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II. STATEMENT OF THE CASE

This appeal arises out of a Petition for Aid and Direction (the “Petition”) pursuant to Section 201 of the Illinois Trust Code (706 ILCS 3/201) filed by Petitioner-Appellant, Debra A. Tiedemann, as Trustee of the Edward E. Tiedemann Trust dated January 30, 2014 (“Trustee”), on February 28, 2024, in the Circuit Court of Piatt County, Illinois, Case No. 24-CH-2. Trustee’s Petition sought to use assets of the Edward E. Tiedemann Trust dated January 30, 2014 (the “Trust”) to, in part, pay off a promissory note executed by Edward E. Tiedemann (“Settlor”). Settlor had used the funds received in exchange for signing the promissory note to purchase real estate known as 4500 East Highway 161, Belleville, Illinois (the “Rentchler Property”).

Brent E. Tiedemann and Kevin A. Tiedemann, as Beneficiaries of the Trust (“Trust Beneficiaries”) argued that Trustee could not use Trust assets to pay off the promissory note because doing so would be contrary to Section 20-19(a) of the Illinois Probate Act (755 ILCS 5/20-19(a)). Trust Beneficiaries disagreed that the promissory note should be satisfied by the Trust. Trust Beneficiaries argued that Section 20-19(a) prohibited Trustee from using Trust assets to pay off the promissory note because Trustee received the Settlor’s interest in real estate as a joint tenant with right of survivorship subject to the same mortgage affecting the three parcels held in Trust. Trust Beneficiaries argued that using Trust assets to pay off the promissory note would be a detriment to Trust Beneficiaries and unjustly enrich Trustee. Trust Beneficiaries argued that Trustee had a fiduciary duty to properly and equitably manage Trust assets for the benefit of Trust Beneficiaries.

Trustee argued that Section 20-19(a) did not apply because the statute only applies to the payment of a debt from the personal estate of a decedent. Trustee argued that Article Ten of the Trust directed her to use Trust assets to pay all of the Settlor’s “just debts,” which included the

promissory note. Trustee argued that using Trust assets to pay off the promissory note was in the best interest of the Trust and its beneficiaries and asserted that doing so was the only way to ensure that the Trust retains ownership of at least some of the parcels held in the Trust along with the farm income it received from those parcels.

The Circuit Court of the Sixth Judicial Circuit, Piatt County, Illinois entered an Order on August 26, 2024, holding that Section 20-19(a) of the Probate Act restricted Trustee from using Trust assets to pay off the promissory note because Settlor did not express his intent for the Trust to pay off the note. The circuit court found that Article Ten of the Trust did not contain sufficient language directing the Trust to assume liability for the promissory note. The circuit court found that Article Four of the Trust suggested that Section 20-19 was to apply to any specific bequests or outright transfers of encumbered real estate.

Trustee appealed to the Illinois Appellate Court, Fifth District. On October 2, 2025, the appellate court entered an Order affirming the circuit court, holding that a general direction within a trust to pay the settlor's "just debts" is insufficient to direct a trustee to pay off a promissory note encumbering real estate passing by joint tenancy with right of survivorship. The appellate court held that to hold otherwise would effectively reintroduce the doctrine of exoneration that was abolished by Section 20-19 of the Probate Act.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the direction within Article Ten of the Trust to pay the Settlor's "just debts" is sufficient direction to Trustee to use Trust assets to pay off a promissory note encumbering the Rentchler Property.
2. Whether Section 20-19(a) of the Illinois Probate Act requires Trustee to receive the Settlor's encumbered interest in the Rentchler Property subject to its encumbrances without a discharge.

IV. STATEMENT OF FACTS

On the same date the Settlor executed the Trust, the Settlor executed the Last Will and Testament of Edward E. Tiedemann Dated January 30, 2014 (the "Settlor's Will"). A2, ¶ 3; A18; A39. Section 1 of the Settlor's Will provided for the payment of his debts, expenses of administration, and estate related taxes under the terms of the Trust. A18. Other than a few specific bequests relating to tangible personal property, the Settlor's Will is a "pour-over will" that transfers the residue of his estate into the Trust. *Id.*

Trust Beneficiaries are entitled to the balance of the Trust Estate. A31-32. The Trust defines "Trust Estate" to mean certain property described in a schedule attached and incorporated into the Trust, and any other property that may be added by the Settlor or otherwise, together with the proceeds thereof pursuant to the Trust. A29; A40-43. The Trust Estate includes three parcels located in St. Clair County, Illinois. A2, ¶ 3; A17; A40-43. Settlor reserved the right to amend or revoke the Trust during his life. A29.

Article Three of the Trust provides, in relevant part:

If I am not Trustee and while I am alive, . . . [Trustee], shall have the use and enjoyment, rent free, of any residential real estate that is part of the Trust Estate and which she is occupying as her domicile, and the Trust Estate shall be responsible for my share of any costs and expenses incident to the use, debt service, maintenance and protection thereof,

including the cost of monthly mortgage payments, insurance and the taxes thereon. A29-30 (emphasis added).

Article Four of the Trust provides, in relevant part:

At my death, if [Trustee] survives me, and we are married, [Trustee] shall hold, administer and distribute the Trust Estate, after making the payments provided for in [Article Ten] below, as follows:

(1) If the property which [Settlor and Trustee] are occupying as our marital domicile is the home at 804 Hillside Drive, Monticello, Illinois, and said property is or becomes part of the Trust Estate, said property shall be distributed to [Trustee] as her sole property. If said property is or becomes part of the Trust Estate, and [Trustee] and I are not occupying it as our marital domicile at the date of my death, this bequest is withdrawn; and

(2) If [Trustee] and I are occupying a property other than that referred to in sub-paragraph (1) above as our marital domicile, which property is or becomes part of the Trust Estate, I direct . . . that [Trustee] shall have the use and enjoyment, rent free, of said real estate for and during her lifetime, . . . provided she pay the costs and expenses incident to the use, debt service, maintenance and protection thereof, including the cost of monthly mortgage payments, if any, insurance and the taxes thereon. Upon [Trustee's] . . . failure to pay the aforesaid costs and expenses incident to the use thereof . . . said property shall be distributed per stirpes to my descendants then surviving;

(3) If the property which [Trustee] and I own jointly, as joint tenants . . . , does not have a net market value . . . of at least \$250,000.00 at the date of my death, my successor Trustee shall distribute next from the Trust Estate to [Trustee] an amount equal to the difference between the net market value of said jointly owned property and the sum of \$250,000.00; and

(4) The balance of the Trust Estate shall be distributed in equal shares to [Trust Beneficiaries], if they survive me..." A30-32 (emphasis added).

Article Ten of the Trust provides that:

After my death, [Trustee] shall pay from the Trust Estate, directly or through my personal representative, without apportionment or reimbursement, all of my just debts, including the expenses of my last illness and funeral, all expenses of administration of property wherever situated, passing under my Will or this [Trust] or otherwise, and all estate inheritance, transfer and succession taxes which become due by reason of my death (including interest and penalties thereof, if any), other than any tax on a generation-skipping transfer which is not a liability of my estate." A38-39.

On June 30, 2022, Settlor and First Federal Savings Bank of Mascoutah (the "Bank") entered into a promissory note ("Promissory Note"). A45-46. The Promissory Note included

several material terms, including that Settlor received valuable consideration from the Bank in exchange for his promise to pay back that principal amount received, plus interest, and that Settlor's death was an event of default. A45. Settlor used the funds received in exchange for signing the Promissory Note to purchase real estate known as 4500 East Highway 161, Belleville, Illinois (the "Rentchler Property"). A21. The Rentchler Property was not transferred into the Trust before or after the Settlor's death. A21.

