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September 1, 2022
via e-mail

D. Jeanette Golay
[Redacted]
Jerome, ID 83338

Denise Powers
[Redacted]
Twin Falls, Idaho 83301

Charmelle Y. Puka
[Redacted]
Henderson, NV 89011

Re: Marge Puka Irrevocable Trust Misunderstanding and Clarification

Dear Jeanette, Denise, and Charmelle:

I am writing this letter in hopes of clarifying the trust terms, and hopefully help everyone come to an understanding. I am going to first clarify my representation and trust terms, followed by a proposed solution.

My Representation

I represent Marge Puke in all regards. She is my client, and it is my duty and honor to help her plan for a lasting legacy. As part of my representation, I also represent any trustee of her trust, and my firm serves as Trust Protector. I will explain the Trust Protector role later.

Establishment and Purpose of the Irrevocable Trust

Over a year ago, I visited with Marge about Estate Planning options. At the time, there was an irrevocable trust already established by Tom and Marge Puka. That Trust had been in place for well over a decade. Unfortunately, the laws changed thereby rendering that irrevocable trust as ineffective. As such, after a lengthy discussion and several visits, Marge decided to create a new irrevocable trust. The creation of this trust took place through the course of four meetings and with input from Marge's financial advisor and CPA.

16 Years

The primary purpose of this trust was to protect Tom and Marge's assets from creditors, predators, the government, and other outside influence. Marge was adamant that she creates a lasting legacy that she





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can pass on to all of you. In order to protect the assets, Marge essentially removed the assets from her Estate and placed them into the Marge Puka Irrevocable Trust. By so doing, she is no longer a beneficiary of those assets, barring unforeseen circumstances that will be discussed later. In general, she retains some control over those assets, but those assets are managed by the Trustee (Denise) with oversight by the Trust Protector (Twin Falls Estate Planning, PLLC). By virtue of being an irrevocable trust, Marge cannot unilaterally make a change to the Trust or to the Trustee without the approval of the Trust Protector.

Issue of the Lifetime Beneficiaries

There seems to be some misunderstanding regarding a term about the lifetime beneficiaries I would like to clear up. The most important thing to point out is that no one is to receive any money or property from this trust until Marge has passed away. Further, no one has received any distributions from this Trust, not even Marge.

The lifetime beneficiary term is a way to transfer property back to Marge. In the unlikely event she needs money or property back from the Trust, we have to transfer property temporarily to one of the lifetime beneficiaries. That lifetime beneficiary must then use the money or property for Marge's benefit. If this ever occurs, it requires the approval of the Trust Protector. Someone, I believe John Martin, purported that Denise and/or Charmelle were receiving funds from Marge's Trust for tax purposes. I investigated the issue and found that not to be the case.

Issue of Joseph Living Rent Free

This Trust was in effect with no issue and no disputes until Joseph started living in Marge's home "rent free." Since this seems to have driven a wedge between the family, I'd like to clarify the plan and reasoning for this. Marge came to me a few months ago and said that she would like to keep the home that she and Tom built in the family. We created a plan for Joseph to occupy the home until Marge passes away. He is responsible for paying the taxes, insurance, and maintenance on the home while he occupies the home. Upon Marge's death, the value of the home will be calculated (either as agreed or by a professional), transferred to Denise, and then subtracted from her share of the inheritance.

It is important to note that the value of the home will be calculated based on the value at Marge's death. There was a proposal that the home be transferred to Denise now, with the value of the home being equally distributed to Charmelle and Jeanette. I believe this idea came from John Martin, and I tried



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explaining how this does not work for multiple reasons. First, that is in violation of terms as indicated previously. Second, doing so would impose a significant capital gains tax liability. Third, it is important to leave the home in the Trust because if Marge ever needs it again, then there is a way to distribute the home back to her. Fourth (and perhaps most important), doing so would significantly drain the assets in Marge's estate.

Regarding the rent issue, yesterday Marge came to me with a proposal to have the rent value be distributed to Charmelle and Jeanette. For the reasons already stated, we cannot pay rent money from the Trust to any of the beneficiaries. If Marge decides that Joseph must pay rent, the proceeds would be paid into the Trust. Either way, that would create a landlord-tenant relationship. By so doing, the Trust would then be responsible for the taxes, insurance, and maintenance of the property.

When Marge approached me with this idea, I had no concerns about unfairness. The benefit Charmelle and Jeanette have in this is the increased value at Marge's death. Right now, the home is worth \$400,000, but it is likely to go up in value by the time that dreadful day comes when Marge passes away. Because the value is to be calculated at Marge's death, more will be taken out of Denise's inheritance share and distributed to Charmelle and Jeanette. I think the best solution is to keep the home in the Trust in case Marge needs it back and because all things will be fair when the ultimate distribution occurs.

Issue of Denise as Trustee and Proposal for Resolution

It seems clear that this situation with Joseph has caused trust issues with Denise. Hopefully my explanation explains the reasoning. My understanding is that Tom personally asked her to be Trustee years ago. Typically, a Trustee is removed in the act of bad faith or a breach of fiduciary duty. So far, the only reasons I have heard for Denise to be removed as Trustee is because you all don't get along. While I wish I could help in that regard, I can tell you that from purely an administrative standpoint I have found no wrongdoing.

At one point I suggested that Marge look into hiring a third-party Trustee. However, Marge made it clear that she does not want to hire a third-party Trustee. Third-party Trustees are expensive – usually \$300 per hour or more. I have considered having another family member act as Trustee, but I do not believe that would alleviate the tension going on right now.

Though I cannot help with those problems, I can help with the trust issues. Going forward, I am

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going to take a more active role as Trust Protector. The Trustee will be required to provide me with a diligent accounting of all Trust activities, reporting to me at least monthly. I will oversee the affairs of the Trust to ensure everything is administered according to Marge's wishes.

Ultimately, it would also be a lot of work and expense to transfer the assets to another's care. I think it would be beneficial to find a way to resolve the issues with the current Trustee. One thing to note is that the Trustee cannot also be an active beneficiary of the Trust without some form of security. If a beneficiary is actively receiving trust funds and acting as Trustee, that beneficiary/Trustee is required to insure the Trust with a personal bond. That bond protects the other beneficiaries' interests. Typically, this is a \$1 million bond, and the individual is required to pay approximately \$10,000 upfront to secure said bond. For all these reasons I have suggested that we keep the Estate Plan.

Communications to Marge About the Estate Plan

I promise you that Marge is in good hands. I love working with her, and I want to ensure that her (and Tom's) wishes are carried out. I ask that you kindly let me work with her and oversee the Trust Administration. One thing I need to disclose since I am Marge's attorney, if you have questions or concerns about what I have explained, I suggest you consult with your own attorney about your rights. I am happy to provide you with a referral if needed. Otherwise, I hope this clarifies Marge's plan.

Sincerely,

David Taylor
Attorney and Counselor-at-Law

Who are
your friends

That you get
a referral fee
commission
Brooke
Kara