good alternative to fireproof file equipment.

This discourse has been kept as simple as possible for a reason. Filing is simple, keep it that way. If your system gets too complicated, there is good cause to suspect you are doing something wrong. This subject is the opening move into the field of Records Management which is a rather lengthy topic in itself.

Records Management is a matter with which you should become familiar as soon as possible. It has to do with the creation of paper within the firm as well as its receipt into the firm, its flow during its active life, and its eventual disposition.

Microfilming has a great deal of application in modern business but for a great many reasons should be approached with caution and made the subject of a great deal of study. It has certain hazards as well, being rather expensive. It is not the panacea that some would have you believe.

Retention Schedules should be developed as soon as possible to prevent the unnecessary accumulation of files beyond their useful life. At the same time, these schedules should insure that nothing is destroyed prematurely. The modern tax structure and the great many government suits involving price fixing, anti-trust actions, etc., ad inf ad nauseum, make this a rather delicate subject. In fact, in some cases, you are better off if you destroy some records a little prematurely. Any retention schedule has an element of a "calculated" risk involved. In the area of Records Management, expert help should be obtained.

If any specific advice is desired on any related subject, please feel free to contact the author for such guidance as might be possible.

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Although it would probably not be necessary for you to run out and purchase a brand-new bank of filing cabinets or invest a great amount of money in fireproof safes or other such equipment, it would be wise to devote a specific place and drawer that would be safe, either in your business office or home for the proper filing of initial records concerning your trust and foundation. It is also highly recommended that each organization's records be kept in a separate drawer or separate place, or otherwise separated, so that records cannot be intermingled. Whether you are involved in a trust or foundation, or both, or connected with a business corporation, partnership, joint venture or other similar organization, it is imperative that you keep all records separate.

Your trust is not yourself. Your foundation is not yourself, and neither are any of the other business organizations in which you deal. They should be respected as independent organizations. We have emphasized this before and can only emphasize it again, that clear, neat and organized records showing your clear relations apart from those of the organizations' themselves must be kept. If you as an individual write a letter to

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the board of directors of your foundation, it might physically involve only passing a letter from your left hand to your right hand. However, you should keep a copy of the letter in your records and file the letter you want the foundation to recognize in the foundation's file, just as if the foundation were located thousands of miles from your home. This may seem like extra work that is unnecessary, but it is only good business practice. If you treat your foundation, your trust and any other organization with which you are connected as you would treat your plumber or General Motors or the New York Stock Exchange or some other related, independent person, then you should have no trouble in maintaining clear, concise, and proper records of the operations of your organizations. By instilling this habit in yourself with correspondence and other paper records, you should have no trouble in handling the more important income and funds of these independent organizations. Later on we will discuss which organizations should, in fact, pay for certain expenses and the primary guidelines which will govern these payments, but for now, we can only suggest that it is highly improper for the foundation to pay trust

expenses or vice versa. This is obvious, but we wish to make it quite clear.

Property Management - Real Estate

The trust deals with real estate exactly as an individual deals with real estate. A trust may own or lease real estate and a trust may manage real estate for business purposes. A trust may be a landlord or a tenant, and a trust may use for its own purposes, property that it owns. A trust may pay all the taxes that an individual must pay concerning the ownership or management of real estate. A trust, furthermore, should have owner's insurance or renter's insurance for property it owns or leases. A Trust would have to complete all the documents and pay necessary taxes on any properties it buys or sells. It accomplishes all of these transactions however, in the name of the trust, and not in the name of any individual.

The trustees of the trust sign all the important documents as trustees. Trusts generally do not have seals or special signatures and all transactions are accomplished through the handwritten signatures of the trustees. In most states and under most laws of all

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nations, trusts enjoy no special benefits different from individuals. There may be some exceptions to this rule of thumb, but these are usually local in nature and would have to be investigated by local experts or attorneys.