Settlor, Trustee, and the Bank entered into a mortgage agreement dated June 30, 2022 (the "Mortgage"). A47-62. Within the Mortgage, Settlor, Trustee and the Trust mortgaged their right, title, and interest to the Rentchler Property and the three parcels held in the Trust to the Bank as security for payment of the indebtedness under the Promissory Note, Mortgage, and related documents. A47-48; A57-58; A61-62. Settlor executed the Mortgage individually and as then-acting trustee of the Trust. A58. Trustee executed the Mortgage individually. *Id.* The Promissory Note was incorporated into the Mortgage. *Id.* Settlor and Trustee owned the Rentchler Property as joint tenants with right of survivorship until the Settlor's death on September 7, 2023. A14; A21. The Settlor's interest in the Rentchler Property transferred to Trustee by operation of law upon his death. *Id.*

The Settlor's Will was filed with the Circuit Clerk of Piatt County, Illinois, on October 19, 2023. A18. On January 19, 2024, Trustee, Trust Beneficiaries, and the Trust received a notice of default from the Bank (the "Notice of Default"), informing the parties that the Promissory Note and Mortgage were in default due to the Settlor's death. A78-79. The Notice of Default stated that the Bank would pursue foreclosure on the mortgaged properties if the default was not remedied, including the three parcels held in the Trust. *Id.*

On February 28, 2024, Trustee filed her Petition with the Circuit Court. A24-79; C5-60. Trustee's Petition, in part, sought to use Trust assets to pay off the Promissory Note, which then had an outstanding balance of \$858,476.08. A25-26. When Trustee filed her Petition, the only Trust assets were the three parcels located in St. Clair County, but other assets of the Settlor would "pour-into" the Trust after probate proceedings. A3-4, ¶ 8.

Trust Beneficiaries filed their Response to Trustee's Petition on July 3, 2024, arguing that Trustee could not use Trust assets to pay off the Promissory Note because doing so would be contrary to Section 20-19. A80-85; C65-70. Trust Beneficiaries acknowledged that Trustee had a fiduciary duty to manage Trust assets for the benefit of the Trust's beneficiaries, and that Trustee was a beneficiary of the Trust with respect to the marital domicile shared as of Settlor's death. A81-82, ¶¶ 4-5, 15. Trust Beneficiaries argued that the Promissory Note should not be paid by Trust assets because the Rentchler Property was titled jointly with right of survivorship between Settlor and Trustee, and that using Trust assets to pay off the Promissory Note would be a detriment to Trust Beneficiaries and unjustly enrich Trustee. A81-82, ¶¶ 7-9, 12. Trust Beneficiaries argued that using Trust Assets to pay off the Promissory Note would contravene Section 20-19 because the Mortgage was an "encumbrance" that Section 20-19 required Trustee be responsible for due to receiving the Settlor's interest in the Rentchler Property. A82, ¶¶ 13-14.

On July 19, 2024, Trustee filed her Reply in Support of her Petition. A86-93; C71-78. Trustee argued that she had a duty to use Trust assets to pay off the Promissory Note because the Note was a "just debt" of the Settlor under Article Ten of the Trust. A87-88. Trustee argued that Section 20-19 did not apply because it applies to the payment of a debt from a decedent's personal estate and not to the payment of a debt from a trust. A88.

On August 26, 2024, the circuit court entered an order on Trustee's Petition. A16-23; C83-90. The circuit court held that Section 20-19 applied to the transfer of the Settlor's interest in the Rentschler Property under the express terms of the statute. A19-20. The circuit court held that unless there is specific direction otherwise, Section 20-19 will apply and the beneficiary of a bequest or transfer by other instrument, non-testamentary or otherwise, takes the real estate subject to the encumbrance. A20-21. Upon review of the Trust and the Settlor's Will, the circuit court held that the Settlor did not express an intent for the Trust to pay off the Promissory Note. A21-22.

The circuit court took judicial notice of the Settlor's Will and that it was a pour-over will with a few specific tangible personal property bequests with the remainder "pouring over" into the Trust. A21. The circuit court found that the Settlor's Will specifically provided for the payment of his "debts, expenses of administration, and estate taxes" pursuant to the Trust. *Id.* The circuit court noted that the Settlor did not execute a codicil to his Will expressing intent for Section 20-19 to not apply or for the Trust to pay off the Promissory Note. A21-22.

The circuit court found that Article Ten of the Trust was a general direction to Trustee to pay the Settlor's expenses of last illness, administrative expenses, and all estate, inheritance, and transfer taxes. *Id.* The circuit court found that Article Ten did not "contain specific language expressing the Settlor's intent" that the Trust "pay or assume the liability for encumbered real estate that passes upon [the Settlor's] death through a right of survivorship or another non-testamentary instrument." *Id.*

The circuit court noted that the Trust provided for Trustee to reside in the parties' marital home for her lifetime with conditions, including that Trustee was responsible for "all monthly mortgage payments, costs and expenses incident to the use, debt service, maintenance, and

protection thereof, and real estate taxes and insurance.” A22. The martial home at the time of the Settlor’s death was in Monticello, Illinois. *Id.* The circuit court found that Article Four of the Trust suggested that Settlor intended for Section 20-19 to “apply to any specific bequests or outright transfers of encumbered real property.” *Id.* The circuit court noted that Illinois law presumed that Settlor “understood that [Trustee] would receive the entire interest in the [Rentchler Property], at the time of his death.” *Id.* The circuit court concluded by finding that Section 20-19 applied to the transfer of the Settlor’s interest in the Rentchler Property because the Settlor did not intend for the Trust to assume liability for the Promissory Note. A23. On September 20, 2024, Trustee filed her Notice of Appeal, requesting that the appellate court reverse the circuit court’s order regarding the payment of the Promissory Note. A98-100.

On October 2, 2025, the appellate court issued its opinion. A1-15. The appellate court agreed that Article Ten of the Trust directs Trustee to use Trust assets to pay all of the Settlor’s “just debts.” A7, ¶ 20. The appellate court noted that Trust Beneficiaries acknowledged that the Promissory Note was a debt of the Settlor but disputed that the Note was a “just debt” under Article Ten of the Trust. *Id.* The appellate court found that Section 20-19 “unquestionably applies to the transfer of the [Rentchler Property]” because a mortgage is included within the Illinois Probate Act’s definition of an encumbrance. A9, ¶ 24.

The appellate court relied upon Illinois court decisions applying Section 20-19, in addition to rules of statutory construction and construction of a trust to conclude that using Trust assets to pay off the Promissory Note was “clearly contrary to the express wording of Section 20-19.” A9-14. The appellate court noted that the Settlor could have specifically authorized using Trust assets to pay off the Promissory Note within the Trust, his Will or in a codicil to his Will, but that he did

not. A12, ¶ 30. The appellate court found that there is no “catch-all provision allowing exoneration of debts on encumbered assets” within the Trust. *Id.*

By applying rules of construction of a trust, the appellate court found that provisions within the Trust indicated that Settlor did not intend for Trust assets to pay off the Promissory Note. A12-13. The appellate court found that within the Trust, Settlor provided for “[Trustee] to have the marital home ... as her sole property if they were living in that home when he died[,]” that the Settlor made “no provisions about payment of real estate taxes, insurance, maintenance, or any other costs associated with home ownership” and noted that Trustee “did not seek guidance from the court on who was responsible for said expenses.” A12-13, ¶ 32 (internal quotations omitted).

The appellate court found that the Trust provided that if Settlor and Trustee were living anywhere other than the marital residence in Monticello, Trustee could live there subject to certain conditions, including that she was responsible for “costs and expenses incident to the use, debt service, maintenance and protection thereof, including the cost of monthly mortgage payments, if any, insurance and the taxes thereon.” A13, ¶ 33. The appellate court found that the Trust provided that upon Trustee’s “death, remarriage, cohabitation, abandonment of said property, or failure to pay the aforesaid costs and expenses incident to the use thereof ... said property shall be distributed per stirpes to my descendants then surviving.” *Id.*

The appellate court found that Article Four of the Trust limited the amount that Trustee could receive for certain “property.” A13, ¶ 34. While noting that it was unclear what “the property” referred to, the appellate court found it to be characterized like a marital domicile as used in other paragraphs of Article Four. *Id.* The appellate court concluded by finding “no basis in law or in the express terms of the Settlor’s Trust and/or his will that [Trustee] was entitled to pay off the encumbrance on the [Rentschler Property] with Trust assets.” A14, ¶ 35.

V. ARGUMENT

The appellate court and circuit court correctly held that the language within Article Ten of the Trust directing Trustee to pay the Settlor’s “just debts” is insufficient to direct Trustee to use Trust assets to pay off the Promissory Note. The appellate court and circuit court correctly found that there is no specific direction within the Trust or the Settlor’s Will for Trustee to use Trust assets to pay off the Promissory Note. Further, the appellate court and circuit court correctly held that the language within Article Ten of the Trust to pay the Settlor’s “just debts” is insufficient to direct Trustee to use Trust Assets to pay off the Promissory Note because holding otherwise would effectively reintroduce the doctrine of exoneration that Section 20-19 of the Probate Act abolished. 755 ILCS 5/20-19(a).

A. **This Court Should Affirm Because the Trust Does Not Direct the Trustee to Use Trust Assets to Pay Off the Promissory Note.**

Trustee argues that the only basis that the appellate court relied upon to determine that Trustee could not use Trust assets to pay off the Promissory Note was its application of Section 20-19. This argument is misplaced because this Court can affirm upon any basis in the record. *People v. Tompkins*, 2023 IL 127805, ¶ 54 (“[T]his [C]ourt may affirm on any basis provided by the record, regardless of whether the lower court relied on those grounds and regardless of whether the lower court’s reasoning was correct.”). Trustee’s argument is further misplaced given the review and analysis by the appellate court of other relevant Trust provisions to find that Settlor did not intend for the Trust to be liable for payment of the Promissory Note. A 12-14, ¶¶ 31-35.

The primary objective of Illinois courts when construing a trust is to “discover the settlor’s intent, which the court will effectuate if it is not contrary to law or public policy.” *Estate of Mendelson v. Mendelson*, 2016 IL App (2d) 150084, 25 (citing *First National Bank of Chicago v. Canton Council of Campfire Girls, Inc.*, 85 Ill. 2d 507, 513 (1981)). The intent of the settlor is

determined “as of the time the instrument is executed.” *Id.* Illinois courts must also consider the plain and ordinary meaning of the words used by the settlor within the entire document. *Id.* (citing *First National Bank of Chicago*, 85 Ill. 2d at 514).

There is no dispute that Article Ten of the Trust directs Trustee to use Trust assets to pay all of the Settlor’s “just debts.” A38-39. However, Article Ten does not define “just debts.” *Id.* A review of the language used within the Trust, in addition to Illinois caselaw and rules of construction of a trust agreement, show that Settlor did not intend for the Promissory Note to be considered a “just debt” to be paid pursuant to Article Ten of the Trust.

i. Article Ten does not direct Trustee to use Trust assets to pay off the Promissory Note.

Trustee does not argue that the Trust specifically directs her to use Trust assets to pay off the Promissory Note but instead relies upon Article Ten’s boilerplate language providing for payment of the Settlor’s “just debts” as the basis for her argument and this appeal. There is no ambiguity within Article Ten that Settlor did not specifically direct Trustee to use Trust assets to pay off the Promissory Note.

The plainly expressed intent of the Settlor is preferred over all technical rules of construction. *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 32. However, if the Settlor’s intent cannot be ascertained from the words used within the trust document, and this Court finds that the Settlor’s meaning is obscure or uncertain, then rules of construction apply to give the words used “their plain and ordinary meaning.” *Harris Trust & Savings Bank v. Donovan*, 145 Ill. 2d 166, 172 (1991). The Illinois Trust Code provides for the rules of construction applicable under Illinois law to the construction of wills and disposition of property by will to apply “as appropriate to the interpretation of the trust instrument and the disposition of the trust property.” 760 ILCS 3/112.

Illinois law is clear that a general direction within a will directing for the payment of the decedent's expenses and indebtedness is insufficient to express an intent by the decedent to shift the liability for encumbrances to realty from the one taking the decedent's interest in the realty to the decedent's estate. *In re Estate of Matthews*, 409 Ill. App. 3d 780, 785 (2011) (a decedent's direction for his executor to "pay all governmental charges, taxes or liens imposed upon [his] estate or upon the interest of any and all beneficiaries by any governmental entity relating to the transfer of property by descent or devise" was insufficient to hold the estate liable for real estate taxes encumbering the bequest of the decedent's realty); *In re Estate of Light*, 385 Ill. App. 3d 196, 197, 201 (2008) (boilerplate language within a will directing for the payment of "all taxes assessed or imposed against [the decedent's] estate" was insufficient to make the estate liable for real estate taxes encumbering a bequest of the decedent's realty); *Griffin v. Gould*, 72 Ill. App. 3d 747, 748-753 (1979) (something more than the stock phrase all indebtedness owed by me at the time of my death" was required to make an estate liable for encumbered realty as opposed to the devisee) (internal quotations omitted).

The basic principle from these cases applicable to the case at bar is that specific language must be used within a trust or another writing executed by the settlor showing that the settlor intended for a trust be held responsible for an encumbrance attached to an interest in property passing from the settlor to another upon his death rather than the receiver of the settlor's interest.

There is no ambiguity that Article Ten of the Trust does not specifically direct Trustee to use Trust assets to pay off the Promissory Note or include the Promissory Note as an example of the types of "just debts" payable from the Trust. A 38-39. However, even if this Court looked further at Article Ten to resolve any ambiguity on this part, cannons of construction show that Settlor did not intend for the Promissory Note to fall under "just debts" that are payable from Trust assets.

- a. Applying the doctrine of *ejusdem generis* shows that Settlor did not intend for the Promissory Note to fall within the definition of “just debts” under Article Ten of the Trust.

Under Illinois law, the doctrine of *ejusdem generis* applies to the interpretation of statutes, wills, and other instruments. *Brink's Inc. v. Illinois Commerce Com.*, 108 Ill. App. 3d 186, 190 (1982); see also *Sverid v. First Nat'l Bank*, 295 Ill. App. 3d 919 (1998) (applying *ejusdem generis* to a will); *Paul B. Episcopo, Ltd. v. Law Offices of Campbell & Di Vincenzo*, 373 Ill. App. 3d 384 (2007) (applying *ejusdem generis* to a contract). This doctrine provides that when specific words are followed by general words or examples within a clause, the general words are interpreted to include only items of the same kind, class, or nature as those specifically enumerated. *Bullman v. Chicago*, 367 Ill. 217, 225-226 (1937). The rationale behind the doctrine is to avoid rendering the specific words used as superfluous. *Pooh-Bah Enters. v. County of Cook*, 232 Ill. 2d 463, 492 (2009). The doctrine is not a “rule of mandatory application”; however, this Court has indicated that the doctrine applies unless “a contrary intent is evident.” *Brink's Inc.*, 108 Ill. App. 3d at 190.

In *Sverid*, the decedent's will named a friend and an educational institution as the two beneficiaries to her will. 295 Ill. App. 3d at 920-21. The decedent's will bequeathed “all of [the decedent's] personal effects, household goods, and all other goods and chattels” to her friend. *Id.* The decedent bequeathed her estate residue to the educational institution. *Id.*, at 921. At her death, the decedent owned a residence and its contents and furnishings, and various certificates of ownership to certain common stocks and bonds. *Id.* Most of the decedent's stock and bond certificates were found in a safe-deposit box; however, some were located among the decedent's residence and personal possessions. *Id.* When the decedent's will was admitted to probate, her friend sought a declaration that she was entitled to the decedent's stocks and bonds which were valued over \$1 million, rather than the educational institution. *Id.* The trial court disagreed and

held that the educational institution was entitled to the decedent's stocks and bonds under the unambiguous terms of the decedent's will. *Id.* The friend appealed. *Id.*

On appeal, the friend argued that the plain and obvious meaning of the phrase "all of my personal effects, household goods, and all other goods and chattels" bequeathed all the decedent's personal property to her because there were no words of limitation as to the decedent's tangible personal property or property at another location. *Id.* The friend suggested that the will's designation of her as the decedent's "good friend" reinforced her interpretation. *Id.* The friend argued that the decedent's use of "all" denoted an inclusive scope of the decedent's bequest of personal property and signaled the decedent's intent to separate her property into the broad categories of real and personal property. *Id.* The friend further argued that, at minimum, the phrase "personal effects" was capable of two meanings, one inclusive of intangible personal property and another limited to tangible personal property. *Id.* The executor and educational institution argued that the decedent's will unambiguously conveyed only tangible personal property to the friend. *Id.*

The appellate court affirmed the circuit court, holding that the stocks and bonds were bequeathed to the educational institution under the will's residuary clause. *Id.*, at 922-23. The court found that the decedent's bequest of "personal effects" was conjoined with her bequest of other personalty already categorized as tangible property by other Illinois courts. *Id.*, at 923 (*citing In re Estate of Berman*, 39 Ill. App. 2d 175, 179 (1963) (the term "goods and chattels" within the Probate Act denoted tangible personal property, rather than intangible property like stocks, bonds, mortgages, accounts receivable, notes and the like) and *Watkins v. Nobiling*, 22 Ill. 2d 290, 292 (1961) (a decedent's bequest of "joint belongings" when viewed in a light of extrinsic circumstances did not manifest an intent by the decedent to devise real estate because "belongings" is ordinarily used to designate tangible personal property such as household goods and personal

effects)) (internal quotations omitted). The court ruled that the decedent's will unambiguously bequeathed only tangible personal property to the friend. *Id.*, at 923.

