Appendix C
Sample Office Memorandum

This appendix contains an office memorandum of the type described in Chapter 7.
TO: Theresa Wycoff  
FROM: Christine Chopin  
DATE: March 1, 1998  
FILE: Eli Goslin  
RE: constructive trust

ISSUE

Will a constructive trust in favor of Eli Goslin be imposed on the title to his home and only asset, which he deeded over to his nephew after the latter promised to make the remaining three years of payments to prevent foreclosure, where Goslin made no statement at the time that would reveal his reasons for giving the deed, and where the nephew has since then threatened to throw Goslin out of the home?

BRIEF ANSWER

A court is likely to impose a constructive trust in Goslin's favor on the nephew's title to the house. Goslin is able to prove each of the four elements of the New York test for a constructive trust: (1) a confidential or fiduciary relationship between Goslin and his nephew; (2) a promise, implied by the nephew's actions, to hold title while allowing and helping Goslin to live in the house; (3) Goslin's transfer of title to the nephew in reliance on that promise; and (4) unjust enrichment by the nephew if the promise is broken. New York courts have uniformly held these elements to be satisfied where—as happened here—a person in a vulnerable situation deeds the bulk of her or his assets to someone like a trusted relative who pays either nothing or a fraction of the property's fair value.

(This memorandum does not consider an action to set aside the deed on the grounds of fraud, undue influence, or impaired capacity—all of which have already been researched and rejected.)

FACTS

Eli Goslin, the client, is a 74-year-old arthritic widower who has been retired for nine years. He has been married twice, and both wives are deceased. His son is dead, and his daughter lives in Singapore. His only income is from social security.

Until last year, he also had income from an investment, but when that business went bankrupt, he became unable to meet the mortgage payments on his house. The house was Goslin's only asset. He has lived there for 24 years, and when these events occurred, the mortgage had only three more years to run. He has no other place to live.

After Goslin found that he could no longer pay the mortgage, Herbert Skeffington, a nephew, offered to make the remaining $11,500 in payments as they became due. Within a few days afterward, Goslin, without stating his purpose to anyone, gave a deed to the property to Skeffington and got the bank to agree to transfer the mortgage to him. At the time, the house was worth approximately $95,000 and was unencumbered except for the mortgage
that Skeffington had offered to pay. Aside from the promise to make mortgage payments, Skeffington gave no value connected to the deed.

Goslin has told us that he made the deed for the following reason: “At the time, it seemed like the right thing to do. He was going to pay the mortgage, and after a certain point — maybe after I’m gone — the place would become his. I didn’t think it would end up like this.” Skeffington had not asked for a deed, and Goslin arranged for the deed before telling the nephew about it. Goslin knew at the time that Skeffington would not need a deed to make the mortgage payments: the bank would have been willing to accept Skeffington’s check if it were accompanied by Goslin’s payment stub, or, alternatively, Skeffington could simply have given the money to Goslin, who could in turn have paid the bank.

As far as Goslin knows, Skeffington has made the payments as they have become due.

At the time of the deed, neither party said anything about changing the living arrangements in the house. Goslin continued to live alone there until a few weeks ago, when Skeffington’s rental apartment was burned out and he moved, along with his wife and two children, into the house. Goslin neither agreed to nor protested this. A few days later, Skeffington ordered Goslin to move out, which Goslin has refused to do. Since then Skeffington has, at the top of his voice, frequently repeated the demand. While yelling at Goslin, Skeffington has twice, with the heels of his palms, suddenly shoved Goslin in the chest and sent him staggering. Skeffington has threatened to strike Goslin again and to pack up Goslin’s belongings and leave them and Goslin on the sidewalk. Skeffington takes the position that his family has no other place to go, and that the house is the only thing he owns.