DISTRIBUTE EXHIBIT #32

Property Management - Personal Property

Trusts may own all kinds of personal property in the same way as individuals. Trusts should obtain bills of sale when they purchase, exchange or trade for any significant amount of property, and trusts should obtain receipts for any large payments. Trusts may also give receipts and bills of sale to others when they are involved in similar transactions. Again, the procedures and records that would have to be accomplished or maintained are exactly the same as those that are required of individuals.

DISTRIBUTE EXHIBIT #33

EXHIBIT 32

TRUST OWNERSHIP OF REAL ESTATE

by Walter J. Janus
Janus Realty Institute

I. BENEFITS

A. Privacy Provided

Since your trust is not required to disclose confidential trust affairs to the public, the purchase or sale of real estate can be carried on in privacy. A trust provides an anonymity which is possible in no other way. As the trust owns the property, the grantor is shielded from possible harassment from opportunists, developers, schemers, and even from friends and relatives.

B. Personal Liability Eliminated

As with corporation-owned real estate, trust ownership provides relief from personal liability.

C. Assured Distribution

The trust gives the grantor creating it assurance that upon his demise, his property will be dealt with precisely as he wishes. Thus, the property is protected against falling into the wrong hands, and you have greater assurance that your intended provisions will be faithfully carried out, particularly in providing support for your primary beneficiary who receives income for life, and security for those who receive principal and income later.

D. Financing and Development

Acquisition of real estate by a trust provides a modus operandi for financing and orderly improvement and development.

E. Improved Management

Trust ownership enables trustees either to manage properties themselves or to employ professional management, whichever is deemed most feasible by trustees.

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Regardless of method of management selected, procedures for development, conservation and enhancement can be outlined and authority granted by the action of the trustees and recorded in trust minutes.

F. Perpetuity

Trust ownership of real estate unlike individual ownership or partnership ownership is not subject to death, disagreements and possible litigation.

G. Simplified Conveyance

In the disposition of property, when assets are conveyed it is not necessary to go through the added expense of title searches and title insurance and all other expenses incidental to the transfer of ownership. Having been paid when the property was conveyed into the trust, at the time of acquisition, there is no repetition of these expenses upon the demise of the grantor; all that is required is for the simultaneous resignation of the outgoing trustees and the appointment of new trustees.

II. TRUST USES OF REAL ESTATE

Trusts use real estate in much the same way business and professional men do to carry on their operations and activities, which generate income or carry out the purposes and objectives of their organization.

A trust can do any and all things relating to real estate than an individual can. For this reason trusts fall into the private sector's sphere of operations.

III. MARKETING ACTIVITIES

Trust owned real estate may involve the trust in: marketing, financing, development, and maintenance. In addition to buying and selling decisions, marketing activities may include leasing, renting, trading and exchanging. Decisions to acquire or dispose of property may be made by the managing trustee or anyone he may choose. He may delegate such authority to an associate trustee, a member of the family or to a Real Estate Broker who does this for a fee.

IV. BROKERAGE

Small family trusts as a rule do not do a sufficient volume of business to afford the heavy load of a full time salaried Real Estate Broker. Therefore, an outside broker is called in as needed. This is usually the most efficient way for a small trust to handle their real estate transactions.

A licensed Real Estate Broker Realtor who acts as an agent for a buyer and seller is required by a code of ethics to keep himself informed as to movements affecting real estate in his community as to property interests, market values, etc. They are usually professionally competent in the technical matters of handling property such as listing, advertising, and showing. He is knowledgeable concerning paper work that goes with the selling or buying of property. He will also have the information about the current mortgage market.

V. PROPERTY MANAGEMENT

Effective utilization of real estate requires good administration. When a trustee accepts the responsibility of the management of the family estate, he is subject to an implied pledge to protect and promote the interests of the trust.

The growing complexity of the problems involved in planning, operating, and maintaining trust property and real estate in general has resulted in the growth of property management specialists, and the trust manager may at some time or another leave the management of a particular building in the hands of a certified property manager. Typically, the property manager acts for the trust in all matters pertaining to the operation of the property which is under his direction, including leasing, renting, rental collection, selection of tenants, repair, maintenance, renovation, grounds maintenance, and even in issuing an auditor's report on the operating cost and surplus income. The entire portfolio of properties may be placed in the hands of an agent, or sometimes only a single property. The choice will be at the discretion of the trustees, or directors, whichever the case may be.

