The Ohio Estate Planning Guide

THE FAMILY ESTATE & LEGACY PROGRAM®

Expertise. Confidence. Clarity.

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Preface

Why Update Your Estate Plan?

So you completed a will along with a Durable Power of Attorney, Health Care Power of Attorney and a Living Will some time ago. You secured it in your safe deposit box, and promptly forgot about it. Eventually you hear that you need to update your estate plan.

You have procrastinated.

After all, who wants to talk about their own demise? Yet, the thought still gnaws at you. You do not want to leave your loved ones in a bind, but you do not know where to begin.

You have found the right book.

In these pages you are going to read about the advantages to a thorough and complete estate plan, which will not only benefit your loved ones you leave behind, but could very well benefit you for the rest of your life. You will learn how to maximize those advantages by implementing strategies that are unique to you and your loved ones' situation.

How is that possible? Because no one ever told you about the opportunities.

You will learn the difference between revocable living trusts, irrevocable living trusts, and wills, and the benefits each provide over the other. Even if you have a living trust, most estate plans focus on your demise. But are

your legal documents hearty enough to take care of you in the event of your disability? What if you should suffer a terrible calamity, or succumb to Alzheimer's? No one *wants* to consider these possibilities, but a good estate plan does.

Even if someone has told you that your plan is "just fine," I am going to show you why your plan probably has not considered many of the possibilities. I do not mean to criticize what you may have heard from others, but I have seen too many assertions by my client's former attorneys, even the "experts" at the "best firm in town," to not point out what issues arise with many plans. These issues can cause real problems and are easily rectified by a knowledgeable professional who knows exactly what to look for.

Does your current estate plan, for example, wrap a protective sheath around your spouse, children and grandchildren, or will the inheritance you leave them become subject to the claims of future and divorcing spouses, creditors and predators? I discuss basic legal strategies to use that can achieve these goals. My suspicion is your current estate plan does not fully and adequately adopt these strategies.

If you already have a living trust, will your assets avoid the probate process? Again, my guess is that many of your assets will not. This is because ***your assets must be transferred into your living trust*** to avoid the probate process. Many new clients who visit me ***never completed this important step*** of the estate planning process, mainly because they were given a sheet of instructions without much guidance. You will learn how our trademarked estate planning process – The Family Estate & Legacy Program® takes care of this problem and raises the other issues I have mentioned here.

Once you update your estate plan under The Family Estate & Legacy Program®, you will be part of our Legacy Club™ that serves to never let your plan fall out of date again.

In the epilogue, I will show you how to begin updating your estate plan. We believe you will enjoy the process, finding clarity and comfort. How am I so confident that these assertions will come true?

My name is Attorney Ted Gudorf, and I am the founder and Managing Attorney of Gudorf Law Group, LLC. It is a boutique estate planning, estate administration, tax advisory and elder care law firm started in 1992. I am Board-Certified in Estate Planning, Trust and Probate Law by the Ohio State Bar Association and hold a Master of Laws degree (LL.M.) in Estate Planning and Elder Law.

I have built a team of highly qualified professionals around me who use my trademarked estate planning process designed to help you find the plan that meets your needs.

So please discover for yourself how an up-to-date estate plan can benefit you during your life, and your loved ones you leave behind.

While every effort is made to convey the most current information at the time I write these chapters, the estate, trust, and tax laws are changing constantly. Because this book is only intended to be a broad overview of the issues individuals face when deciding upon state residence and estate plans, many of the details, caveats, and exceptions to the general rules that may apply to specific situations are intentionally omitted.

This book does not serve as legal advice, and no attorney-client relationship may be inferred without an express agreement between you and the author and/or his law firm. Similarly, existing clients of the author's law firm may not rely on statements made in this book. Before acting on any statement contained herein, you should always consult with a qualified professional to assess your individual facts and circumstances.

I welcome your comments, questions, and criticisms - and especially your kudos!

