

LEONARD
STREET
AND
DEINARD

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March 6, 2012

Hearing Examiner
Department of Safety and Inspections
City of St. Paul
375 Jackson Street, Suite 220
Saint Paul, MN 55101

Re: Property: 571 South Saratoga Street, Saint Paul, Minnesota
Appellant: Mark S. Finley
Hearing Date: March 6, 2012

Sir or Madam:

The Safety and Inspections Department has ordered certain capital improvements and repairs to be made at a single-family dwelling: 571 South Saratoga Street in Saint Paul. The order was directed to Mark S. Finley, who occupies the property. The order was in the form of a Fire Inspection Correction Notice issued under Chapter 40 of the Saint Paul City Code. The Inspector apparently believed that the property is occupied by a non-owner.

Appellant appeals the order on the grounds that he is an owner of the property. Chapter 40 of the Saint Paul City Code expressly exempts owner-occupied single-family homes from the fire certificate of occupancy requirement. Therefore, there is no jurisdiction for the Safety and Inspections Department to make this order. Please consider this letter as evidence submitted into the record of the appeals hearing.

Mark S. Finley is an occupant of the property and has been an occupant continuously for several decades. Mark S. Finley has also been a joint owner of the property since his father, William G. Finley, died "intestate" (that is without a Will) on October 12, 2006. Because of this, Safety and Inspections Department, though clearly acting in good faith, has no authority to issue a Fire Inspection Correction Notice against the Property.

Attached to this letter is a true and correct copy of a Petition for Determination of Descent and of a proposed Decree of Descent. Both these documents were filed with the Ramsey County Probate Court, together with \$320 filing fee, on Friday, March 2, 2012. To confirm the filing of these materials, please contact Jannie Baltes, one of the clerks of Probate Court, at 651-266-8143. (Inquire after filings in the "Estate of William G. Finley")

8730361v1

Attached to the Petition for Determination of Descent is a copy of the certified death certificate of William G. Finley, stating that his date of death was October 12, 2006. The Petition also avers, and I have personal knowledge of the fact that, William G. Finley had only two heirs: Mark S. Finley and George G. Finley, both of whom are his sons. William G. Finley's spouse predeceased him. The Petition also avers, and I can confirm from personal knowledge, that William G. Finley died without a Will – that is, he died “intestate.”

The Uniform Probate Code, as enacted in Minnesota, provides that title to real estate, owned by a decedent who died intestate (such as William G. Finley), vests in the decedent's heirs by operation of law. See Minnesota Statutes §§ 524.2-101 and 524.2-103. This vesting of real estate in heirs occurs automatically without the need for any probate or court procedures. Moreover, case law makes clear that when a decedent dies intestate, title to the decedent's real estate vests immediately in the decedent's heirs-at-law. See Bengtson v Setterberg, 227 Minn. 337, 35 N.W. 2d 623, (1949); Bemboom v. National Surety Corporation, 225 Minn. 163, 31 N.W. 2nd 1 (1947); Hardenberg v. Comm. of Internal Revenue, 198 F. 2nd 63 (8th Cir. 1952), *cert. denied*, 344 US 836, 73 S. Ct. 45. Thus, under Minnesota law, since October 12, 2006, the actual owners of 571 South Saratoga are Mark S. Finley and George G. Finley, the sons and the heirs-at-law of decedent William G. Finley.

The probate proceeding Mark Finley has initiated will clear up out-of-date County records regarding ownership, but the fact remains that Mark Finley has been an owner of 571 South Saratoga since October 12, 2006, that his occupancy of the property is as an owner, and that the property is therefore exempt from Chapter 40 of the City Code.

With this explanation my hope is that the City will withdraw the orders it has placed against 571 South Saratoga.