VI. FINANCING

Acquiring property by purchase, gift or grant, provides a modus operandi for financing the orderly development and conservation of trust assets resulting in a faster build-up of the estate. The financing of the ownership of trust properties and the use of its holdings is carried on by financial institutions, or private investors, or by loans from other not-for-profit organizations or other trusts. As a rule, real estate type of financing is long range in character and usually provides for the pledge of greater or lesser degrees of interest in real property as security for the loan.

VII. APPRAISING

Any Trustee's decision about the value of real estate held by the Trust must be based on an appraisal. An appraisal is an opinion of value and its accuracy depends upon the basic competence and integrity of the appraiser.

The fundamental purpose of an appraisal of Trust property is to estimate value. The value most commonly sought is market-value, or, the amount of dollars a parcel will bring in the open-market. However, there are other types of value depending on the use for which the client requires the appraisal. An appraisal also provides an authoritative basis for taking an action or establishing a policy. The need for an appraisal of trust property may arise for any of many reasons, including the following:

1. In connection with a transfer of ownership.
2. As a requirement related to financing or credit.
3. To establish just compensation in condemnation proceedings.
4. To arrive at an insurable value.
5. Liquidation value for forced-sale or auction proceedings.
6. To assess value for taxation.
7. To merge with other trusts or other business entity.

The above list does not include all the functions of appraisals but does indicate the broad scope of professional appraisers' activities in which the Trust may have occasion to play a part.

VIII. RECORDATION

When real estate is bought, the deed should be recorded in the County Recorder's office to protect the new owners. This recording of real estate transactions is usually handled, in some states such as Illinois, by the lawyer representing the buyer. In other states, this may be part of the Real Estate Broker's service or if there is a mortgage involved, the financing institution who makes the mortgage for the buyer takes care of these details. Clear title to property is very important. Before a real estate sale is closed, title to the property is brought down by the title company in that county and that service is charged to the seller. The lawyer for the seller or the financing company may order this to be done.

At the 'closing' of the sale, when clear title is turned over to the buyer, along with other documents, including deed papers, showing taxes paid, etc., Federal Revenue stamps are affixed to the documents. Stamps indicating more than the sale price may be put on.

EXHIBIT 33

PURCHASE AND SALE OF PERSONAL PROPERTY

Trusts may own all kinds of personal property in exactly the same way as individuals. The sale of any personal property is quite simple. Legally, it is accomplished in the following four steps:

1. Offer - The person who owns the property usually offers it for sale, or the person who desires to purchase the property submits his bid for the property.

Specifically, if you owned a large piano you might place an ad in the newspaper offering the piano for sale, or a friend of yours might see the piano in your home and offer you a specific price for the piano, even though you may not have indicated that it was for sale.

2. Acceptance - Once an offer is made by either a buyer or a seller, the other person may either accept or reject the offer. For example, someone may answer your ad in the newspaper and accept your price for the piano you advertised, or you may decide that the price offered by the potential buyer in the second example is more than adequate for the piano and you would sell it to him. Either of these acts is acceptance of the original offer.
3. Transfer of Property - The third step involves the actual exchange of the piece of property for the money or funds constituting the purchase price. In other words, you would give the piano to the buyer in exchange for his cash or check for the agreed price.
4. Legal Instruments of the Transfer - In most sales of personal property the only legal document that might appear would be the bill of sale, but in small sales, this is not necessary. For example, when you purchase groceries at the corner store you do not ask for any receipt or complex contracts of sale. You put down the money on the counter and the grocer hands you the bread and milk. He may also hand you a receipt but he does not have to. You have got the bread and milk; he has your money and the sale is essentially completed. In cash sales of larger items a bill of sale is often exchanged; that is, the seller usually signs a piece of paper that indicates that he releases all title to