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Chapter One

Estate Planning is Not About the Documents

Ed and Alice sat down in my conference room to discuss their estate plan. "Our plan is simple," Ed began, and we do not want to complicate things. "I want everything to go to Alice, then upon my death we want it to be divided among our four children."

I nodded, jotting down notes. "I see from the client organizer we asked you to complete that you are in a second marriage, and that two of the children are Ed's biological children and the other two are Alice's. Do you intend to treat them all equally at the passing of the survivor of you?"

Ed and Alice nodded in agreement. "Yes!" they both said in unison.

"That is good, I am glad that you both feel the same way towards each other's children." I replied, "So if you want to leave everything outright to the survivor of you, are you confident that each of you will still feel the same way about the other's children as time goes on?"

"Oh yes, certainly," Alice exclaimed.

"What if ten years passed? Twenty?"

Ed shifted uncomfortably in his seat. "Well, I would not want our assets to go to a new spouse if Alice remarried."

Alice shook her head. "I will never remarry anyone," she said, chuckling, "and even if I did I would not change my will."

"Did you ever sign a nuptial agreement with one another?"

"No!" Alice said. "We trust each other implicitly."

"Right, we saw no need for one," Ed said.

"That is good, and I am happy that the two of you have built a solid foundation of love and trust. But, looking at your goals here, if after one of you passes if the survivor remarries again without a nuptial agreement, the new spouse would likely have rights to as much as half of the assets even if he was not included as a beneficiary," I advised.

"Well Ed's much more likely to remarry than I would be," Alice said.

"Another big issue is your IRA accounts," I pointed out. "Have you named each other as the primary beneficiary to the IRA?"

Ed looked quizzically at me. "Yes – but we named the four children as the contingent beneficiaries, so they should end up with whatever IRA money is left after we are both gone."

"Provided the survivor of you does not change the beneficiary designation or remarries," I said. I could see that Ed and Alice had never considered some of these outcomes. "I am not trying to sow discord between the two of you, but a good estate plan considers your goals as well as your concerns, and should provide you comfort and clarity that you have considered all of the possibilities. There are ways that we can do that, depending upon what's most important to you both."

It was evident to me that up until now Ed and Alice's attorney was nothing more than an order taker. He asked who they wanted to act as their executor/personal representative and who should inherit their estate without delving into the important details that should be considered before any estate planning documents are drafted and signed.

The documents, in fact, are the byproduct of excellent conversations between an attorney and client. These conversations may raise delicate issues, and the answers aren't always evident without careful thought and deliberation.

Take for example, the single client, Bonnie. Does she have as many worries as Ed and Alice?

Bonnie has three children, one of whom is a successful surgeon, another a schoolteacher, while a third has suffered from both physical and emotional problems over the years. Should Bonnie treat all three children equally? If Bonnie leaves all of her assets unequally, giving the teacher more money because she will likely need more for retirement, and also providing more to the child with the disabilities, will her successful child feel penalized for being successful?

How should Bonnie leave amounts to the disabled child? If she leaves them outright, they may cause her child to lose her Medicaid and supplemental security income. If Bonnie creates a special needs trust for the disabled child, who should be the trustee? If she names one of her other two children she might undermine the family harmony she hopes long survives her. The Bible admonishes not to make a brother his brother's keeper for good reason. What are the alternatives? What if Bonnie believes that naming a corporate trustee is cumbersome and too expensive?

What if I told you that Bonnie does not trust the surgeon's spouse? How can she protect the inheritance from her child's divorcing spouse? Further, the surgeon is in a high-risk occupation. If there is a huge malpractice claim against the surgeon, how can Bonnie protect the inheritance she leaves her from those real-life dangers?

Let us consider Bonnie's disability. Good estate planning documents not only consider the time following a client's death, but also the period of time which may be short or may be prolonged when a client is not capable of conducting her financial affairs. Should Bonnie name her successful surgeon child as the primary agent under her durable power of attorney and as successor trustee of her trust? I have written another book that covers this topic, *Selecting Your Trustee*.[i] Suffice it to say that there is more to that conversation than I can cover in this single Chapter.

What is an Estate Plan Really About?

So if an estate plan is not about the documents, what is it about? The answer is unique to each and every one of you reading this book. An excellent estate plan is more than who gets what at the time of your death. It is putting in place a solid legal, tax and financial program to take care of your needs if and when you are not able to take care of your needs yourself.

Modern technology has made financial planning easy-as-pie, for example. Online platforms like Schwab, E-Trade, Vanguard, and Fidelity have made saving, investing and planning fast, cheap and easy. I can tell you, however, from my many years as an estate-planning attorney that those same platforms can be dangerous if a succession plan in the event of your disability is not well thought out. It is imperative that the title to the accounts fits hand-in-glove with your legal documents. You can have the best legal documents in the world, but if your assets are not properly titled to coordinate with your planning, then your plan may fail you.

Whose responsibility is it to coordinate your assets with your plan? I discuss this topic more thoroughly in Chapters Seven and Eight. Suffice it to say that if your prior attorney merely handed you an instruction sheet on how to title the assets into your trust without further instruction or conversation, then it is likely that your assets are not quite aligned with your estate plan.

It is called an "estate plan" for a reason. Most people spend more time planning their annual vacation than they do over their legal, tax and financial future and that of their loved ones. A good plan starts with a conversation about your goals and concerns. It reviews who will be in charge of your affairs in the event you cannot be, and specifically how they access your accounts, whether they should have the power to change your advisors, sell your homes and other assets, put you in a nursing home (by the way… which one and how do we pay for it? and a variety of other planning issues).

A good plan considers the hopes and aspirations you harbor for your loved ones and how best to achieve them. Do you want your estate to provide an education to your children or grandchildren — in the sense that it is better to teach a man to fish rather than give a man a fish? Would you rather your plan be saved for your children's retirement years? Should you somehow restrict access to the assets for these specific purposes? How exactly can you efficiently and cost-effectively accomplish those goals?

If you have charitable intent, what is the most tax efficient way to accomplish that? Do you want the charity to spend the money in a specific way? How is that best done? Should you sign the pledge agreement? What are the downsides?

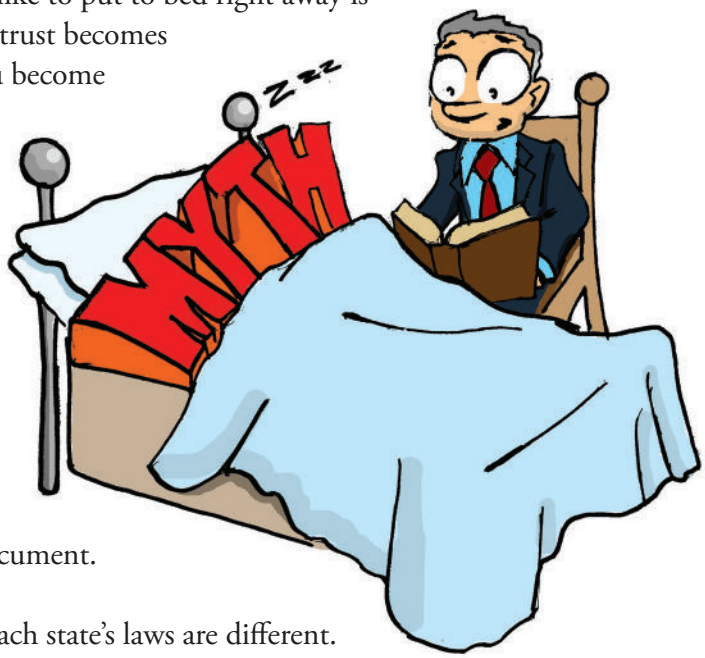
An estate plan is really about you. It is not a form document that you can get on the Internet or through a general practitioner. Even some of the best-known firms do not take the time to delve into the real issues, raising the important points that really need to be discussed.

It all starts with a conversation. I review our unique, trademarked process that ensures the right issues are raised during your initial consultation in Chapter Nine. So let us progress by looking at whether your current plan is valid even if you have moved here from another state.

Chapter Two

Is Your Will/Trust From Another State Valid?

A myth I would like to put to bed right away is that your will or trust becomes invalid when you become a resident of Ohio. If the will or trust document is signed properly under the laws of the state in which you are domiciled at the time, moving here does not invalidate the document.



With that said, each state's laws are different. If one doesn't update one's estate plan upon becoming an Ohio resident, unintended adverse consequences may arise.

Updating to Ohio Law

So exactly what does it mean to update your estate plan to Ohio law? Many recognize that somewhere in their wills and trusts there is a provision that states "The laws of the State of Michigan shall govern this will," (or wherever you may come from).

Linda and Larry arrived in my office wanting only a simple amendment to their Michigan wills. They owned a residence in Michigan that was in Linda's name and a residence on Grand Lake in Ohio in Larry's name. Their bank and brokerage accounts were divided between them, with

Linda and Larry each owning about half.

"Our Michigan attorney told us that our documents were fine," Linda began, "and he also told us he is licensed in Ohio. So all we want you to do is do a simple amendment changing the state law from Michigan to Ohio."

"It is not so simple," I began, "let me show you why we need to do more than that to update your documents to Ohio law."

One of my pet peeves, by the way, is the attorney who is licensed in Ohio but does not practice here – yet speaks with authority about Ohio law. While the out-of-state attorney may have passed the Ohio Bar, if he rarely practices here it is easy to miss significant issues.

Because your former attorney may have gained your confidence over the years, you may be predisposed to take his word over mine. After all, you have just briefly met me during our workshop or in our initial conversation.

As you will see in my trademarked Family Estate & Legacy Program® described more completely in Chapter Nine, we invite your advisors to take part in your planning, including your long-time attorney if you would feel more comfortable with her as a part of the process. We believe that by including those with whom you are most comfortable, we will arrive together at the best possible plan.

Wills Subject to Probate

Here is another issue with Linda and Larry's estate plan. Many believe that since Linda and Larry had wills, their estates will avoid probate. This is false.

Some people believe that if their estate value is less than whatever the federal estate tax exemption is ($15,000,000 per person for 2026 and $30,000,000 for a married couple as I write this book), then there will not be a probate. That is false too.

Almost any asset subject to disposition by your loved one's will is distributed by the probate process. Understanding what probate means, is crucial to understanding these issues.

The Probate Process

Probate is a legal process under which the deceased's assets are transferred to their beneficiaries, all under court supervision. Larry's assets would be probated and then transferred to the testamentary trusts (the Family Trust and Marital Trust). The Last Will is filed with the probate court in the state and county in which the decedent lived at the time of his or her passing. This is known as the "domiciliary estate."

The personal representative (executor) in the will petitions the court for "Letters of Administration" which gives the personal representative the authority to transact business on the decedent's accounts.

It does not matter whether bank and brokerage accounts are held in the same state in which the probate is opened. A bank account in Michigan, for example, is governed by the probate court in Ohio.

If, however, the decedent owned real property in his or her individual name in another state, then an "ancillary probate administration" usually must be opened in that state. On Linda's death, for example, since she owns real property in Michigan, her estate would require both a domiciliary administration (since she is an Ohio resident) and an ancillary administration in Michigan.

Why is probate necessary? It is not just for attorneys to make fees, as you might be thinking right about now. The probate process "protects" both the beneficiaries of the estate, any potential creditors, and of course, the taxing authorities.

