

**IN THE IOWA DISTRICT COURT FOR BUCHANAN COUNTY**

<b>IN THE MATTER OF THE ESTATE OF MARY LOU COOK, Deceased.</b>	<b>Case No. ESPR008210  PETITION FOR DECLARATORY JUDGEMENT</b>
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COMES NOW, Terri L. Cook Wunder, Executor of the Estate of Mary Lou Cook, and in support of this Petition for Declaratory Judgement hereby states as follows:

**INTRODUCTION**

1. This is an action by Terri L. Cook Wunder, serving in her capacity as the Executor of the Estate of Mary Lou Cook, seeking a declaratory judgment to interpret the terms of the Last Will and Testament of Mary Lou Cook regarding distribution to the Independence Public Library.

2. Pursuant to Iowa Code Section 633.11, during the administration of an estate, the district court sitting in probate shall have full, legal and equitable powers to make declaratory judgments in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. It shall have full, legal and equitable powers to enter final orders and decrees in all probate matters to effectuate its jurisdiction and to carry out its orders, judgments and decrees.

**JURISDICTION**

3. The district court sitting in probate has exclusive jurisdiction of proceedings concerning the internal affairs of an estate. See Iowa Code Section 633.10.

4. Venue is proper in Buchanan County, as pursuant to Iowa Code Section 633.12, a proceeding may be commenced in the county in which the estate's principal place of administration is or is to be located and if the estate is created by will, also in the county in which the decedent's estate is administered. Pursuant to Iowa Code Section 633.10, the principal place of administration of an estate is the usual place where the day-to-day activity of the estate is carried on by the executor or the executor's representative who is primarily responsible for the administration of the estate. Terri L. Cook Wunder is the Executor of the Estate of Mary Lou Cook, which is being administered in Buchanan County, Iowa.

**FACTS**

5. Mary Lou Cook executed a Last Will and Testament ("Will"), attached hereto as Exhibit A, on August 14, 2018.

6. Mary Lou Cook passed away on September 10, 2024.

7. The Estate of Mary Lou Cook is pending in the Iowa District Court for Buchanan County as Case No ESPR008210. The Will has been admitted to probate in the proceedings.

8. Article III of the Will provides: Independence Public Library, Independence, Iowa as a named beneficiary.

9. Funds payable to the "Independence Public Library" pass to the City of Independence, which do not necessarily benefit the Independence Public Library. In order for these funds to be distributed directly to the Library, the correct beneficiary designation would have been the "Independence Public Library Foundation".

#### **COUNT 1: DISTRIBUTIONS TO INDEPENDENCE PUBLIC LIBRARY FOUNDATION**

10. That Attorney A.J. Flickinger drafted the Will and confirmed that the "Independence Public Library Foundation" was the intended beneficiary listed in Article III of the Last Will and Testament of Mary Lou Cook. An Affidavit of Attorney A. J. Flickinger is attached hereto as Exhibit B.

11. That the City of Independence consents to this bequest to the "Independence Public Library Foundation, Independence, Iowa." See consent attached hereto as Exhibit C.

12. That the Executor requests a Declaratory Judgment to construe and determine the terms of the Will.

13. That the Executor requests the Court construe Article III of the Last Will and Testament of Mary Lou Cook to show "Independence Public Library Foundation," Independence, Iowa as a named beneficiary, as opposed to "Independence Public Library."

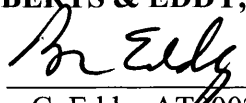
#### **REQUEST FOR DECLARATORY RELIEF**

14. The Executor incorporates paragraphs 1 through 13 by reference as though fully stated herein.

15. The Executor requests the Court issue a declaratory judgment to replace Independence Public Library, Independence, Iowa with "Independence Public Library Foundation, Independence, Iowa" in Article III.

WHEREFORE, Terri L. Wunder Cook, Executor of the Estate of Mary Lou Cook, prays for an order interpreting the terms of the Mary Lou Cook Last Will and Testament regarding distribution to the "Independence Public Library Foundation, Independence, Iowa" and for any further relief the court deems appropriate.

Respectfully submitted,  
**ROBERTS & EDDY, P.C.**

By:   
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**ATTORNEYS FOR EXECUTOR**

By:   
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**EXHIBIT A**

**Last Will and Testament  
of**

MARY LOU COOK

I, MARY LOU COOK, of Buchanan County, Iowa, being of sound mind, full age and disposing memory, do hereby make, publish and declare this instrument to be my Last Will and Testament, and revoke all former Wills and Codicils heretobefore made by me.

ARTICLE I.

I direct that all of my debts, including the expense of my last illness and funeral, and all inheritance, estate, or other similar taxes, be paid as provided by the law of the State of Iowa.

ARTICLE II.

I give, devise and bequeath my personal property and household goods located inside my Oakview apartment and storage area to my daughter, TERRI L. COOK WUNDER, or to her lineal descendants, per stirpes, if she does not survive me.

ARTICLE III.