Like a will or trust, Illinois law interprets the intention of parties to written agreement by first resorting to the plain and ordinary language within the agreement unless the words used are ambiguous. *Paul B. Episcopo, Ltd.*, 373 Ill. App. 3d at 391 (a written agreement "speaks for itself, and the intention with which it was executed). In *Paul B. Episcopo, Ltd.*, two law firms entered into a joint representation agreement concerning a mutual client's federal lawsuit. 373 Ill. App. 3d at 386. The firms' client was originally represented in the lawsuit by a firm unrelated to the joint representation agreement before the firm withdrew its representation. *Id.* The joint representation agreement provided that if "a monetary recovery is obtained by way of judgment, settlement or otherwise [the law firms] shall receive 33-1/3% of the Net Recovery as a contingent fee." *Id.* The agreement defined "Net Recovery" to mean "the total recovery, including any award of attorney's fees or expenses, less all expenses and disbursements that [the mutual client] have paid." *Id.* The joint representation agreement specifically listed the mutual client and defined the "matter" which the agreement related as the client's pending lawsuit. *Id.*, at 387.

After the mutual client's lawsuit was resolved, one of the law firms filed a legal malpractice claim against the mutual client's original attorneys. *Id.* The other firm to the joint representation agreement was not involved with the legal malpractice action and did not share in the settlement recovery, although the firm had urged the other firm to pursue the action and provided it with research on the relevant issues. *Id.* The law firm that did not receive any settlement recovery filed an action seeking 1/3 of the settlement fees based on the joint representation agreement, alleging that the other firm breached a fiduciary duty. *Id.*, at 387-88. The firm alleged that the legal malpractice case was part of the same representation contained within the joint representation

agreement, only directed against a different defendant and thus the other firm had a duty to share the settlement recovery fees. *Id.* The firm filing suit relied upon the phrase “[i]n the event a monetary recovery is obtained by way of judgment, settlement or otherwise” as a basis for recovery of a share of the settlement funds. *Id.*, at 390.

The law firm filing suit argued that “otherwise” as used within the relevant portion of the joint representation agreement widened the intention of the agreed upon recovery to include any recovery from a legal malpractice suit. *Id.* The appellate court disagreed and applied *ejusdem generis* to find that the words “other” and otherwise” were limited to the objects and persons enumerated within the joint representation agreement. *Id.*, at 390-91. The court interpreted “otherwise” as used within the joint representation agreement to mean “that monetary recovery can occur by judgment, settlement, and by such other similar means as arbitration, mediation, or other alternative dispute resolutions.” *Id.* The court found that because “otherwise” is not interpreted to extend to things of a different quality, that agreement could not apply to a recovery from a wholly different litigation because the agreement itself was limited to the federal lawsuit. *Id.*, at 391.

Article Ten of the Trust directs Trustee to pay the Settlor’s “just debts” from the Trust estate. A38. Article Ten does not define “just debts,” but does list specific examples. A38-39 (“the expenses of [Settlor’s] last illness and funeral, all expenses of administration of property ... passing under [Settlor’s] Will or [the Trust] or otherwise, and all estate, inheritance, transfer and succession taxes ... due by reason of [Settlor’s] death ... other than any tax on a generation-skipping transfer which is not a liability of [Settlor’s] estate.”). Like *Sverid* and *Paul B. Episcopo, Ltd.*, the Settlor’s examples of “just debts” do not specifically refer to the Promissory Note, another encumbrance upon real estate, nor any like item. *Id.* Instead, the Settlor’s listed examples of what

is included within his “just debts” are general matters of estate administration as opposed to the payment of a debt encumbering an interest in real estate that he had at his death. *Id.* Therefore, the Promissory Note is not a “just debt” under Article Ten of the Trust pursuant to *ejusdem generis*.

- b.* Because the Promissory Note is not a “just debt” pursuant to *ejusdem generis*, applying the doctrine of *expressio unius est exclusio alterius* shows that Settlor did not intend for Trust Assets to be used to pay off the Promissory Note.

Illinois recognizes another canon of construction, *expressio unius est exclusio alterius*, which means “the inclusion of one is the exclusion of the other.” *Altenheim German Home v. Bank of Am., N.A.*, 376 Ill. App. 3d 26, 36 (2007); *see too Gwinn v. Gwinn*, 2016 IL App (2d) 150851 (applying the doctrine to a trust to hold that language giving the trustee express power to make gifts of trust assets to the settlor’s descendants is an implied denial of power to make gifts of assets to any other person); *Woolard v. Woolard*, 547 F. 3d 755 (7th Cir. 2008) (language within an Illinois trust did not allow for the trustee to make distributions to the settlor). This Court has explained that the doctrine is based on “logic and common sense,” reflecting the principle that the listing of certain items implies that omitted items are excluded. *Metzger v. DaRosa*, 209 Ill. 2d 30, 44 (2004) (“[W]hen people say one thing they do not mean something else.”)

In *Gwinn*, the settlor’s trust named her husband as successor trustee and primary beneficiary and their children as contingent beneficiaries. 2016 IL App (2d) 150851, ¶¶ 3-7. After the settlor died, her husband remarried and purchased a residence using trust assets and titled the home in the second wife’s name only. *Id.*, ¶ 8. The children filed a complaint against their father, arguing that he violated the trust and breached his duty as trustee by purchasing the residence which resulted in damages to them due to depletion of trust assets. *Id.*, ¶¶ 9-12. The trial court dismissed the complaint for failure to state a claim. *Id.*, ¶ 13. The children appealed. *Id.*

The Second District looked to the language of the trust to determine the trustee's gifting powers. *Id.*, ¶¶ 16-23. The court determined that the settlor gave the husband, as successor trustee, authority to provide for himself as primary beneficiary of the trust regarding his "health, support and maintenance in reasonable comfort." *Id.*, ¶ 17. The children argued that "health, support and maintenance" is recognized term of art that "objectively limits a trustee's direction." *Id.* The court determined that the trustee had no obligation under the trust to support the children from the trust while he was alive. *Id.*, ¶ 18. However, the court did not construe the trust to find that trustee had unlimited authority to "do whatever he wanted with trust property," because the trustee was given the power to make gifts of trust assets to the children. *Id.*, ¶ 19.

In analyzing the language of the trust, the court found nothing that would allow trustee to make an extraordinary gift of trust assets. *Id.*, ¶ 21. The court noted that its interpretation of the trust was consistent with the Restatement (Third) of Trusts § 50 cmt. d(2) (2003), which explains that provisions within a trust for the support and maintenance of a beneficiary do not authorize distributions to enlarge the beneficiary's personal estate or enable him to make extraordinary gifts. *Id.* (citing *In re Estate of Polley*, 111 Ill. App. 3d 873, 875-78 (1982)) (decendent's will authorizing husband to use corpus "for his support in his accustomed manner of living" but not to build up his own separate estate).

The court agreed with the children that under *expressio unius est exclusion alterius*, the express grant of power to the trustee to make gifts of assets to the settlor's descendants was an implied denial of power to make gifts of trust assets to any other person than the settlor's descendants. *Id.*, ¶ 22 (citing *Altenheim German Home*, 376 Ill. App. 3d at 36). Viewing the complaint in a light most favorable to the children, the court determined that trustee breached his fiduciary duty by

making an extraordinary gift and reversed the judgment of the circuit court and remanded for further proceedings. *Id.*, ¶¶ 23-24.