Imagine that there was no probate process. Suppose in a codicil to his will your Uncle Ed left you his entire estate. Then again, what if Uncle Ed dies and your cousin brings a copy of his old will into the bank and asks that his accounts be distributed to him pursuant to that older will.

How does the bank really know that this is Uncle Ed's Last Will? What if your cousin beat you to the bank, and you did not realize it? What recourse would you have once the bank distributed to your cousin? The probate process protects against just this scenario and many others.

If you submit a will as the Last Will of Uncle Ed to the court, and someone else submits a codicil to the will to the same court, now we have a centralized system that can ensure Uncle Ed's final wishes are carried out. The personal representative of the will organizes all the assets of the deceased and files an inventory with the court so all interested parties can determine in full light what the estate is worth. They can also question if the inventory is complete or is missing assets.

Ohio law provides that creditors have six months from the date of death to file a valid claim against the estate. There are laws that deal with creditors, how they are to make claims, and how the personal representative may object to a claim. In some states, the personal representative has a duty to notify reasonably ascertainable creditors of the administration.

Once all the creditor claims are dispensed with and all tax clearances are obtained, the personal representative submits an accounting statement of the estate to the court. All the income and expenses are listed as are items of capital gain and loss. The personal representative then presents a schedule of proposed distributions pursuant to the terms of the will.

The distributions may be to beneficiaries, or to trustees of testamentary (after death or continuing) trusts established under the terms of the will as in the case of Larry's will noted above. All the beneficiaries have the chance to object to any item listed in these petitions, and can appear before the court. A judge decides if any objection has merit.

Once all the distributions are made, the personal representative petitions to close the estate and be discharged from further obligations as a fiduciary for the estate. Receipts of distributions are filed with the court. So as you can see, probate is a strictly supervised court (public) process. It is very hard for any "monkey business" to get by a judge.

Cost and Complexity of Probate

So why did not Linda and Larry's Michigan lawyer use living trusts as opposed to wills? In many states, the probate process is not as onerous as it is here, and one can accomplish it without hiring an attorney. I have had several Michigan attorneys tell me that probate is not a significant issue for Michigan residents.

Not so in Ohio.

While probate is nothing to be feared, if you can minimize a public court process over your assets at the time of your death, the more private and less cumbersome your administration will be. It should also be less expensive. The Ohio statutes calculate a reasonable attorney's fee for the ordinary services related to a probate administration. That same fee is reduced by as much as 50% for those same services in a trust administration. A living trust therefore can be expected to save significant attorney's fees.

The fact that Larry's will contains an invalid devise and is subject to probate are two important reasons they should update their Michigan estate plan to Ohio law. There are many others. In the next chapter I contrast 1) a will with a living trust; and 2) a revocable living trust and an irrevocable living trust.

Chapter Three

Will vs. Trust

In the last chapter I alluded to the differences between wills and trusts. In Ohio, anyone with any degree of net worth that would otherwise be subject to probate should investigate whether a revocable living trust, sometimes referred to as an "inter vivos" (or lifetime) trust, would be beneficial.

So let us review the differences between a will and a trust. A will, we all know, is a document that states who you want to administer your estate (your personal representative) and how your estate is to be distributed. The will has no other function. It does nothing for you during your lifetime.

Further, who can view your will and other probate documents is unlimited in Ohio. It is an online public record!

Keeping Your Estate Private and on Your Terms

Most individuals with significant net worth do not want their estates so easily accessible by the public in this age of identity theft and preying on the susceptible. Your spouse and family can be exceptionally vulnerable at the time of your death, so this is not a time when anyone with any degree of wealth would want his affairs made public.

As opposed to many other states, Ohio probate may be expensive and onerous. I described the probate process and attorney fees in Chapter Two, and how the typical trust administration is less expensive than the typical probate administration.

Some married couples have separate individual trusts while others have joint trusts. Whether a married couple should have a joint trust or have separate individual trusts is a product of several factors, including whether they have different beneficiaries, have wealth they want to preserve for multiple generations, and whether they are in a long-term or second marriage.

