

**HEALTH AND SAFETY CODE - HSC**

**DIVISION 105. COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 122420]** *(Division 105 added by Stats. 1995, Ch. 415, Sec. 7.)*

**PART 4. HUMAN IMMUNODEFICIENCY VIRUS (HIV) [120775 - 121349.3]** *(Part 4 added by Stats. 1995, Ch. 415, Sec. 7.)*

**CHAPTER 18. Clean Needle and Syringe Exchange Program [121349 - 121349.3]** *(Chapter 18 added by Stats. 2005, Ch. 692, Sec. 3.)*

**121349.**

(a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to reduce the spread of HIV infection and bloodborne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe exchange project pursuant to this chapter in any city, county, or city and county upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) In order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly bloodborne infections, the State Department of Public Health may, notwithstanding any other law, authorize entities that provide services set forth in paragraph (1) of subdivision (d), and that have sufficient staff and capacity to provide the services described in Section 121349.1, as determined by the department, to apply for authorization under this chapter to provide hypodermic needle and syringe exchange services consistent with state standards in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. Authorization shall be made after consultation with the local health officer and local law enforcement leadership, and after a period of public comment, as described in subdivision (e). In making the determination, the department shall balance the concerns of law enforcement with the public health benefits. The authorization shall not be for more than two years. Before the end of the two-year period, the department may reauthorize the program in consultation with the local health officer and local law enforcement leadership.

(d) In order for an entity to be authorized to conduct a project pursuant to this chapter, its application to the department shall demonstrate that the entity complies with all of the following minimum standards:



(1) The entity provides, directly or through referral, all of the following services:

(A) Drug abuse treatment services.

(B) HIV or hepatitis screening.

(C) Hepatitis A and hepatitis B vaccination.

(D) Screening for sexually transmitted infections.

(E) Housing services for the homeless, for victims of domestic violence, or other similar housing services.

(F) Services related to provision of education and materials for the reduction of sexual risk behaviors, including, but not limited to, the distribution of condoms.

(2) The entity has the capacity to commence needle and syringe exchange services within three months of authorization.

(3) The entity has adequate funding to do all of the following at reasonably projected program participation levels:

(A) Provide needles and syringe exchange services for all of its participants.

(B) Provide HIV and viral hepatitis prevention education services for all of its participants.

(C) Provide for the safe recovery and disposal of used syringes and sharps waste from all of its participants.

(4) The entity has the capacity, and an established plan, to collect evaluative data in order to assess program impact, including, but not limited to, all of the following:

(A) The total number of persons served.

(B) The total number of syringes and needles distributed, recovered, and disposed of.

(C) The total numbers and types of referrals to drug treatment and other services.

(e) If the application is provisionally deemed appropriate by the department, the department shall, at least 90 days prior to approval of the application, provide for a period of public comment as follows:

(1) Post on the department's Internet Web site the name of the applicant, the nature of the services, and the location where the applying entity will provide the services.

(2) Send a written and an e-mail notice to the local health officer of the affected jurisdiction.

(3) Send a written and an e-mail notice to the chief of police, the sheriff, or both, as appropriate, of the jurisdictions in which the program will operate.

(f) The department shall establish and maintain on its Internet Web site the address and contact information of programs providing hypodermic needle and syringe exchange services pursuant to this chapter.

(g) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121349.1.



(h) This section shall become inoperative on January 1, 2019, and as of that date is repealed.

*(Amended by Stats. 2011, Ch. 744, Sec. 1. Effective January 1, 2012. Repealed as of January 1, 2019, by its own provisions. See later operative version added by Ch. 744.)*



## **SETTLEMENT AGREEMENT REGARDING DISTRIBUTION OF THE ELIZABETH A. SIMPSON TRUST**

This Agreement (the "Agreement") is entered into by SUSAN L. BERBEC as trustee (the "Trustee") of the Elizabeth A. Simpson Trust (the "Trust"), SUSAN L. BERBEC ("Susan"), CHESTER SIMPSON ("Chester"), PETER SIMPSON ("Peter") and FRED SIMPSON ("Fred") as the only beneficiaries of the Trust. The date of this Agreement, for convenience purposes, shall be February 1, 2014. The above-mentioned parties shall sometimes be referred to collectively herein as the "Parties" or individually as a "Party;" and SUSAN L. BERBEC, CHESTER SIMPSON, PETER SIMPSON and FRED SIMPSON shall sometimes be referred to collectively herein as the "Beneficiaries" or individually as "Beneficiary".

