

# Co-Trustee

Attempt to shutout the family trustee using the resident co-trustee requirement.

# Box

The family is in a box. The accountants do not allow the family any option for a co-trustee except Joanne Barnes.

ANTHONY M. O'CONNELL  
CONSERVATOR  
2337 SOUTH THIRTEENTH STREET  
ST. LOUIS, MISSOURI 63104  
(314) 776-4926

June 20, 1985

MR. Henry C. Mackall  
4031 CHAIN BRIDGE RD  
FAIRFAX, VIRGINIA 22030

DEAR MR. MACKALL,

In reference to our phone conversation today, thanks for taking the job. The enclosed Commission's account letter explains the situation.

I need you, unless you advise me otherwise, to:

1. Get the appropriate assets in the ~~the~~ trust according to the 50%-50% intention of the will. To my mind that would include the entirety of ~~one of the~~ other pieces of real estate. This, I think, involves contacting my

★ ★ NOTE: ~~Each~~ Each piece of real estate has appreciated about \$1,000,000 each.

mother's accountant who is now or  
has just completed the final estate  
 account. Her name & address is:

MS JOAN BARNES  
 BRUNER, KANE AND MCCARTHY  
 300 NORTH Lee Street  
 P.O. Box 1250  
 Alexandria, Virginia 22314  
 Tel (703) 549-7800

2. Take me through the point, where  
 I am recognized by the court as  
 trustee.
3. Advise me on what ever you  
 think is important in this situation  
 [Can we use an alternate valuation  
 of the real estate to avoid  
 huge ~~future~~ future capital gains?]

My mother is scared and upset of  
losing control to a trust. I  
know I don't have to ask that  
you be gentle in any contact  
with her. It would be most  
~~beneficial~~ beneficial for all if  
any contact with her is done  
by a woman, if possible.

Thank you  
Sincerely,

Anthony M. Donald

LAW OFFICES

**MACKALL, MACKALL, WALKER & SILVER**

A PROFESSIONAL CORPORATION

4031 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA

22030

HENRY C. MACKALL  
DOUGLASS S. MACKALL, III  
DOUGLAS D. WALKER  
GLENN H. SILVER  
NANCY E. GIBB

TELEPHONES  
(703) 273-0320  
(703) 273-0321

June 25, 1985

Mr. Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

Re: Estate of Harold A. O'Connell

Dear Mr. O'Connell:

I received your letter with the enclosures regarding your father's estate and the trust referred to in the Will. From looking at the documents you sent me, it appears that the trust created by the Will was devised a 92.2% interest in each of the real estate interests included in the estate. Because the estate interest was only 50%, this would mean that the interest of the trust in each parcel of real estate is 46.1%. Your mother has apparently paid all of the real estate taxes from the date of your father's death and the trust would owe her 46.1% of those taxes. It seems to me that a final account would be very simple, merely reflecting the ownership percentages as distributions. No formal deed would be required. Obviously if either you or your mother wanted to sell, the other would have to agree. I notice from your letter to Joan Barnes you state that the trust should contain all of one or the other of the two properties. Is there some reason why you do not wish to have the 46.1% interest in each of the properties in the trust?

As soon as you advise me on this and on the response you receive from Ms. Barnes, I will have my associate, Amy Blanchard, contact your mother to see if we can't get this resolved.

Sincerely,



Henry C. Mackall

HCM/jkw

good man



Newly Muskall  
Interest transferred  
to trustee

main thing - go ahead  
showing % goes in interest  
that there to be co-trustee?

James Thompson  
W/land you - James -  
Lester in house

leave to son -  
lawyer & commissioner

long qualify  
to come out

qualify trustee

Equalization Bd.  
691-3213

will call when get  
another date open

do not  
(L<sup>rd</sup>)

Clark 691-2224  
691-4193 - give

(Proceeds)  
come in - security bond -  
De resident with  
Patty Mooto

Bond fee - Lawyer fee so  
bond pd when sold.  
nominal amt now.

look over carefully. I call for  
qualifying trustee 1/2 questions  
then trust - lawyer

later non-taxable exchange

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(703) 273-0320  
(703) 273-0321

July 8, 1985

Mr. Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

Re: Estate of Harold A. O'Connell

Dear Mr. O'Connell:

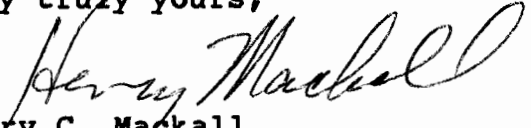
I have spoken with Ms. Barnes who agreed with my suggestion that a final account be filed by your mother reflecting the trust's ownership of an undivided percentage interest in the real estate. Funds advanced by your mother to pay the trust's share of the real estate taxes would be treated as a liability of the trust to be repaid when the realty is sold. She advised me that the percentages were not exactly as earlier calculated because of a slight difference in some jointly owned property. She is sending me a new computation which I will forward when it arrives.