Feel free to call me if you have questions.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association


Joseph M. Finley

JMF/lao

Enclosures

cc: Mark S. Finley

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
PROBATE DIVISION
SECOND JUDICIAL DISTRICT

Court File No. _____

Estate of

William Girard Finley,

PETITION FOR
DETERMINATION OF DESCENT

Decedent

I, Mark Stephen Finley, state:

1. My address is: 571 South Saratoga Street
St. Paul, MN 55116
2. I am an interested person as defined by Minnesota law because I am: The son and an heir of William Girard Finley.
3. Decedent was born on November 10, 1911, at St. Paul, Minnesota.
4. Decedent died on October 12, 2006, at St. Mary's Home, St. Paul, Minnesota. A certified copy of Decedent's death certificate is attached.
5. Decedent at the time of death resided in Ramsey County, at: 571 South Saratoga Street, St. Paul, MN 55116
6. Decedent's Social Security Number is
7. The names and addresses of Decedent's spouse, children, heirs, devisees and other persons interested in this proceeding so far as known or ascertainable with reasonable diligence by the Petitioner are:

Name and Mailing Address	Relationship and Interest (list all)	Birthdate of Minors
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(Attach separate schedule, if necessary)

Mark S. Finley
571 So. Saratoga Street
St. Paul, MN 55116

Son

10/17/49

George G. Finley
4256 W. 1st Street
Los Angeles, CA 90004

Son

5/13/1948

8. Negative Allegation Statement (see Minn. Gen. R. Prac. 408(a)): The Decedent left no surviving spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of deceased children.

9. All persons identified as heirs have survived the Decedent by at least 120 hours.

10. (Check appropriate boxes)

- Decedent died leaving no surviving spouse.
 Decedent died leaving no surviving issue.
 All issue of decedent are issue of decedent's surviving spouse, except for:

- These are issue of the surviving spouse who are not issue of the Decedent.
 Does not apply. Decedent died before January 1, 1987.

11. Venue for this proceeding is in this County of the State of Minnesota because:

The Decedent was domiciled in this County at the time of death and was the owner of property located in the State of Minnesota.

or

Though not domiciled in the State of Minnesota, the Decedent was the owner of property located in this County at the time of death.

12. I have not received a demand for notice and am not aware of any demand for notice of any probate or appointment proceeding concerning the Decedent that may have been filed in Minnesota or elsewhere.

or

Proper notice has been given to those persons who have filed a demand for notice.

13. I have made a reasonable diligent search for any testamentary document.

(Check appropriate boxes)

Intestate.

I am unaware of any testamentary instrument relating to property having a situs in this state under Minnesota law.

Testate.

Decedent's Will is comprised of the following:

- Last will dated _____.
 Codicil(s) dated _____.
 Separate writing(s) under Minn. Stat. 524.2-513 dated _____.
 (check if applicable) The Will refers to a separate writing, but none has been found.

The documents comprising the Will:

- accompany this Petition.
 are in the Court's possession.
 have been probated elsewhere and an authenticated copy of the Will and statement or order probating the same accompany this Petition.
 are unavailable, but a Statement of Contents of Lost, Destroyed or Otherwise Unavailable Will accompanies this Petition.

To the best of my knowledge and belief, the Will has been validly executed.

Having conducted a reasonably diligent search, I am unaware of any instrument revoking the Will or of any unrevoked testamentary instrument.

- 14. More than three years have passed since the Decedent's death and there has been no probate proceeding or administration proceeding commenced in Minnesota.
- 15. At the time of death, Decedent was the owner of certain property described and valued at date of death as follows ("Property"):

SCHEDULE A: REAL ESTATE

Item Number	Description of Property	County Assessor's Market Value	Fair Market Value
1	Homestead in the County of Ramsey Minnesota: Lot 3, Block 3, Otto Hunt's Addition (Torrens Cert. #385702)	\$188,200	\$150,000
2	Other Real Estate: None	\$	\$
<div style="border-top: 1px solid black; border-bottom: 1px solid black; height: 300px; position: relative;"> <div style="position: absolute; top: 0; right: 0; width: 100%; height: 100%; border-left: 1px solid black; border-right: 1px solid black;"></div> </div>			
Schedule A: Real Estate		TOTAL	\$150,000