### **RECITALS**

This Agreement is made with reference to the following facts:

- A. The Beneficiaries have reached an agreement between themselves on a satisfactory distribution of the Trust assets.
- B. The Trustee is willing to accommodate the Beneficiaries and distribute the Trust estate accordingly provided that the Beneficiaries release the Trustee of liability for doing so. The Trustee has also agreed to memorialize the terms of the agreement between the Beneficiaries along with the terms of the release of Trustee.
- C. The Trust provides that the Trust assets will be distributed equally between the Beneficiaries.
- D. The real property located at 812 Skipper Circle, Sacramento, CA 95822 (the "House") is a Trust asset.
- E. The Beneficiaries wish to distribute the House upon terms different from the terms provided in the Trust.
- F. Susan, as an individual, wishes to become the sole owner of the House. The other Beneficiaries wish Susan to own the House.

### **AGREEMENT**

#### **NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:**

- 1. Trustee shall distribute the House to Susan.
- 2. Susan agrees to include the following instructions in her estate plan:
  - a) If Susan owns the House on her date of death, her estate will make a specific gift to each of Fred and Chester equal to twenty-five percent (25%) of the appraised value of the House on her date of death. Each gift shall be reduced by twenty-five percent (25%) of the cost of any capital improvements Susan made to the House since the date of this Agreement.





b) If Susan sells the House prior to her date of death, her estate will make a specific gift to each of Fred and Chester equal to twenty-five (25%) of the sale price of the House. Each specific gift shall be reduced by twenty-five percent (25%) of the selling costs and any capital improvements Susan made to the House since the date of this Agreement.

c) If Susan involuntarily loses ownership of the House for any reason, her estate will not be obligated to make any specific gift to Fred or Chester.

d) If Fred is not living at Susan's death, any specific gift to be made to Fred in this Agreement shall instead be made to his widow if she is then living. If neither Fred nor his widow is living at Susan's death, the gift to Fred shall be distributed on such terms and conditions, outright or in trust, as Fred appoints in writing delivered to Susan, or if there is no such written exercise of the power of appointment, then to Fred's estate.

e) If Chester is not living at Susan's death, any specific gift to be made to Chester in this Agreement shall instead be made to his widow if she is then living. If neither Chester nor his widow is living at Susan's death, the gift to Chester shall be distributed equally between Fred and Peter if both of them are living, or all to the survivor of them if only one of them is then living. If neither Fred nor Peter is then living, the gift shall be distributed on such terms and conditions, outright or in trust, as Chester appoints in writing delivered to Susan.

3. Fred and Chester agree that:

a) They have received their full and complete distribution of their share of the House from the Trust estate.

b) This Agreement does not provide them a secured interest in the House or any real property that Susan may buy in the future.

c) The value of the House may go up or down between the time this Agreement is executed and when the value of their specific gift, if any, from Susan's estate is determined.

d) There is a risk that they may not receive any specific gift from Susan's estate for a number of reasons including, without limitation, that her estate might not have sufficient assets to make the gift or that Susan may have involuntarily lost ownership of the House.

4. Within thirty (30) days of the Trustee distributing the House to Susan, Susan will engage a mortgage lender to begin the underwriting process for making a loan to her. The appraisal done for the purposes of making the loan shall be used as the value of the House for purposes of the administration of the Trust (the "Appraised Price"). Susan agrees to pay Peter twenty-five percent (25%) of the Appraised Price within one hundred and twenty (120) days of when the Trustee distributes the House to Susan. Peter agrees that upon receipt of such payment from Susan, he will have received his full and complete distribution of his share of the House from the Trust estate.

5. The Trustee will distribute the remaining Trust assets equally among the Beneficiaries.



6. Each Beneficiary has received all of the tangible personal property Trust assets that they desire to receive.

7. Beneficiaries agree to remove all of their personal property from the House within ninety (90) days of executing this agreement. The Trustee has agreed to use Trust funds to arrange for a professional moving company to move the personal property of Fred and Chester since their residences are a significant distance from the House. The Trustee will not pay for a professional moving company to move the personal property of Peter since his residence is reasonably close to the House. Further, all Beneficiaries agree that all personal property remaining in the House ninety (90) days after the execution of this Agreement shall be considered abandoned and that the Trustee shall use Trust funds to dispose of some or all such personal property. All Parties agree the Trustee is not responsible for any damage to any personal property.