In the letter your mother received from Mr. McCandlish, mention was made of your being able to qualify without a co-trustee if you appointed an agent on whom process might be served. I assume he was talking about Section 26-59 of our Code which deals with non-resident fiduciaries. I don't believe it is applicable to your situation. Because of this and because it will make your mother feel more comfortable, I discussed with Ms. Barnes the idea of her qualifying as a co-trustee with you. She has agreed. Since your mother is the sole beneficiary of the trust during her lifetime and is willing to forego any income from the trust there seems no need to sell the land. It has proven to be a good investment and your mother seems willing and able to continue to pay the real estate taxes as they accrue. The Will contains a waiver of bond for the trustee so that expense can be avoided. After an initial account there will only be a requirement to file one every three years showing no activity. When land is sold this situation will change but, at least for now, there will be little expense.



I think we can plan for you to come east at a time when Ms. Barnes is available so the two of you can qualify as trustees. The estate can be closed with little effort.

Very truly yours,

A handwritten signature in cursive script that reads "Henry Mackall". The signature is written in dark ink and is positioned above the typed name.

Henry C. Mackall

HCM/jkw  
Enclosure

LAW OFFICES

**MACKALL, MACKALL, WALKER & SILVER**

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(703) 273-0320  
(703) 273-0321

July 11, 1985

Ms. Joan Barnes  
Bruner, Kane & McCarthy  
300 North Lee Street  
P. O. Box 1250  
Alexandria, Virginia 22314

Re: Estate of Harold A. O'Connell

Dear Ms. Barnes:

Following my phone conversation with you, I reported to Mr. O'Connell that you and I had agreed on a procedure which could be followed in connection with closing the Estate of his father and I recommended that procedure to him. He has just advised me by phone that the procedure is not acceptable. As a result of our phone conversation I am no longer representing him.

Sincerely,

  
Henry C. Mackall

HCM/jkw

cc: Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

BRUNER, KANE & MCCARTHY, LTD.

A PROFESSIONAL CORPORATION

CERTIFIED PUBLIC ACCOUNTANTS

300 NORTH LEE STREET

POST OFFICE BOX 1250

ALEXANDRIA, VIRGINIA 22313

(703) 549-7800

August 16, 1985

MEMBERS  
AMERICAN INSTITUTE OF  
CERTIFIED PUBLIC ACCOUNTANTS

ARTHUR J. BRUNER, C. P. A.  
JOHN T. KANE, C. P. A.  
DANIEL F. MCCARTHY, C. P. A.  
WILLIAM H. ROBERTS, C. P. A. (1977-1978)  
JOANNE L. BARNES, C. P. A.  
CHARLES W. BALLOU, C. P. A.

Mrs. Jean M. O'Connell, Executrix  
Estate of Harold M. O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150

Re: Estate of Harold M. O'Connell

Dear Mrs. O'Connell:

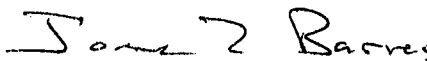
Your son requested that I furnish him copies of the Court Accountings that had been filed for the Estate. I have sent them on to him today. I am also enclosing a copy of the schedule which I believe reflects the fraction of the estate's one-half interest in each property to which you and the Trust are entitled.

If the transfers are made in these percentages, you would then own 56.475% of each property (50% owned individually plus 12.95% of one-half interest of the estate) and the Trust would own 43.525% of each property. If you and the Trust chose at some time in the future to exchange all or part of an interest in a property, I believe it should be done based on the then current fair market value of the properties. In such case, I would recommend that you have the properties appraised by a qualified real estate appraiser.

With regards to your request that I serve as co-trustee of the Trust with your son, I regret that I must decline to be either co-trustee or act as agent to receive notices and processes for him.

Please call me and we can discuss this further.

Very truly yours,



Joanne L. Barnes

JLB:jsp

cc: Mr. Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

ESTATE OF HAROLD M. O'CONNELL

COMPUTATION OF PERCENTAGE INTEREST IN TRUST

PROBATE ASSETS:

1/2 interest - residence	\$ 40,681
1/2 interest - Accotink	37,500
605 shares, Washington Mutual	6,709
220 shares, New Virginia	1,953
Refund	5
Overpayment of Virginia tax	57
Cash	3,245
	<u>\$ 90,150</u>

PAYABLE TO WIFE DIRECTLY:

Cash POD	\$ 16,541
Life insurance	14,918
Jointly owned property	13,902
Personal property	500
U. S. Civil Service	1,381
Annuity	16,338
	<u>\$ 63,580</u>

Gross estate per return	\$153,986
Funeral expenses, etc., per return	5,372
Net estate	<u>\$148,614</u>
Federal estate and Virginia inheritance tax	2,225
Net estate	<u>\$146,389</u>
Less property passing directly to wife	63,580
Net probate estate	<u>\$ 82,809</u>
Marital deduction	\$74,307
Less passing directly	<u>63,580</u>
	(12.95% wife's share) <u>10,727</u>
Residuary estate	(87.05% Trust share) <u>\$ 72,082</u>

ANTHONY M. O'CONNELL  
CONSERVATOR  
2337 SOUTH THIRTEENTH STREET  
ST. LOUIS, MISSOURI 63104  

---

  
(314) 776-4926



August 20, 1985

Ms. Joanne Barnes  
Bruner, Kane & McCarthy, Ltd  
300 North Lee Street  
P.O. Box 1250  
Alexandria, Virginia 22313

Dear Ms. Barnes:

Thank you for my copy of your letter to Jean O'Connell dated August 16, 1985, and for copies of previous accountings.

I have a question concerning the marital deduction. The real estate is deeded not as tenants in common but as each party having an undivided one-half interest (Please refer to the inclosed copy of the deed.) Does this real estate, therefore, not qualify for the marital deduction and hence, change the percentages of the trust? Please advise me.

I hope that you would remain open to acting as co-trustee.

Sincerely,

Anthony O'Connell

A handwritten signature in black ink that reads "Anthony O'Connell". The signature is written in a cursive style and is positioned below the typed name.

cc: Mrs. Jean O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150

LAW OFFICES  
MACKALL, MACKALL, WALKER & SILVER  
A PROFESSIONAL CORPORATION  
4031 CHAIN BRIDGE ROAD  
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NANCY E. GIBB

TELEPHONES  
(703) 273-0320  
(703) 273-0321

October 7, 1985

Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

Re: Estate of H. A. O'Connell

Dear Mr. O'Connell:

Thank you for your letter of September 23 regarding your father's Estate. I will be happy to try to help you. I have serious problems with the limitations you wish to place on me. I believe a great deal can be accomplished by free and open discussion between counsel and I cannot see any harm in throwing out possible alternatives during such a discussion. I cannot hang up each time a new subject comes up in order to get instructions. I never commit a client to any particular course without his approval but I might well discuss actions which later turn out to be unacceptable to the client.

Your plan sounds fine but you cannot insist on it and be certain it will be adopted. There is no problem with funding the trusts as suggested. It seems the only practical way.

I do not know anything about Mr. Higham. I think your mother's wishes must be considered since she is a beneficiary. I know the Court will consider her desires before it makes an appointment.

I see no reason why the intended final account has to be reviewed and approved before it is filed. If it is wrong, objections can be made before the Commissioner of Accounts. If we reach an agreement I assume the account will be drawn as we discussed earlier and that we'll have some input.

If you want me to help further please let me know.

Sincerely,

  
Henry C. Mackall

# Out of the Box

Robert McCandlish provides the family with a way out of the box. I did not know that I could just tell Robert McCandlish who my co-trustee until I received his letter of August 19, 1985.



ROBERT J. McCANDLISH, JR.  
COMMISSIONER OF ACCOUNTS

COMMISSIONER'S OFFICE

CIRCUIT COURT OF FAIRFAX COUNTY

4069 CHAIN BRIDGE ROAD

TELEPHONE 385-0268

FAIRFAX, VIRGINIA 22030



JESSE B. WILSON, III  
DEPUTY COMMISSIONER OF ACCOUNTS

July 16, 1985

Mr. Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

Re: Estate of Harold A. O'Connell

Dear Mr. O'Connell:

This will acknowledge receipt of your letter of July 11, 1985.

Mr. Mackall's advice is correct, in my opinion, under the circumstances. A resident agent can be appointed to serve with a non-resident personal representative such as an executor or administrator of an estate. However, the exception provided in §26-59 of the Virginia Code does not extend to non-resident trustees. Therefore, I believe that a resident co-trustee will be necessary.

As Mr. Mackall has pointed out, this should not be the cause of any significant trouble or expense.

Yours very truly,

Robert J. McCandlish, Jr.

RJM/hap



Business

July 16, 1985

Dear Mother,

First, let me discuss  
the trust.

The lawyer I asked to help me, Henry MacKell said that a certain percentage of each year of your estate, rather than the entirety of one piece, was to be in the trust as he suggested this to Ms. Barnes. So that's the way you want it. I find with me. That was different from what we had agreed on. In short, if that is the way you want it, fine.

I have not heard anything from Ms. Barnes.

~~Also, from my law~~

above

My lawyer also said that  
he thought I did need a  
co trustee, contrary to the  
letter from the commissione  
of accounts. I wrote the  
commission of accounts  
requesting a definitive answer

Frankly, I doubt if I  
ever get an answer from them

I asked Anoly Higgins  
if he would serve as  
co trustee. He has agreed.  
He is already a trustee  
several times including  
trustee for the little  
church. He would not  
charge anything, though  
I insisted he ~~the~~ charge  
an hourly fee.

Would you be comfortable  
with Anoly Higgins as  
co. trustee?  
Sincerely,  
1918

Anoly is a man of  
very high integrity.

Pleasant

July 16, 1985

Dear Mother,

It's very hot here  
Went to ~~the~~ Black River,  
about 2 hours south of  
here last weekend.

The Black River is  
a clear fast moving small  
river, great for canoeing.

But this year I  
couldn't be find it. ~~They~~  
There were dozens and  
dozens of 3-wheel motor  
cycles tearing along the  
bank and in the water  
(They're especially designed  
not to stop in the  
water). It was horrible.  
The canoe business  
was down 70% people  
said.

I got honey out of the  
combs last week, that is,

I extracted it. I weighed  
it and it came to a  
little over 200 lbs!  
The bees also for the  
first time filled up  
these these little  
(4 1/2" x 4 1/2") wooden frames.  
I have about 18 of these.  
So - It was a ~~great~~  
bountiful harvest.

I will probably be at  
Sherley's in Portland in the  
next ~~week~~ two weeks.  
So - If you try to reach me  
and I'm not here,  
please try there.

Love, Tony



ROBERT J. McCANDLISH, JR.  
COMMISSIONER OF ACCOUNTS

COMMISSIONER'S OFFICE

## CIRCUIT COURT OF FAIRFAX COUNTY

4069 CHAIN BRIDGE ROAD

TELEPHONE 385-0268

FAIRFAX, VIRGINIA 22030



JESSE B. WILSON, III  
DEPUTY COMMISSIONER OF ACCOUNTS

August 19, 1985

Mr. Anthony M. O'Connell  
2337 South Thirteenth Street  
St. Louis, Missouri 63104

Re: Estate of Harold A. O'Connell

Dear Mr. O'Connell:

We have had no response to our letter of July 16, 1985.

Please have a resident trustee appointed as soon as possible.

Very truly yours,

Robert J. McCandlish, Jr.  
Commissioner of Accounts

RJM/jd

ANTHONY M. O'CONNELL  
CONSERVATOR  
2337 SOUTH THIRTEENTH STREET  
ST. LOUIS, MISSOURI 63104

(314) 776-4926

August 23, 1985

Mr. Robert J. McCandlish, Jr.  
Commissioner of Accounts  
Commissioner's Office  
4069 Chain Bridge Road  
Fairfax, Virginia 22030

Re: Estate of Harold A. O'Connell

Dear Mr. McCandlish:

Thank you for your letter of August 19, 1985, requesting  
that a resident co-trustee be appointed.

I request that Andrew Higham be appointed as resident  
co-trustee. His address is:

Andrew Higham  
6208 Higham Drive  
Franconia, Virginia 22310  
(314) 971-3129

I also request that the Trust be funded in accordance with  
Ms. Joanne L. Barnes letter of August 16, 1985 (attached).

I apologize for the extended time and effort this account has  
taken. I am optimistic that the trust will be funded soon.  
Again, thank you for your help.

Very truly yours,

*Anthony O'Connell*

Anthony O'Connell

cc: Mrs. Jean O'Connell  
Ms. Joanne L Barnes