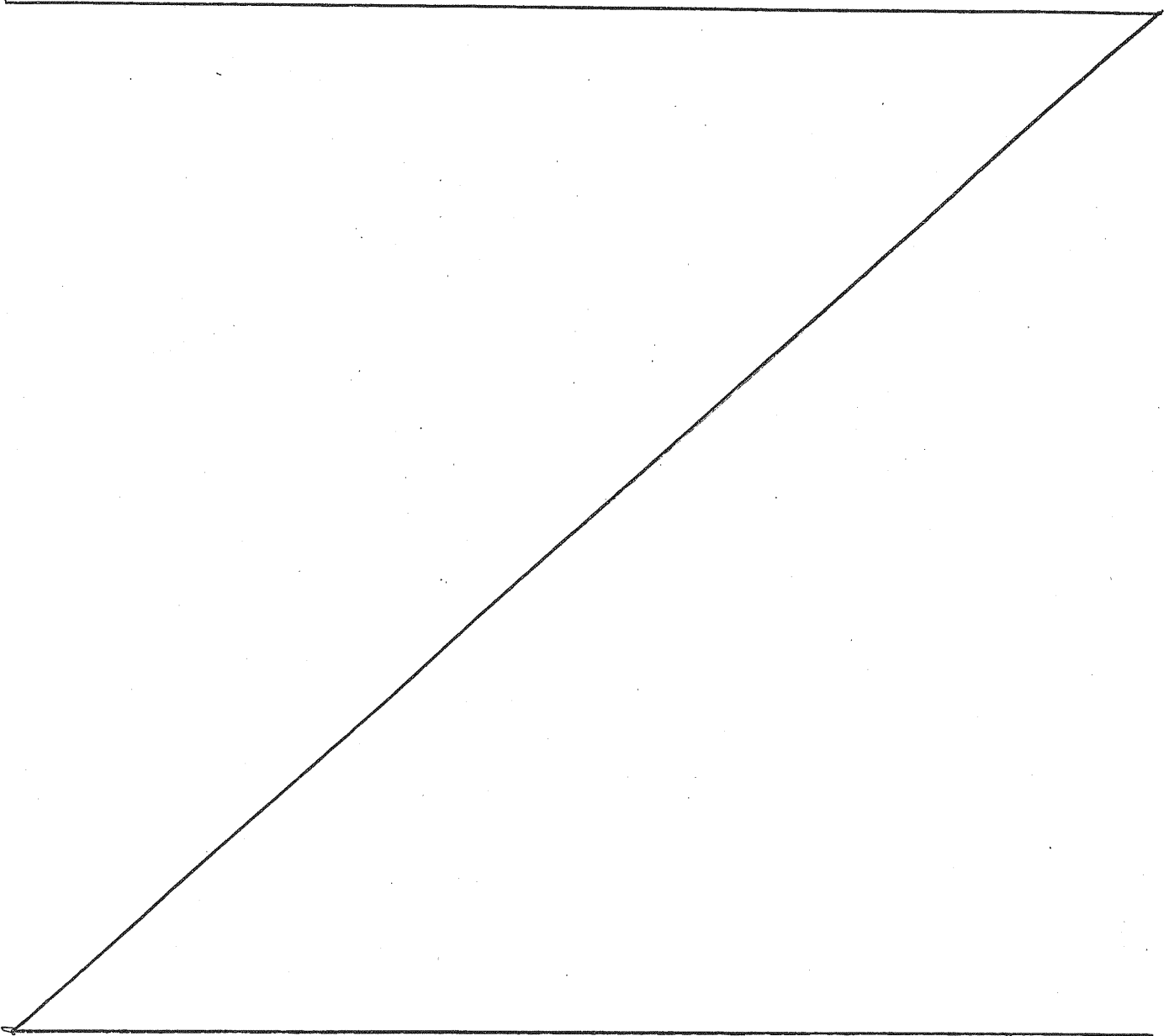
SCHEDULE B: PERSONAL PROPERTY

Note:

1. Specify face value of bonds, number of shares of stock with stock certificate number and CUSIP number.
2. List each bond issue, stock, or certificate separately.