I say that trusts are private because absent a dispute among beneficiaries, trusts are not filed with any public court or other institution. No one can go down to the courthouse (or log online into court records) to read your trust following your death. Similarly, the trust inventory is not filed with the probate court. The only parties privy to the trust inventory following your death are the beneficiaries and the trustee, and perhaps, the IRS.

Finally, when you die with a living trust, there is a trust administration process that your trustee is responsible to conduct prior to making distribution of the trust assets. This is not a court-supervised process and is therefore not as time consuming as no one waits for a judge to act or for a court calendar to clear. You can read more about this process in my book, *When A Loved One Dies: A Legal Guide*™.[ii]

You Maintain Control Over Your Revocable Trust Assets

When you create a revocable living trust, you transfer your assets to the trust. This does not mean you lose control over them. In almost all revocable living trusts, you serve as your own trustee as long as you are able and willing. You handpick your successor trustee. You name whom you want to serve as the party who will manage your investments. Your successor trustee might be your spouse, an adult child, or other close friend or relative. It may also be a bank or trust company or your attorney or CPA.

A "revocable" trust means just that. At any time, you can amend, alter or revoke the trust. The assets remain yours for your lifetime; they are just owned by you through your trust. The taxpayer identification number for your trust is your social security number for as long as you are alive. This means that no other income tax returns other than your personal 1040 are filed during your life.

Your Will Becomes a Safety Net

When you create a revocable living trust, your attorney will also draft a "pour-over" will for you. A pour-over will acts as a safety net. In order for your trust assets to avoid the probate process, the assets must be transferred into your trust. (See Chapter Nine to review how our unique process, The Family Estate & Legacy Program®, directs those transfers.) If any assets somehow didn't get transferred into your trust during your lifetime, the pour-over will catches them and puts them in at your death. There would be a probate process on those assets, but not on the others that made it in.

Trusts Support You if You Become Incapacitated

Trusts also shine over wills when you consider how well they work in the event of your incapacity. Assuming you have placed your assets inside of the trust, in the event of your incapacity your successor trustee seamlessly steps in and acts for you. You either resign or are removed as your own trustee, and the person or party you have named in your stead can manage your trust assets.

Contrast this to when you have a will. Your will does not control your assets during your lifetime. So if you become incapacitated, you need

to rely on your agent named in a general durable power of attorney document, assuming you have one that is valid and up to date. If you do not have a current and valid general durable power of attorney "GDPOA," probate becomes significantly more likely during your lifetime.

The problem with relying solely on a durable power of attorney is banks and brokerage firms are wary of liability when powers of attorney are presented. If a bank accepts a power that is revoked, for example, they could be held liable to the account owner for any losses she incurs because of its use. This means that a bank or brokerage firm may spend a considerable amount of time performing due diligence to ensure the power presented is valid. This due diligence takes time. Time may or may not be of the essence should you become incapacitated.

This is not to say GDPOAs are not useful. They are. That is why we include them as a part of your estate planning package. Powers of attorney certainly work for assets outside of your trust, which can include annuities, IRA and 401(k) accounts, to name a few examples. Relying solely on a durable power of attorney document to take care of your legal and financial affairs in the event of your incapacity is not as preferable as having a revocable living trust in your arsenal, however.

Irrevocable Trusts are Gaining Momentum

While virtually every client of mine chooses to have a revocable living trust, most also have an irrevocable trust. But not all irrevocable trusts are the same! Some are used to protect assets from a nursing home, while others are used to protect hard-earned assets from creditors, including lawsuit judgment creditors. Still other irrevocable trusts are used to exempt assets from the federal estate tax or to protect assets for beneficiaries with special needs.

Each type of irrevocable trust has its own purpose and unique design based upon your goals and circumstances.

Documents Become Stale

Even if you have Ohio documents, estate plans often fall out of date because of changes to the laws or changes to your family or financial circumstance.

