

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF **HERKIMER**

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In the Matter of the Estate of

**RECENT DECEDENT**

**RENUNCIATION AND  
DISCLAIMER**

File No. **2006-153**

Deceased.

-----X

1. I, **DAVE DECEDENT**, residing at 20 Main Street, Herkimer, NY, am the brother of Recent Decedent (“RD”), who died September 5, 2012. I am also a beneficiary of his Will, dated April 21, 2012 (“RD’s Will”).

2. Articles **SECOND** and **SIXTH** of RD’s Will provide that if I survive RD, the following bequests are made to me, and Article **SEVENTH** provides for the disposition of some of such property if I should not survive RD:

“**SECOND**: A. All of the interest I have in the real property located in Dallas, Texas, including the contents of the house thereon and all gas, oil and mineral rights relating thereto, and all assets that I own that are located in the State of Texas;

B. The improved real property known as Nick Plaza in the Town of Herkimer, Herkimer County, New York.

C. My condominium located in Orlando, Florida.

D. Any Certificates of Deposit that I have in either him [sic] name alone or in my name jointly with her or in trust for him.

E. Any items of personal property that he may desire that are located in my home situate at 15 Main Street, Herkimer, New York...

“**SIXTH**: All the rest, residue and remainder of my Estate I give, devise and bequeath to my beloved brother, **DAVE DECEDENT**.

“**SEVENTH**: In the event my beloved brother, **DAVE DECEDENT**, predeceases me then, and in such event, I give, bequeath and devise any bequest made to my said beloved brother to his immediate children, my beloved nieces and nephews X Y and Z, ”

3. (a) *I do hereby irrevocably and unqualifiedly disclaim and renounce pursuant to Section 2518 of the Internal Revenue Code of 1986, as amended, all of my right, title and interest in and to the property described in paragraphs B, D and E, of Article SECOND, and in and to the property passing as part of RD's residuary estate under Article SIXTH of RD's's Will (except as provided in paragraph (c), below).*

(b) *I do hereby further irrevocably and unqualifiedly disclaim and renounce pursuant to (i) Estates, Powers and Trusts Law ("EPTL") §2-1.11 and (ii) the common law of the State of New York, all of my right, title and interest in and to the property described in paragraphs B, D, and E of Article SECOND, and in and to the property passing as part of RD's residuary estate under Article SIXTH of RD's Will (except as provided in paragraph (c), below). Pursuant to EPTL §2-1.11(e), this disclaimer and renunciation has the same effect as though I had predeceased RD.*

(c) *This renunciation and disclaimer does not relate to real and tangible personal property located outside the State of New York, and I intend to execute separate renunciations and disclaimers with respect to such property.*

4. **Nick Plaza Real Property:** *By reason of my disclaimer and renunciation of the bequest to me under paragraph B of Article SECOND of RD's Will of the improved real property known as Nick Plaza in the Town of Herkimer, Herkimer County, New York, such bequest shall be paid to my children, X, Y, and Z ("my Children"), pursuant to Article SEVENTH of RD's Will.*

5. **Gifts of Certificates of Deposit:** *The bequests to me of interests in Certificates of Deposit under paragraph D of Article SECOND of RD's Will are ambiguous:*

(i) *RD's interest in Certificates of Deposit held by RD and me jointly would pass to me by operation of law. It does not appear that RD could bequeath to me her interest in property*

held jointly with me. It appears, however, that regardless of whether RD's interest in Certificates of Deposit would otherwise pass to me (i) by operation of law or (ii) under RD's Will, the disclaimed property would pass to my Children:

(a) If RD's interest in the Certificates of Deposit that I disclaim would otherwise pass by operation of law, the disclaimed property would pass to my Children as part of RD's residuary estate, pursuant to Articles SIXTH and SEVENTH of RD's Will.

(b) If RD's interest in the Certificates of Deposit that I disclaim would otherwise pass under RD's Will, the disclaimed property would pass to my Children under the provisions of EPTL §3-3.3(a)(2) (the "Anti-lapse" statute).

(ii) RD's interest in Certificates of Deposit held "in trust for" me would also pass by operation of law. For the reasons set forth in subparagraph (i), above, RD's interest in such Certificates of Deposit would pass to my Children, either as part of RD's residuary estate or pursuant to the Anti-lapse Statute.

(iii) Paragraph D of Article SIXTH also purports to give to me "any Certificates of Deposit that I have in . . . his [my] name alone"

(a) RD's Will could not dispose of Certificates of Deposit in my name alone.