Skeffington is 36 years old, and throughout Skeffington’s life he and Goslin have seen each other at least monthly at family get-togethers, including each other’s weddings. Seventeen years ago, Goslin contributed $3,200 to Skeffington’s college tuition. The two of them have never discussed whether this was to be treated as a gift or a loan, and Goslin does not recall which he intended or even whether he had an intent at the time. He says that he considered both the tuition money and his nephew’s offer to pay the mortgage to be “the sort of thing people in a family do for each other.” In any event, except for the mortgage payments, the nephew has never given Goslin money directly or indirectly, and he has not announced an intention to compensate Goslin for the tuition money.

**DISCUSSION**

A constructive trust will be imposed where the record shows “(1) a confidential or fiduciary relation, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment.” McGrath v. Hilding, 363 N.E.2d 328, 330 (N.Y. 1977) (citations omitted).

**Confidential or Fiduciary Relationship**

Goslin’s relationship with his nephew satisfies the first element.

A confidential or fiduciary relationship exists where one person is willing to entrust important matters to a second person. A relationship between an aunt and a niece has been held to be a confidential one for the purpose of a constructive trust where the aunt turned over a substantial amount of her finances to the niece and relied on the niece’s care while ill. Tebin v. Moldock, 241 N.Y.S.2d
A substantiating proof of the rule (§11.3), synthesizing two holdings, Tebin and Sharp (§15.5).

A counter-analysis (§10.2), smoothly introduced. It would have been awkward to begin “Skeffington’s lawyer might argue…”

The sub-conclusion for the second element.

The supporting rule, synthesized from several cases. Because it is at least a little surprising, it needs an extended explanation and proof. Some corollary rules explain the meaning of “All that is required is a promise.” (The first corollary rule tells you that the promise need not be written.)


Although a confidential relationship might not exist between an uncle and a nephew if contact has been rare and if both viewed the relationship as merely technical, that is not true here. Goslin and his nephew have seen each other at least monthly since the nephew was a boy; they attended each other’s weddings, frequent family social activities, and other events; and Goslin contributed to the nephew’s college tuition.

Implied Promise by the Transferee

The courts are also likely to find here a promise—even if not stated in words—by the nephew to hold title in name only for Goslin’s benefit while doing nothing that might prevent Goslin from continuing to live in his home. All that is required is a promise. It need not be written, and the Statute of Frauds will not prevent a constructive trust. Sharp, 351 N.E.2d at 723-24; Pattison v. Pattison, 92 N.E.2d 890 (N.Y. 1950); Foreman v. Foreman, 167 N.E. 428 (N.Y. 1929). (“Equity in this area has always reached beyond the facade of formal documents, absolute transfers, and even limiting statutes on the law side.” Tebin, 241 N.Y.S.2d at 638.)

The promise need not even be expressly stated where it “may be implied or inferred from the very transaction itself.” Sharp, 351 N.E.2d at 723. In Sharp, a 56-year-old farmer conveyed his farm to a 40-year-old woman who had declined his offer of marriage. After the transfer, the woman ordered the farmer off the property. Although the record contained no evidence of a promise in words, the Court of Appeals held that an understood promise was inherent in the actions of both parties because it is inconceivable that plaintiff would convey all of his interest in property which was not only his abode but the very means of his livelihood without at least tacit consent upon the part of the defendant that she would permit him to continue to live on and operate the farm.

Id. at 724.

In family relationships, New York courts have been extremely reluctant to accept a transferee’s claim, under suspect circumstances, that a transfer was an absolute gift. For example, in Sinclair v. Purdy, 139 N.E. 255 (N.Y. 1923), a brother, who was employed as a court clerk and was continually being asked to pledge his property for other people’s bail, deeded it over to his sister, receiving nothing in return. The Court of Appeals held that the circumstances implied a promise, and Judge Cardozo wrote for the court that

[h]ere was a man transferring to his sister the only property he had in the world. . . . Even if we were to accept her statement that there was no distinct promise to hold it for his benefit, the existence of such a promise, in view of the relation, might well have seemed to be superfluous.

Id. at 258.