In *Woolard*, a settlor established a trust allowing the trustee to distribute its income and principal for the sole benefit of the trust beneficiary, the settlor's child. 547 F. 3d at 757. The trust specifically allowed the trustee to make distributions of income and principal directly to the beneficiary, a legally appointed guardian, or a custodian. *Id.* The trust prohibited the trustee from loaning trust property to the settlor. *Id.* The trustee distributed more than \$850,000.00 from the trust to the settlor. *Id.* The district court held that the trustee's distributions to the settlor was an express violation of the trust. *Id.*

On appeal, the trustee argued that his distributions to the settlor complied with his duties as trustee because the trust gave him discretion to distribute funds to the settlor. *Id.*, at 758. The trustee argued that the Illinois Trust and Trustees Act gave him authority to distribute funds to the settlor as an adult relative of the beneficiary. *Id.* The trustee argued that it was appropriate to distribute funds to the settlor and it should be presumed that the beneficiary benefitted from the funds because the settlor had a legal duty to support the beneficiary as his son. *Id.* The beneficiary argued that the case simply turned upon "a violation of the express and exclusive terms of the [t]rust, which did not allow for distributions to [the settlor]." *Id.*

The Seventh Circuit noted that, under Illinois law, the "limits of a trustee's powers are determined by the instrument which creates the trust." *Id.* (citing *Stuart v. Continental Ill. Nat'l Bank & Trust Co.*, 68 Ill. 2d 502 (1977)) (internal quotations omitted). Upon reviewing the provision of the trust, the Seventh Circuit found that none of the distributions from the trustee to the settlor were distributed directly to the beneficiary and there was no legally appointed guardian or custodian. *Id.* The Seventh Circuit rejected the trustee's argument that another trust provision

allowed for him to make distributions “in [his] sole discretion” for the benefit of the beneficiary and that by giving money directly to the settlor that he was directly applying the money for the beneficiary’s benefit by relying on the plain language of the trust. *Id.*, at 758-59 (“[Trustee] cannot find justification for the distribution within the terms of the [t]rust [a]greement”).

The Seventh Circuit also compared the language of the trust to that of the Trusts and Trustees Act (760 ILCS 5/3(1)) to find the settlor was not an authorized to receive distributions from the trust. *Id.*, at 759-60. The court found that the trust mirrored certain provisions of the Act, except for the option to distribute money to an adult relative and the option to distribute to a related trust. *Id.*, at 759-60. The court found these to be “intentional omissions” under *inclusion unius est exclusion alterius*. *Id.*, at 760. The court found that the trust specifically prohibited the settlor from receiving loans from the trust. *Id.* Because the court found that the trust “anticipated and provided for distributions to, or for the benefit of, minors” the court further found that the provision within the Act allowing for distributions to an adult relative did not apply. *Id.* The court also rejected the trustee’s argument that it was logical and appropriate to distribute trust assets to the settlor as the beneficiary’s father, because the trust “simply did not allow distributions to [the settlor].” *Id.*

Article Ten of the Trust does not specifically direct Trustee to use Trust assets to pay off the Promissory Note. When analyzing Article Ten of the Trust, the circuit court correctly determined that it was a general direction to Trustee to pay the Settlor’s expenses of last illness, administrative expense, and all estate, inheritance, and transfer taxes. A21. The expenses of last illness, administrative expenses, and estate, inheritance, and transfer taxes are clearly a different subject matter than the Promissory Note. The Settlor’s lack of express authority within the Trust to use Trust assets to pay off the Promissory Note is his direction to not use those assets to pay off the Promissory Note.

Even if this Court were to look further at the language of Article Ten to resolve any ambiguity, cannons of construction of a trust show that Settlor did not intend for the Promissory Note to be a “just debt” payable from Trust assets pursuant to Article Ten.

- ii. *Other Trust articles show that Settlor did not intend for Trust assets to be used to pay off the Promissory Note.*

When an Illinois court construes any particular clause of a trust, it must consider the entire instrument. *Oldweiler v. Peoples Bank of Bloomington*, 161 Ill. App. 3d 317, 321 (1987) (construing a trust agreement, as a whole, to find no ambiguity as to settlor’s intent). Illinois courts must consider the plain and ordinary meaning of the words used when determining the settlor’s intent. *Citizens Nat’l Bank of Paris v. Kids Hope United, Inc.*, 235 Ill. 2d 565, 574 (2009). The court can also consider the relation of the parties, their connection with the subject matter of the trust, and the circumstances under which it was made and the purpose of the trust. *Bank of Am., N.A. v. Carpenter*, 401 Ill. App. 3d 788, 797 (2010) (“[I]n searching for the testator’s intent, courts analyze both the words used in the instrument and the circumstances under which they were drafted, including the state of the testator’s property, his family, and the like”). When construing a trust, Illinois courts strive to avoid rendering any language in the trust as surplusage, insignificant, or nonsensical. *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 32.

Within Article 4(A)(1) of the Trust, Settlor provided for Trustee to receive the parties’ martial home in Monticello, Illinois, “as her sole property” if they were residing in the home when he died. A30. Article 4 does not provide for the payment of real estate taxes, insurance, maintenance, or any other costs associated with the home from Trust assets. *Id.* Article 4 does not direct for the Trust to be responsible for any mortgage or other encumbrance attached to the Monticello home. *Id.* Thus, Article 4(A)(1) shows that the Settlor did not intend for the Trust to be responsible for debt encumbering that real estate which Trustee received an interest in due to the Settlor’s death.

Although Trustee was residing in the Monticello home when Settlor died, alternative Trust provisions discussing Trustee's housing after Settlor's death are relevant to show Settlor's intent for the use of Trust assets in this case. A30-31. If Settlor and Trustee resided at another home at Settlor's death, Article 4(A)(2) of the Trust provided that Trustee could reside at that home for her life, subject to certain conditions, including that Trustee was expressly responsible for "costs and expenses incident to the use, debt service, maintenance and protection thereof, including the cost of monthly mortgage payments, if any, insurance and the taxes thereon." *Id.* While farmland, it is a logical interpretation that the Settlor intended for the Rentschler Property to fall under Article 4(A)(2). Thus, Article 4(A)(2) shows that the Settlor did not intend for the Trust to be responsible for debt encumbering that real estate which Trustee received an interest in due to the Settlor's death.

Article 4(A)(3) of the Trust also limits the amount of the "property" that Trustee can receive as a conditional distribution under the Trust. A31. Article 4(A)(3) provides that if Settlor and Trustee owned "property" as joint tenants or as tenants by the entirety at his death that did not have a "net market value" (fair market value, less mortgage or security interest debt) of at least \$250,000.00, then Trustee was to receive an amount equal to the difference between the net market value of the "property" and the sum of \$250,000.00. *Id.* Article 4(A)(3) of the Trust does not define the "property," however, the appellate court found that the term was characterized like a marital domicile as used in the other paragraphs of Article 4. *See* A30-31; A13.

Further, if this Court were to look at the entire Trust, it would be reasonable to conclude that the Settlor created the Trust for the primary benefit of Trust Beneficiaries rather than Trustee. As discussed above, Trustee is a beneficiary of the Trust limited to any land that she and the Settlor owned as a marital domicile that was held in the Trust and a conditional distribution if certain

property owned in joint tenancy with the Settlor did not have certain net market value upon the Settlor's death. A29-31. The Trust Estate includes the three parcels held in Trust and any income therefrom, in addition to the Settlor's estate residue, and is to be distributed to Trust Beneficiaries. A31-33; A18. The balance of the Promissory Note at the Settlor's death was \$858,476.08. A25-26. When construing the Trust, as a whole, it is a logical conclusion that the Settlor established the Trust for the primary benefit of his two children, Trust Beneficiaries. Another logical conclusion is that the Settlor would not have established the Trust that bequeaths three parcels of farmland that accrue income and the residue of his estate to Trust Beneficiaries in order for the Trust property to be then ultimately used to satisfy a substantial debt at the detriment of Settlor's only children.

B. The Appellate Court Correctly Held that Section 20-19 Applies to the Case at Bar to Effectuate the Settlor's Overall Intent for His Estate Plan.

Trustee argues that the appellate court and circuit court erred in finding that Section 20-19 prohibits Trustee from using Trust assets to pay off the Promissory Note because she is seeking payment of the Promissory Note from Trust assets, rather than the real or personal estate of the Settlor. Trustee's arguments are misplaced because the appellate court and circuit court correctly found that Section 20-19 applies to the case at bar by construing the Trust and Settlor's Will, in light of Section 20-19, to hold that Settlor did not express his intent within either instrument for the Trust assets to be used to pay off the Promissory Note.

When an Illinois court interprets a statute, its main objective is to determine and give effect to the legislature's intent. *Westberg v. Barcroft*, 2022 IL App (2d) 210543, ¶ 23 (citing *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 24). The "most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Id.* "Each word, clause, and sentence of a statute must be given a reasonable construction, and no term should be rendered

superfluous.” *Id.* (citing *1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 21). Illinois courts cannot deviate from a statute’s plain and unambiguous language by “reading into the statute exceptions, limitations, or conditions not expressed therein.” *Id.* (citing *Rosenbach*, 2019 IL 123186, ¶ 24).

The common law doctrine of exoneration provided that a devisee of encumbered real estate was entitled to a discharge of the encumbrance from the decedent’s personal estate unless otherwise directed. *Griffin v. Gould*, 72 Ill. App. 3d 747, 749 (1979). This rule was followed in Illinois “as a corollary of the common law principle that a decedent’s personalty is the primary fund for payment of his debts.” *Id.* (citing *Watts v. Killian*, 300 Ill. 242 (1921)).

The predecessor to Section 20-19 took effect in 1967 (1967 Ill. Laws 2012 (§ 219(b)) and eliminated the doctrine of exoneration within Illinois, “[e]xcept as otherwise expressly provided by decedent’s will.” 755 ILCS 5/20-19 (West 2022). After the predecessor to Section 20-19 took effect, there were questions concerning its application:

“A question suggested by the statutory words [of what is now Section 20-19] is whether a general direction to the legal representative to pay the debts of the decedent constitutes an “express provision” to the contrary. The majority rule appears to be that a general direction to pay debts is merely declaratory of the law and does not of itself indicate an affirmative or express intent to pay debts secured by a lien or encumbrance. 4 William M. James, *Illinois Probate Law and Practice* 219b.4, at 242 (Austin Fleming Supp. 1975); *see also* Spencer H. Raymond, 1967 Legislative Changes Affecting Probate and Trust Law, 56 Ill. B.B.J. 208, 215 (1967) (“The new statute requires an express provision in the decedent’s will to overcome the effect of the statute and a mere statement to pay the testator’s debts will not be sufficient to overcome it.”).

Section 20-19 provides, in relevant part:

Except as otherwise expressly provided by decedent’s will: (a) [w]hen any real estate . . . subject to an encumbrance . . . is specifically bequeathed or passes by joint tenancy with right of survivorship or by the terms of a trust agreement or other nontestamentary instrument, the legatee, surviving tenant or beneficiary to whom the real estate . . . or beneficial interest is given or passes, takes it subject to the encumbrance and is not entitled to have the indebtedness paid from other real or personal estate of the decedent. 755 ILCS 5/20-19(a) (emphasis added).

As correctly noted by the circuit court, Section 20-19 clearly includes all transfers of encumbered real estate, including those passing through an interest as joint tenant with right of survivorship. *Id.*; A19. Thus, under Section 20-19, regardless of how one inherits encumbered real estate, the recipient can obtain exoneration of the encumbrance from the decedent's estate only if such intent is expressly stated within the decedent's will. *Id.*; *In re Estate of Matthews*, 409 Ill.App.3d 780, 784 (2011); *Griffin*, 72 Ill. App. 3d at 749.

The appellate court and circuit court correctly looked to the plain language of Section 20-19 to hold that it applies to the transfer of the Settlor's interest in the Rentschler Property to Trustee. A9; A23. The appellate court correctly found that Section 20-19(a) specifically provides that “[w]hen any real estate ... subject to an encumbrance ... passes by joint tenancy with right of survivorship ... the ... surviving tenant ... to whom the real estate ... passes, takes it subject to the encumbrance... .” A9 (citing 755 ILCS 5/20-19(a) (West 2022)). The appellate court correctly found that the Probate Act defines an “encumbrance” to include a mortgage. A9 (citing 755 ILCS 5/1-2.07).

The question that remained and which was correctly resolved by the appellate court was whether Trustee, as the “undisputed owner” of the Rentschler Property subject to its “monetary encumbrance” could use Trust assets to pay off the Promissory Note. A9. The appellate court correctly resolved that question by applying rules of statutory construction and rules on the construction of a will and trust documents. The opinions of the lower courts are supported by Illinois court decisions applying Section 20-19, cases from foreign jurisdictions applying similar non-exoneration statutes, and public policy.

- i. *Illinois law recognizes that a decedent's will and trust should be construed together to effectuate the intent of the decedent.*

It is well established under Illinois law that so long as certain requirements are met, a will may incorporate by reference other documents, including trusts, even if these documents were not executed with the formality required for the execution of a will. *Estate of Phelan v. Baskin*, 375 Ill. App. 3d 875, 883-884 (2007) (citing *In re Estate of Meskimen*, 39 Ill. 2d 415, 417-418 (1968)). Illinois law uses a three-part test to determine whether a document has been incorporated into a will. *Meskimen*, 39 Ill. 2d at 417-18. First, the will itself must refer to the document as being in existence at the time of the execution of the will and in such a manner as to reasonably identify it and show the testator's intention to incorporate the document within the will and make it a part thereof. *Id.*, at 417. Second, the document must in fact exist at the time the will is executed. *Id.* Third, the document must correspond to the description in the will and be shown to be the instrument referred to within the will. *Id.*, at 418.

This Court recognizes that a decedent's will and trust should be construed together to effectuate a decedent's overall testamentary intent. *See Harris Trust & Savings Bank v. Donovan*, 145 Ill. 2d 166 (1991). The rules of construction of a will under Illinois law also apply to trusts. *Harris Trust & Savings Bank*, 145 Ill. 2d at 172 (citing *First Nat'l Bank v. Canton Council of Campfire Girls, Inc.*, 85 Ill. 2d 507, 513-514 (1981)).

In *Harris Trust & Savings Bank*, the decedent's use of the term "lawful blood children" within his trust documents was interpreted in conjunction with the decedent's will, leading this Court to conclude that the decedent's illegitimate child was disinherited by necessary implication. *Id.*, at 173-177. This Court further underscored that the plain and ordinary meaning of the language in both the decedent's will and trust documents had to be harmonized to determine the decedent's

intent. *Id.*, at 176-177 (“When there are two or more instruments ... relating to a trust, they may, or should, be construed together to effectuate the intention of the creator.”)

The appellate court and circuit court noted that the Settlor executed his Will and the Trust on the same date. A2, ¶ 3; A21. The circuit court noted that Section 1 of the Settlor’s Will provided for the payment of “his debts, expenses of administration, and estate related taxes” under the terms of the Trust. A18; A21. The appellate court and circuit court noted that, except for a few specific bequests of personal property, the Settlor’s Will “pours-over” his estate residue into the Trust. A5, ¶ 11; A18; A21. The appellate court and circuit court noted that Settlor did not execute a codicil to his Will that expressed his intent for Section 20-19 to not apply to the Rentchler Property and for Trust assets to be used to pay off the Promissory Note. A12, ¶ 30; A22.

The appellate court noted that the Settlor could have specifically directed for Trust assets to be used to pay off the Promissory Note, but he did not do so. A12, ¶ 30. The appellate court noted that there is “no catch-all provision allowing exoneration of debts on encumbered assets” held in the Trust. *Id.* The appellate court and circuit court noted that the Settlor did not execute an amendment to the Trust expressing his intent for Trust assets to be used to pay off the Promissory Note. *Id.*; A22. The circuit court found that the Settlor’s estate plan was “detailed and specific, demonstrating his intent to provide for [the Settlor] and [Trust Beneficiaries], and their families. A22. Upon review of the Settlor’s Will and the Trust, as a whole and not in isolation, the circuit court held that the Settlor did not intend to “shift the liability of the [Promissory Note] to the Trust estate.” *Id.*

Trustee argues that affirming the appellate court “raises significant concerns regarding the administration of trusts” because “settlor’s have expected that a clear mandate in a trust requiring the payment of all the settlor’s debts would ... require the trustee to pay all the settlor’s debts.”

Trustee further argues that “all trusts executed without consideration for Section 20-19 must be revised, or else the settlors’ true wishes will not be effectuated. *Id.* This argument is a red herring. As discussed above, this Court has established that a will and trust should be construed together to give effect to the decedent’s overall testamentary intent. *Harris Trust & Savings Bank*, 145 Ill. 2d at 172. Additionally, Trustee has yet to cite a case analogous in fact to the case at bar. As correctly recognized by the circuit court, the Settlor’s estate plan is “detailed and specific,” and if Settlor intended for Trust assets to be used to pay off the Promissory Note, then he knew how to use language within either the Trust or the Settlor’s Will to express such intent. A22. There can be no dispute that he did not express such specific intent within either of his estate planning instruments.

ii. Section 20-19 contemplates its application to a trust.

Trustee argues that the appellate court and circuit court erred by applying Section 20-19 to the case at bar because trusts are not subject to the doctrine of exoneration. However, Trustee cannot dispute that this Court presumes that one who inherits an interest in encumbered real estate takes the interest subject to the encumbrance unless there is contrary direction within a decedent’s will. See *Belfield v. Findlay*, 389 Ill. 526, 529 (1945) (“The law in this State is that a testator is presumed to have known the law and to have made his will in conformity therewith.”); 755 ILCS 5/20-19 (“Except as otherwise expressly provided by decedent’s will ...”).

Trustee argues that trusts are not subject to the doctrine of exoneration because the doctrine allowed for a discharge of an encumbrance from a decedent’s “real or personal estate.” Trustee further argues that Section 20-19 does not apply to the case at bar because the Illinois Trust Code does not have a similar restriction to the payment of indebtedness from a trust. However, these arguments ignore the language within Section 20-19 which provides, in relevant part:

When any . . . beneficial interest under a trust of real estate . . . subject to an encumbrance . . . passes by . . . the terms of a trust agreement . . . [the] beneficiary to whom the real

estate, leasehold estate or beneficial interest is given or passes, takes it subject to the encumbrance and is not entitled to have the indebtedness paid from other real or personal estate of the decedent. 755 ILCS 5/20-19(a).

A plain reading of Section 20-19 shows that the statute clearly contemplates its application to a devisee who receives an interest in encumbered real estate through the terms of a trust, land or otherwise. While it is true that the Rentchler Property never became Trust property, this fact does not support Trustee's proposed construction of the statute. It is also worth noting that Trustee does not cite to any authority, Illinois or otherwise, that expressly holds or discusses that Section 20-19 does not apply to the case at bar.

Giving each word, clause, and sentence of Section 20-19(a) a reasonable construction, it would make little sense that a devisee who receives an interest in encumbered real estate to be barred from seeking a discharge of the encumbrance from a decedent's estate where there is no contrary indication within the will, but then is allowed to receive a discharge from a trust established by the same decedent. The specific issue addressed by Section 20-19 is to prevent one who receives an interest in encumbered real estate from seeking to have the indebtedness discharged. Therefore, the appellate court and circuit court correctly held that Section 20-19 applies to the case at bar, because subsection (a) clearly contemplates its application to a trust.

iii. *Illinois court decisions applying and interpreting Section 20-19 support its application to the case at bar.*

Trustee argues that the cases relied upon by the appellate court and circuit court in applying Section 20-19 to the case at bar are not applicable, because those cases do not specifically address whether Section 20-19 applies to a discharge of encumbered real estate from a trust. While it is true that those cases do not specifically apply Section 20-19 to the discharge of an encumbered interest in real estate passing by joint tenancy by right of survivorship from a trust, the cases relied

upon by the lower courts do demonstrate the application of Section 20-19 and thus support its application to the case at bar.

The Illinois Appellate Court has analyzed Section 20-19 in the context of different types of encumbrances upon real estate to hold that one who receives an interest in encumbered realty must take the interest subject to its encumbrances. *Griffin*, 72 Ill. App. 3d 747; *In re Estate of Matthews*, 409 Ill. App. 3d 780; *In re Estate of Light*, 385 Ill. App. 3d 196. *Griffin* and *Matthews* both discuss that Section 20-19 is an abrogation of the common law exoneration doctrine and that the purpose of Section 20-19 is to effectuate the intent of the decedent. *Griffin*, 72 Ill. App. 3d at 750 (“It seems probable that a [testator] would believe than an encumbrance followed his devise. It would be more normal to expect him to comment if he wished it to be otherwise.”); *In re Estate of Matthews*, 409 Ill. App. 3d at 784 (“[C]ourts have held that a [testator] who wish his estate to assume responsibility for real estate tax obligations of a bequeathed property must make that wish sufficiently clear and that burden of real estate taxes will not be shifted to the estate absent a clear expression of that wish.”).

In *Matthews*, a beneficiary of encumbered realty paid delinquent real estate taxes and sought reimbursement from the decedent’s residuary estate. *Id.* at 782. The trial court entered an agreed order between the decedent’s executor and the beneficiary for reimbursement of the delinquent real estate taxes. *Id.* The sole residuary beneficiary filed a petition to vacate the agreed order, which was denied by the trial court based upon its finding that the decedent’s will specifically provided for the payment of real estate taxes from the residuary of the estate. *Id.*

The appellate court reversed, holding that the beneficiary could not be reimbursed because the delinquent real estate taxes were an encumbrance upon the real estate that Illinois law requires a beneficiary to assume responsibility for unless otherwise specifically provided for within the

decedent's will. *Id.*, at 782-88 (applying Section 20-19). The court found that the language within the decedent's will directing his executor to "pay all ... taxes or liens imposed upon [the decedent's] estate or upon the interest of any and all beneficiaries hereunder ... relating to the transfer of property by descent or devise" to be an insufficient expression of intent by the decedent for Section 20-19 to not apply because the reference to "taxes" meant the payment of estate and inheritance taxes, not real estate taxes. *Id.*, at 785-86. The court held the delinquent real estate taxes were an encumbrance that the beneficiary was required by Illinois law to assume liability for by receiving the property. *Id.*, at 786.

In *Light*, the appellate court applied similar principles to hold that beneficiaries were responsible for the payment of real estate taxes encumbering realty bequeathed to them. 385 Ill. App. 3d at 200-01. The decedent conveyed encumbered real estate to beneficiaries, and her will directed her executor to pay "all taxes assessed or imposed against [her] estate or against any beneficiary of [her] estate ...". *Id.*, at 197-98. The court found that the real estate taxes encumbering the bequeathed realty were not subject to a discharge based upon the plain language of the decedent's will because the taxes were imposed against the land rather than the decedent's estate. *Id.*, at 200-01. The court further found that because the taxes encumbered the land rather than the decedent's estate, Section 20-19(a) required that the beneficiaries be responsible for paying the taxes. *Id.*

The underlying principle from these cases concerning Section 20-19 is that unless a decedent expresses contrary intent within his estate planning instruments, one who receives an encumbered interest in real estate must take that interest subject to its encumbrances and without a discharge. As discussed further above, the Settlor made no such expression of intent, either within his Will or the Trust. A12, ¶ 30; A22.

- iv. *Cases from foreign jurisdictions support the appellate court and circuit court's application of Section 20-19 to the case at bar.*

Foreign jurisdictions have adopted non-exoneration statutes similar to Section 20-19. *See* Mich. Comp. Laws § 700.2607 (unless a will provides direction otherwise, a specific devise passes subject to a mortgage or other security interest existing on the date of the decedent's death, without exoneration, and regardless of a general direction within the will to pay debts); Fla. Stat. § 733.803 (“The specific devise of any encumbered property shall be entitled to have the encumbrance on devised property paid at the expense of the residue of the estate only when the will shows that intent” and “[a] general direction in the will to pay debts does not show that intent.”); Va. Code Ann. § 64.2-531 (“[U]nless a contrary intent is clearly set out in the will, the trust instrument ... real or personal property that is subject of a specific devise or bequest in the will or trust instrument that was revocable immediately before the settlor's death ... passes, subject to any mortgage ... or other lien existing at the date of death of the testator or settlor, without her right of exoneration. A general directive in the will or trust instrument to pay debts shall not be evidence of a contrary intent that the mortgage ... or other lien be exonerated”); Iowa Code § 633.278 (when encumbered real estate is specifically devised, the devisee takes the property interest subject to the indebtedness unless there is testamentary direction otherwise).

While caselaw from these jurisdictions is not binding authority, this Court can rely on such cases as persuasive authority. *See Griffin*, 72 Ill. App. 3d at 751 (citing *Fid. Union Trust Co. v. Laise*, 142 N.J. Eq. 366 (1948), *Davis v. Goforth*, 82 Va. App. 720 (Va. Ct. App. Dec. 10, 2024) (applying Va. Code Ann. § 64.2-531(A) to find that because the decedent's will only contained a general directive to pay all debts and obligations, it did not require the executor to exonerate the subject property before it passed to the decedent's wife), and *Woodward v. Smith* (In re Estate of Woodward), 978 So. 2d 865 (Fla. Ct. App. Apr. 9, 2008)).

The Florida Appellate Court applied the state's non-exoneration statute to hold that an estate's payment of an encumbrance upon bequeathed real estate was improper. *Woodward*, 978 So. 2d at 866-67 (applying Fla. Stat. § 733.803). In *Woodward*, the decedent executed a codicil to his will to leave three encumbered farms to one of his sons, which at the time of his death had an aggregate debt of \$240,000.00. *Id.*, at 866. The decedent's will left the residue of his estate to his five beneficiaries, including the son receiving the encumbered farmland. *Id.* Neither the decedent's will nor its codicil said whether the \$240,000.00 debt encumbering the bequeathed farmland should be paid by the decedent's estate. *Id.* The decedent's will directed that all the decedent's "legal debts" should be paid at the expense of his residuary estate. *Id.*, at 867. The decedent's estate paid off the encumbrances attached to the bequeathed farmland during probate administration, causing another beneficiary to object to the estate administrator's final accounting by alleging that the other beneficiaries' share of the residue of the estate was unlawfully reduced by the payment of the debt. *Id.* The objecting beneficiary further argued that the encumbrances should have followed the devise of property. *Id.*

The trial court dismissed the beneficiary's objection without addressing the encumbrance issue. *Id.* Applying § 733.803, the Florida Appellate Court found that the estate administrator's payment of the encumbrance contravened the statute. *Id.*, at 866-67. The court found that the statute was clear that the devisee of the three encumbered farms was to receive those interests unencumbered only if the decedent's will or its codicil specifically expressed such intent. *Id.*, at 867. Because neither the decedent's will nor codicil expressed such intent, the court reversed the judgment of the trial court. *Id.*

In *Davis*, the decedent devised an encumbered interest in farmland to his wife. 82 Va. App. at 724-25. The decedent's will contained a clause directing his executor to sell certain property to

pay “all debts and obligations of [his] estate.” *Id.*, at 725. The executor did not use the sale proceeds received pursuant to that clause to pay off a mortgage encumbering the interest in farmland bequeathed to the decedent’s wife. *Id.*, at 726.

The decedent’s wife argued that the encumbered farmland she received should have been exonerated by the estate. *Id.*, at 727. The trial court held that a “clear and contrary intent” must be expressly and specifically made by a testator in their will to overcome Virginia’s default standard of non-exoneration. *Id.* (internal quotations omitted). The trial court found that the decedent’s will did not clearly express an intent that encumbered interest in farmland passing to the wife be exonerated by his estate and ruled that the wife took the property subject to the mortgage. *Id.* The wife appealed, arguing that the trial court erred by misapplying the state’s non-exoneration statute (Va. Code Ann. § 64.2-531(A)). *Id.*, at 728.

On appeal, the Virginia Court of Appeals noted that § 64.2-531(A) presumes that specifically devised property passes subject to existing encumbrances, unless a contrary intent is clearly set out in a decedent’s will. *Id.*, at 730. Applying § 64.2-531(A), the court reasoned that the word “clearly” in the statute establishes a lower burden than “expressly” or “explicitly” and does not require an express statement to overcome a presumption of non-exoneration but rather that the “legal drafter” must “use clarity of expression.” *Id.*, at 730-34. However, the court further found that a general directive within a will to pay “all debts and obligations” is precisely the type of general directive that the statute states is insufficient to evince an intent to exonerate. *Id.*, at 734-35. Because the decedent’s will merely contained a general directive to pay debts, the court of appeals held that the executor’s decision not to exonerate the encumbered farmland passing to the wife was not in error and affirmed the trial court’s decision. *Id.*, at 737.

These foreign cases and statutes demonstrate that the appellate court and circuit court correctly held that Section 20-19 applies to the case at bar, because the purpose of Section 20-19 is to abolish the common law exoneration doctrine and require that one receiving an interest in encumbered real estate by right of the death of another take the encumbered interest subject to its encumbrances and without a discharge unless there is contrary intent expressed by the decedent within his estate planning instruments. Like *Woodward* and *Davis*, the language within Article Ten of the Trust directing for the payment of all “just debts” clearly does not meet the standard of evidencing intent for Section 20-19 not to apply to the Rentchler Property.

VI. CONCLUSION

The appellate court and circuit court correctly concluded that Article Ten of the Trust provides a general direction to Trustee to pay all the Settlor’s “just debts,” including the expenses of Settlor’s last illness and funeral, all expenses of administration of property wherever situated, passing under Settlor’s will or the Trust or otherwise, and all estate, inheritance, transfer and succession taxes which become due by reason of the Settlor’s death except for any tax on a generation-skipping transfer. A7, ¶ 20; A5, ¶ 13; A21. However, as discussed above, the Settlor did not demonstrate his intent for the Promissory Note to fall within the definition of a “just debt” as that term is used within Article Ten of the Trust.

The appellate court and circuit court correctly applied Illinois law concerning construction of a trust document to find that the Settlor did not express an intention for the Trust and its assets to be liable for the Promissory Note. A12-14, ¶¶ 31-35; A22. Regardless of whether this Court affirms the holdings of the appellate court and circuit court that Section 20-19 is applicable to the case at bar, this Court can affirm for any basis found in the record.

The appellate court and circuit court correctly construed Section 20-19 to find that it prohibits Trustee from using Trust assets to pay off the Promissory Note. Not only does the Trust lack any evidence of intent by the Settlor for the Trust to be liable for the Promissory Note, but the Settlor's Will also lacks such expression of intent. Therefore, under the clear terms of Article Ten and pursuant to Section 20-19, Trustee is not entitled to pay off the Promissory Note with Trust assets. *Palm v. Sergi*, 2022 IL App (2d) 210057, ¶ 10 ("It is well established that trustees must administer trust property in accordance with the terms of the trust instrument.")

For the reasons stated herein, the appellate court's opinion should be affirmed.

Respectfully submitted,

BRENT E. TIEDEMANN and KEVIN A.
TIEDEMANN, as Beneficiaries of the EDWARD
E. TIEDEMANN TRUST DATED JANUARY 30,
2014, Appellees.

By: s/ Andrew T. Jarmer

One of Their Attorneys

David A. Rolf, Bar #6196030
Andrew T. Jarmer, Bar #6342472
Sorling Northrup
1 N. Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
Telephone: 217-544-1144
Fax: 217-522-3173
E-Mail: darolf@sorlinglaw.com
E-Mail: atjarmer@sorlinglaw.com

VII. CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 36 pages.

/s/ Andrew T. Jarmer
 Andrew T. Jarmer, One of the Attorneys for
 Respondent-Appellees

VIII. CERTIFICATE OF SERVICE

I certify that on April 7, 2026, I electronically filed the foregoing Brief of the Appellees with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I hereby certify that I have emailed the foregoing to the following at the email address as shown:

Rita B. Garman (0916080)
 Michael J. Brusatte (6305551)
 David C. Thies (3126449)
 Hayden R. Earl (6349190)
WEBBER & THIES, P.C.
 100 Trade Centre Dr., Ste 402
 Champaign, IL 61820
 rgarman@webberthies.com
 mbrusatte@webberthies.com
 dthies@webberthies.com
hearl@webberthies.com

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Andrew T. Jarmer