I give, devise and bequeath all of the rest, residue and remainder of my property, real, personal or mixed, wherever situated and whether acquired before or after the execution of this Will as follows: Fifty (50%) percent to my daughter, TERRI L. COOK WUNDER, or to her lineal descendants, per stirpes, if she does not survive me; Twenty-Five (25%) percent to be divided among the following named charities or institutions in the memory of ROBERT C. COOK and MARY LOU COOK: Camp Courageous, Monticello, Iowa; Hospice of Buchanan County, Iowa; Iowa Public TV, to be used for Nature Programing; Independence Public Library, Independence, Iowa; and East Buchanan Funds for the Future for scholarships given in the name

1. Mary Lou Cook

LAST WILL AND TESTAMENT OF MARY LOU COOK

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of ROBERT C. COOK and MARY LOU COOK. In the event that any of the above named entities are not in existence at the time of my death, the other entities shall receive a prorata share. The remaining Twenty-Five (25%) percent share I give to my son, TIMOTHY F. COOK, or in the event he does not survive me, his share shall be divided among the above named charities or institutions, equally.

ARTICLE IV.

I nominate and appoint my daughter, TERRI L. COOK WUNDER, as Executor. If for any reason she shall fail to act or cease to qualify, I nominate and appoint MARK GEERTSMA as First Successor-Executor. If for any reason he shall fail to act or cease to qualify, I nominate and appoint BANKIOWA, Independence, Iowa, as Second Successor Executor of this Will. I further direct that no bond shall be required of my Executor or Successor-Executor. I give my Executor or Successor-Executor the power to sell or retain all or any part of my property, real or personal, on such terms and conditions as they may deem advisable, without necessity of any appraisal, Order of Court, or Notice to any person.

IN WITNESS WHEREOF, I have subscribed this, my Last Will and Testament, consisting of Three (3) typewritten pages, including this page, and each bearing my signature on this 14 day of August, 2018.

Mary Lou Cook

Maria Delagardelle

Amber A Sorenzen

2. Mary Lou Cook

LAST WILL AND TESTAMENT OF MARY LOU COOK

Page Three

We, the undersigned, each hereby certify that the foregoing instrument, the Last Will and Testament of MARY LOU COOK consisting of Three (3) typewritten pages, including this page, plus a page attached hereto which is a self-proved Will acknowledgement, was subscribed to by MARY LOU COOK in our presence, and in the presence of each of us, and upon each page thereof her signature was affixed on this 14 day of August, 2018, and that she did at the same time declare said instrument in our presence and in the presence of each of us to be her Last Will and Testament, and thereupon at her request and in her presence, and in the presence of each other, we subscribed our names as witnesses to said Last Will and Testament.

Maria E. Delagardelle

Amber A. Sorenzen

This Last Will and Testament was Prepared and drafted by Craig, Wilson & Flickinger, Attorneys at Law, Independence, Iowa, and a copy thereof is on file in their office at 316 First Street East, Independence, Iowa 50644.

3. Mary Lou Cook

AFFIDAVIT

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STATE OF IOWA :  
 : ss  
BUCHANAN COUNTY :

We, the undersigned, MARY LOU COOK, Maria E Delagardelle  
and Amber A Lorenzen, the testator and the witnesses, respectively, whose  
names are signed to the attached or foregoing instrument, being first duly sworn, declare to the  
undersigned authority that at the date of the instrument, we all knew the identity of each other;  
the instrument was exhibited to the witnesses by the testator, who declared it to be the testator's  
last will and testament and was signed by the testator or by another at the direction of the testator  
at Independence, in the County of Buchanan, State of Iowa, on the date shown in the instrument,  
and in the presence of each other as subscribing witnesses; that we, as witnesses, declare to the  
undersigned authority that in our presence the testator executed and acknowledged such will as  
the testator's will and that we, in the testator's presence, at the testator's request, and in the  
presence of each other, did subscribe our names thereto as attesting witnesses on the date of such  
will; and that the witnesses were sixteen years of age or older.

Mary Lou Cook  
Testator

Maria E. Delagardelle  
Witness

Amber A Lorenzen  
Witness

Subscribed, sworn and acknowledged before me by MARY LOU COOK, the testator;  
and subscribed and sworn before me by Maria E Delagardelle and  
Amber A Lorenzen, witnesses, this 14 day of August,  
2018.

Alanson J. Fluker  
Notary Public in and for the State of Iowa

**EXHIBIT B**

**AFFIDAVIT**

STATE OF IOWA                    )  
  ) ss:  
COUNTY OF BUCHANAN )

The undersigned, being first duly sworn, deposes and states as follows:

1. I, A.J. Flickinger, am the attorney who prepared the Last Will and Testament for Mary Lou Cook.
2. I know of my own personal knowledge that when Mary Lou Cook signed her Will she intended her bequest to "Independence Public Library, Independence, Iowa" to be the "Independence Public Library Foundation, Independence, Iowa" so that the library would directly and exclusively benefit from the bequest.
3. This Affidavit is made for the purpose of showing "Independence Public Library Foundation, Independence, Iowa" is the intended beneficiary pursuant to Article III of the Last Will and Testament of Mary Lou Cook.

\_\_\_\_\_  
A.J. Flickinger

Subscribed and sworn before me on this \_\_\_\_ day of October, 2024, by A.J. Flickinger.

\_\_\_\_\_  
Notary Public