The courts are likely to consider Goslin’s circumstances to be at least comparable to those of the farmer in Sharp and the brother in Sinclair. Goslin
owned nothing of substance other than his home. At the time of the transfer, he had been retired for nine years, and his only income was from social security. His income had just been reduced because of the bankruptcy of a small business in which he had had an interest. The house itself was worth approximately $95,000 at the time of the transfer, and the three years of mortgage payments remaining totalled $11,500. Even Skeffington's promise to make the mortgage payments cannot be considered a payment to Goslin because, if Skeffington really took clear title, the mortgage payments would benefit him and not Goslin. In addition, seventeen years ago, the nephew had received $3,200 from Goslin for college tuition, and he had not returned any of it. Although the parties have never talked with each other about whether the tuition money was a gift or a loan, the courts are likely to consider the label unimportant and instead focus on mutual family responsibilities. Accordingly, the courts are not likely to conclude that Goslin intended to make an absolute gift of his house. Instead, they will more probably hold that Goslin and his nephew had an unstated understanding that the nephew's mortgage payments were to reciprocate Goslin's contributions to the nephew's college tuition.

The courts will probably so hold even though the nephew could have made the mortgage payments without having received a deed. Of all the facts here, the most troubling is the lack of any need to deed the house over to the nephew. For example, the bank would have accepted the nephew's check, as long as it was accompanied by a stub from Goslin's payment book, and the stub could have been filled out by Goslin or his nephew. Or the nephew could have simply given Goslin the money and let him make the payments.

But under the case law, the lack of a need for a transfer is irrelevant. The farmer in Sharp, for example, seems to have given a deed for purely sentimental reasons, but the Court of Appeals considered it to be subject to a constructive trust anyway. Sharp can most reasonably be interpreted to stand for the proposition that, no matter how quixotic a transferor’s purpose may have been, a promise of some kind will be implied where the parties have a family or other emotionally charged relationship and where the property transferred is the bulk of the transferor's assets. Although Goslin did not have the same practical need to make a transfer that the court clerk had in Sinclair, the Court of Appeals did not treat the court clerk's need as essential in that decision.

Transfer in Reliance on the Promise

The transfer itself is not in dispute here, and, for the reasons described above, Goslin should be able to prove that he granted the deed in reliance on his nephew's promise.

Unjust Enrichment

Goslin should also be able to establish the fourth element, which has been described variously as "unjust enrichment under cover of the relation of confidence," "Sinclair, 139 N.E. at 258; as a situation where "property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest," Sharp, 351 N.E.2d at 723; and as circumstances where "discernible promises, made in a confidential relationship, have been broken or repudiated, and the trusted one will be unjustly enriched by reason of the breaches," Tebin, 241 N.Y.S.2d at 634.
with any need to prove fraudulent intent. That gets more explanation through Sharp, Tebin, and Ferano.

Rule application.

In Sharp and in Tebin, the courts held that a plaintiff need not prove that the party who accepted the transfer did so with a fraudulent intent. "A constructive trust may be imposed even though the transferee fully intended to perform his promise at the time of the conveyance." Ferano v. Stephanelli, 183 N.Y.S.2d 707, 711 (1st Dep't 1959). It is enough to show that the entrusted party has breached the promise on which the grantor relied.

Here, the nephew took a deed upon promising to make three years of mortgage payments and without paying anything for Goslin's sizeable equity. On these facts, the courts are likely to decide that the nephew has tried to pervert into a windfall his assumption of a family responsibility. (The nephew's offer to pay the remaining mortgage could have been seen by both parties as reciprocation for Goslin's help in putting the nephew through college, although that is not necessary to a ruling in Goslin's favor.)

CONCLUSION

Goslin can demonstrate all the elements of a constructive trust. He had a relationship of confidence with Skeffington because they are uncle and nephew and have acted that way for years. The most reasonable interpretation of the facts is that both parties understood an implied agreement that Skeffington would take title in name only and for the purpose of protecting the house for Goslin's use. The deed was a transfer of Goslin's home and only asset and could have been made only in reliance on that promise. And without a constructive trust, Skeffington would be unjustly enriched because he would have clear title to a $95,000 asset in exchange for $11,500 in mortgage payments.

All of the elements of a constructive trust are therefore established, and a court is likely to impose one.