(b) If this provision is construed to mean Certificates of Deposit in RD's name alone, the disclaimed property would pass to my Children pursuant to Articles SIXTH and SEVENTH of RD's Will.

6. **Tangibles Located at Main Street:** By reason of my disclaimer and renunciation of the bequest to me under paragraph E of Article SECOND of RD's Will, all tangible personal

property located at RD's house situate at 15 Main Street, Herkimer, Herkimer County, New York, will pass to my children, **X, Y, and Z** under Article **THIRD** of RD's Will.

7. **RD's Residuary Estate**: By reason of my renunciation and disclaimer of the bequest to me under Article **SIXTH** of RD's Will of her residuary estate, all of RD's residuary estate, other than real and tangible personal property located outside the State of New York, will pass to my children pursuant to Articles **SIXTH** and **SEVENTH** of RD's Will.

8. This renunciation and disclaimer is made by me in all capacities, including, without limitation, as a beneficiary of RD's estate, as joint tenant with RD, and as beneficiary of any trust account.

9. I hereby release any right which I might have to petition for the revocation or modification of this Renunciation and Disclaimer.

Dated: April , 2013

\_\_\_\_\_  
DAVE DECEDENT

STATE OF NEW YORK                    )  
  )  
COUNTY OF HERKIMER                )        s.s.

*On this \_\_\_\_\_ day of April, 2013, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally came **DAVE DECEDENT**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and she duly acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument the individual executed the instrument.*

\_\_\_\_\_  
*Notary Public*  
*Commission Expires: \_\_\_\_\_*  
*Affix Seal or Stamp:*

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF **HERKIMER**

-----X  
*In the Matter of the Estate of*

**RECENT DECEDENT**

*Deceased.*

**NOTICE OF  
RENUNCIATION AND  
DISCLAIMER**

*File No. 2006-153*

-----X

TO: **X**  
*(Beneficiary)*

**Y**  
*(Beneficiary)*

**Z**  
*(Beneficiary)*

**NOTICE IS HEREBY GIVEN** in accordance with the provisions of Section 2-1.11(b) of the New York Estates, Powers and Trusts Law that Dave Decedent has renounced and disclaimed all right, title and interest he might otherwise have in and to certain property which otherwise would pass to him under the Will of Recent Decedent, as described in greater detail in the instrument of Renunciation and Disclaimer attached hereto, and your interests may be increased by reason of such Renunciation and Disclaimer.

Dated: April , 2013  
Millbrook, New York

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**TEAHAN & CONSTANTINO LLP**  
ATTN: Vincent L. Teahan, Esq.  
41 Front Street, Suite A  
P.O. Box 1181  
Millbrook, New York 12545  
(845) 677-2101

To: **X**  
**207 120<sup>th</sup> Street, S.E.**  
**Herkimer, NY 12345**

**Y**  
**52 W. Kiernan Avenue**  
**Herkimer, NY 12345**

**Z**  
**1717 E. 16<sup>th</sup>**  
**Herkimer, NY 12345**

**RECEIPT ACKNOWLEDGED:**

\_\_\_\_\_  
**X, Beneficiary** **Date: April , 2013**

\_\_\_\_\_  
**Y, Beneficiary** **Date: April , 2013**

\_\_\_\_\_  
**Z, Beneficiary** **Date: April , 2013**

SURROGATE'S COURT OF THE STATE OF NEW YORK  
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In the Matter of the Estate of

**RECENT DECEDENT**

Deceased.

**AFFIDAVIT AS TO  
RENUNCIATION AND  
DISCLAIMER**

File No. 2006-153

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STATE OF NEW YORK        )  
  ) s.s.  
COUNTY OF HERKIMER    )

**DAVE DECEDENT**, being duly sworn, deposes and says:

*I have this day renounced and disclaimed (i) all property bequeathed to me under the Will of my brother, Recent Decedent, dated April 21, 2012, and (ii) all property otherwise passing to me by operation of by reason of my brother's death (other than real property and tangible personal property located outside the State of New York).*

*I hereby declare that I have not received and will not receive any consideration in money or money's worth for my renunciation and disclaimer from any person or persons whose interest or interests is or are accelerated as a result thereof.*

\_\_\_\_\_  
**DAVE DECEDENT**

Sworn to before me this  
\_\_\_\_\_ day of April, 2013

\_\_\_\_\_  
Notary Public  
Commission Expires: \_\_\_\_\_  
Affix Seal or Stamp: