

Exercise 31-9³**Ellsworth Agreement**

You worked on a version of this exercise in Exercise 15-1. Now that you've learned about ambiguity and structuring a provision, it is time to work with the full provision—clarify its ambiguities and organize it to make sense conceptually.

On December 15, 20XX, Bertha Ellsworth (Ellsworth) was admitted to the Home for the Aged (the Home) and signed an agreement stating the terms of her stay at the Home. The agreement provided that for the first two months of her stay she would be a probationary member and that afterwards she would become a life member. On the same day, Ellsworth paid \$100,000 to the Home by a check that stated: "In Payment of Life Membership for Bertha Ellsworth in the Home, as specified in the Agreement dated December 15, 20XX."

Ellsworth died on December 29, 20XX, before her probationary period ended. The administrator of the estate wants to recover the \$100,000 gift as Ellsworth never became a life member. The Home claims it is entitled to keep the money. The agreement is ambiguous. Assume that you represented Ellsworth when the contract was negotiated. How would you have drafted the following provisions to protect her?

The lines of the provisions are numbered to facilitate class discussion. The provisions are available on the book's website.

- 1 **1.1** Ellsworth having this day given the Home,
- 2 without reservation, the sum of \$100,000 to be used and
- 3 disposed of in the furtherance of its benevolence and
- 4 charitable work as it may deem best, the Home admits
- 5 Ellsworth into the Home as a member thereof during the
- 6 period of her natural life.
- 7 **1.5** It is clearly understood that Ellsworth has been
- 8 received in accordance with the new regulations on a
- 9 probation period of two months in which time she has the
- 10 opportunity of finding out whether she desires to remain in
- 11 the Home. If it should be found advisable to discontinue her
- 12 stay in the Home, then her gift, with the exception of \$2,000
- 13 per month shall be refunded.
- 14 **12.1** Probationary membership means a short trial
- 15 period while the member becomes adjusted to life at the
- 16 Home. The probationary membership shall not continue for
- 17 a longer period than two consecutive months. If for any
- 18 reason the trial member does not desire to remain in the
- 19 Home, she shall have the privilege of leaving. Only
- 20 members who do not have the money to pay for their life
- 21 Membership shall be granted the privilege of paying by the
- 22 month.

3. This exercise is based on *First Nat'l Bank of Lawrence v. Methodist Home for the Aged*, 309 P.2d 389 (Kan. 1957).