Item Number	Description of Property	Unit Value	Fair Market Value
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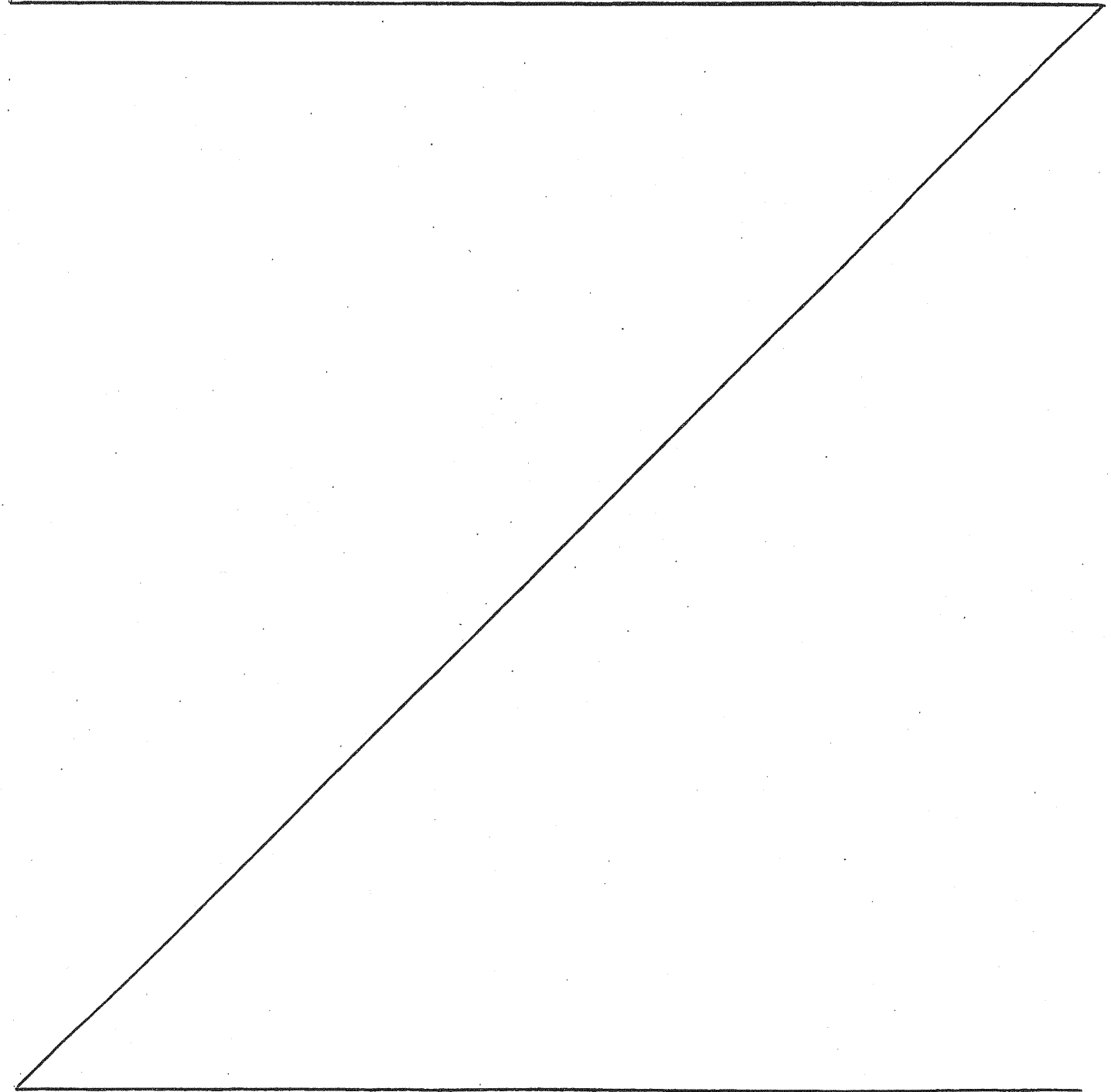
1 Not Applicable



	Schedule B: Case, Stocks, Bonds and Other Securities, and Other Property	TOTAL	\$ N/A
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16. The property on hand for distribution is as reflected in this document and should be distributed to the following persons in the following proportions or parts:

Name	Proportion
Mark S. Finley	In Joint Tenancy with right of survivorship
George G. Finley	In Joint Tenancy with right of survivorship

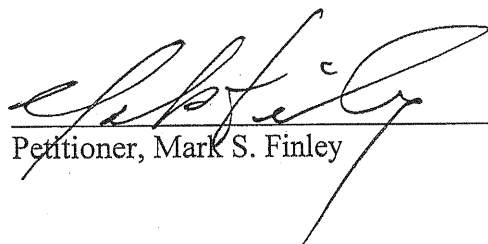


17. (Check appropriate box)
- The devisee or the devisee's successors and assigns possess the property devised in accordance with the Will.
- Any heir or successors and assigns possesses such property which passed to such heir under the laws of intestate succession in force at the Decedent's death.
- or
- The property was not possessed or claimed by anyone by virtue of the Decedent's title during the time period for testacy proceedings.
18. (Check box if this Petition includes Multiple Decedents.) Separate petitions for the determination of descent through multiple decedents of the property described in this Petition are attached and made a part of this Petition.

WHEREFORE, I request the Court fix a time and place for hearing this Petition, and enter an order:

1. Finding that venue is proper;
 2. Finding that the Decedent died more than 3 years ago;
 3. Determining Decedent's domicile at death;
 4. Determining Decedent's state of testacy;
 5. Determining Decedent's heirs;
- or
- Probating the valid and unrevoked Will of Decedent;
 6. Determining the descent of the property and assigning the Property to the persons entitled to the property;
 7. Consolidating multiple petitions for determination of descent into one proceeding; and
 8. Granting such other relief as may be proper.

Under penalties for perjury, I declare or affirm that I have read this document and I know or believe its representations are true and complete.



 Petitioner, Mark S. Finley

3/1/12
Date

Attorney for Petitioner
 Name: Joseph M. Finley
 Firm: Leonard, Street and Deinard
 Street: 150 So. 5th Street, Ste. 2300
 City, State, ZIP: Minneapolis, MN 55402
 Attorney License No.: 12378X
 Telephone: 612-335-1977 FAX: 612-335-1657

NOTE: This form is to be used if there has not been a prior probate proceeding. If there has been a prior probate proceeding use Petition for Determination of Descent of Incorrectly Described Property or Petition for Determination of Descent of Omitted Property.

DEATH CERTIFICATE

DECEDENT'S NAME	WILLIAM GIRARD FINLEY	
DECEDENT'S ALIAS		
SEX, SOCIAL SECURITY NUMBER	MALE	[REDACTED]
RESIDENCE (COUNTY AND CITY, STATE)	RAMSEY	SAINT PAUL, MINNESOTA
DATE AND PLACE OF BIRTH	NOVEMBER 10, 1911	ST PAUL, MINNESOTA
MARITAL STATUS SPOUSE'S NAME	WIDOWED	BEATRICE SCHULTZ
PARENT(S) NAME(S)	JAMES J. FINLEY ELLEN REAGAN	
DATE OF DEATH	OCTOBER 12, 2006	
PLACE OF DEATH (COUNTY AND CITY)	RAMSEY	SAINT PAUL
FUNERAL HOME	O'HALLORAN & MURPHY	
CAUSE OF DEATH IMMEDIATE UNDERLYING	METASTATIC RENAL CELL CARCINOMA WITH LIVER METS	
OTHER CONTRIBUTING CONDITIONS	ANEMIA, PNEUMONIA LOBECTOMY FROM TB	
MANNER CORONER, MEDICAL EXAMINER OR PHYSICIAN	NATURAL TIMOTHY J RUMSEY, M.D. 545 W 7TH, SAINT PAUL, MINNESOTA 55102-	

FATHER'S FIRST NAME modified on 10/27/2006; FATHER'S MIDDLE NAME modified on 10/27/2006

62A-0106786

THIS IS A TRUE AND OFFICIAL RECORD OF THE DEATH REGISTERED IN THE OFFICE OF THE STATE REGISTRAR. DATE FILED: OCTOBER 12, 2006



PLACE ISSUED: RAMSEY

DATE ISSUED: OCTOBER 27, 2006

Linda A. Koltus
Acting State Registrar



STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT
PROBATE DIVISION
SECOND JUDICIAL DISTRICT

Court File No. _____

Estate of

William Girard Finley,

DECREE OF DESCENT

Decedent

The Petition for Determination of Descent in the Estate, signed by Mark S. Finley, came before this Court on _____ . The Court, having heard and considered the Petition, determines the following:

1. The Court has jurisdiction and venue in this County is proper.
2. The Petition is complete.
3. Any notice required by Minnesota law has been given.
4. The Petitioner has declared or affirmed that the representations contained in the Petition are true and complete to the best of the Petitioner's knowledge or belief.
5. The Petitioner is an interested person as defined by Minnesota law.
6. The Decedent died on October 12, 2006, at the St. Mary's Home in St. Paul, Minnesota. More than three years have elapsed since the death of the Decedent and the time limit for appointment proceedings has expired.
7. There has been no probate proceeding or administration proceeding commenced in Minnesota.
8. There is no unrevoked testamentary instrument which relates to property in Minnesota, and which has not been filed for probate in this Court.

9. (Check appropriate boxes)

Testate.

Decedent's Will is comprised of the following:

- Last will dated _____.
- Codicil(s) dated _____.
- Separate writing(s) under Minn. Stat. 524.2-513 dated _____.

The Will was formally probated by the Order of this Court dated _____.

OR

The Will is formally probated by this Order.

The Court construes the Will as follows:

Intestate.

A previous Order of this Court dated _____, determined Decedent died intestate.

or

This Court determines by this Order that the Decedent died intestate.

The following named persons are all the heirs of the Decedent and their relationship to Decedent is as follows:

Mark S. Finley, Son
George G. Finley, Son

10. The property of the Decedent consists of the following:

(A) Personal property described as follows: Not Applicable

(B) Real property described as follows (Legal Description)(Identify if homestead):

1. Homestead in the County of Ramsey, Minnesota:

Lot 3, Block 3, Otto Hunt's Addition (Torrens Cert. #385702).

2. Other Real Estate in the County of _____, Minnesota:

None

11. (Check appropriate boxes)
- The devisee or devisee's successors and assigns possesses the property devised in accordance with the Will.
 - Any heir or successor and assign possesses the property which passes to such heir under the laws of intestate succession in force at the Decedent's death.
 - Such property was not possessed or claimed by anyone by virtue of the Decedent's title during the time period for testacy proceedings.
12. The inheritance taxes on the described property have been paid or waived.

IT IS ORDERED AND DECREED:

1. The Petition is granted.
2. (Testate)
- If not previously probated, Decedent's Will is formally probated. Decedent's Will is construed as stated above.
- or
- (Intestate)
- The heirs of the Decedent are determined to be as stated above.
3. The property left by the Decedent is as stated above.
4. Title to the personal and real property described in this Decree of Descent, subject to any prior disposition, is assigned to and vested in the following named persons in the following proportions or parts:

Name	Proportion
Mark S. Finley 571 So. Saratoga Street St. Paul, MN 55116	In Joint Tenancy with right of survivorship
George G. Finley 4256 W. 1st Street Los Angeles, CA 90004	In Joint Tenancy with right of survivorship

(COURT SEAL)

Judge

Date