8. The Trustee will hold approximately sixteen thousand dollars (\$16,000.00) in reserve. The remainder reserve will be distributed to the Beneficiaries after the Trustee is confident that all outstanding obligations of the estate have been paid in full.

9. Trustee has agreed to take no fee for her services as trustee.

10. In consideration of the foregoing, and excepting the obligations that are expressly set forth in this Agreement, the Parties hereby fully release and discharge one another as individuals and in all capacities, such as trustee or agent, for the Trust, together with their officers, directors, partners, members, principals, agents, employees, representatives, and attorneys, from any and all claims, demands, obligations, interest, suits, actions, causes of action, known or unknown, legal or equitable, contract or tort, or otherwise, through the date of this Agreement, related to the Trusts. In that regard, each Party hereto hereby waives the protections of Civil Code §1542, which provides as follows:

**"CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE"**

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor."

11. The Beneficiaries hereto represent, warrant and agree:

a) Generations did not provide them legal counsel as to their rights as beneficiaries of the Trusts or as to the consequences of entering into this Agreement.

b) No promise, inducement or agreement has been made to them to influence their decision to enter into this Agreement, except for those that are actually expressed in this Agreement. Furthermore, it is expressly agreed and understood that there might be additional information available to the Beneficiaries which could bear upon their decision to enter into this Agreement, and that each of said Beneficiaries has had full opportunity to investigate and discover said information before executing this Agreement.

d) Each Beneficiary has freely and voluntarily entered into this Agreement.



e) Each Beneficiary has had a sufficient opportunity to seek the advice of separate, independent legal and tax counsel of their own choosing. No Beneficiary may deny the validity of this Agreement on the grounds that he or she did not have advice of legal counsel or an understanding of the tax consequences of entering into this Agreement. Each Beneficiary shall bear the cost of their accountant and attorney.

f) Each Beneficiary is the sole holder of any and all beneficial interest referred to in this Agreement and that it has not heretofore assigned or transferred any beneficial interest described herein.

12. Generations, a professional law corporation, represented the Trustee solely in their capacity as trustee and not as an individual or beneficiary of the Trust. Trustee's attorneys' fees are rightfully paid from the Trust estate. Generations has advised the Trustee that the distribution of the House to Susan does not conform to the terms of the Trust and counseled Trustee as to alternatives to meet the goals of the Beneficiaries. Trustee has informed Generations that the Beneficiaries wish to proceed in this manner. With this understanding, Trustee has decided to distribute the House to Susan subject to all Beneficiaries executing this Agreement. Further, Generations has counseled Susan to obtain separate legal and tax counsel regarding her decision, as a beneficiary, to enter into this Agreement.

13. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreements, promises, understandings and representations, and it is understood that no alterations, modifications, amendments or changes in any respect or particular whatsoever may be effected without a writing duly executed by each Party or an authorized representative of each of the Parties to this Agreement.

14. The Parties each represent and warrant that the person signing for that Party is authorized to execute this Agreement on behalf of the Party and that no further approvals by said Party are necessary to bind said Party to this Agreement.

15. This Agreement shall be binding on and inure to the benefit of the personal successors, assigns and heirs of the respective parties hereto.

16. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of California.

17. In the event of an action or proceeding to enforce any portion of this agreement, the prevailing party shall be entitled to recover their reasonable attorney's fees and court costs.

18. This Agreement may be executed in duplicate, counterpart originals and is just as binding and enforceable as if all signatures were placed upon a single document.

SIGNATURE PAGE FOLLOWS



IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed.

**ELIZABETH A. SIMPSON TRUST**

DATE: \_\_\_\_\_

\_\_\_\_\_  
By: SUSAN L. BERBEC  
Its: Trustee

**BENEFICIARIES**

DATE: \_\_\_\_\_

\_\_\_\_\_  
SUSAN L. BERBEC

DATE: \_\_\_\_\_

\_\_\_\_\_  
CHESTER SIMPSON

DATE: \_\_\_\_\_

\_\_\_\_\_  
PETER SIMPSON

DATE: \_\_\_\_\_

\_\_\_\_\_  
FRED SIMPSON