In my next chapter I will review just a few of the changes to the law that have occurred over the last several years, and why those changes merit updates to your plan.

Chapter Four

Legal Changes Merit Vigilance

We always ask new clients to bring a copy of their existing estate planning documents to our initial meeting. Then we literally have to blow the dust off before reading them after ten, fifteen or even twenty years in a safe deposit box.

"So, do you still want your sister Marie to act as a legal guardian for your children should you both die?" I playfully ask the grey-haired septuagenarians sitting across the conference table from me.

"Our youngest son is 43 years old," the wife says, blushing slightly.

With that revelation, we all have a good chuckle. Nevertheless there are serious reasons to make sure your estate plan remains up to date. In this chapter I will review several recent changes in the laws that merit careful vigilance inside of your estate plan.

Ohio Trust Code

The Ohio Legislature enacted the Ohio trust code in 2006, and it became effective January 1, 2007. The General Assembly continues to make changes almost annually. Court cases interpreting the statutes also modify the trust and estate laws. Failure to keep up with those laws may cause unintended consequence to your estate plan.

More recent changes to the Ohio trust code will merit consideration when updating your plan. An example of this is the trustee's duty to

provide an annual accounting to all trust beneficiaries following the grantor's death. Suppose, for example, Dad had a trust when he died. The trust contains a family trust for Mom and their two daughters. Upon Dad's death, Ohio law (like most other state laws) mandates that the trustee must provide annual accountings to Mom and both daughters.

This annual accounting should provide the beginning balance of the trust, income such as interest and dividends earned, capital gains and losses realized, expenses paid, the amount of distributions that Mom took from the trust, the ending balance and any other significant transactions.

Most of our married clients do not want to provide annual accountings to their children during the surviving spouse's lifetime. Ohio law provides a mechanism to circumvent this requirement, but many practitioners are unaware of this, so most trusts do not contain this provision. So long as your trust meets the statutory requirements, the surviving spouse need not detail her deceased husband's trust's affairs to her children for the rest of her life.

Sometimes it is not the surviving spouse who worries about this annual filing requirement. Occasionally our clients do not want a child who has addiction problems or another beneficiary who may have unreasonable expectations to receive an annual accounting. Again, the proper use of the Ohio laws can help the client circumvent this requirement.

There are other issues addressed in the Ohio statutes too numerous to detail here. A thorough review of your goals and concerns will bring out which of the Ohio trust laws we will use to meet your objectives.

Decoupling of the State Death Tax from the Federal Estate Tax

Before 2005 the federal estate tax laws coincided with the state death tax laws. If your estate paid a state death tax, for example, a corresponding deduction was given against the federal estate tax. There was, in fact, a standard state death tax deduction provided for on the federal return.

Many states had something known as a "pick up" tax (Ohio repealed its estate tax effective January 1, 2013), meaning that the amount of that portion of the federal estate tax allocated to the state death tax deduction would be remitted to the state. This pick up tax did not increase the total amount owed; rather the state shared in the amount that otherwise would be paid to the federal government.

That changed in 2005, resulting in what is called "decoupling." The federal estate tax return no longer provided for state death tax deductions.

Minnesota's state death tax threshold is $3.0 million as of this writing; Massachusetts' threshold is $2 million and Oregon's threshold is at $1 million. What this means is that a taxpayer could have an estate well below the federal exemption, yet still have to pay state death taxes because her estate exceeded these lower amounts.

Most estate plans of married couples are drafted in such a way so that even if their estate value is high enough to warrant a federal or state death tax, it is not paid until both spouses are deceased. Assume, for example, that Bill and Bonnie are married. Their attorney helped Bill and Bonnie divide their assets between their two trusts so that no matter who died first, their estate tax exemptions would be entirely applied. (This is no longer necessary in many cases, as I'll discuss in the "Portability" section below).

Assume that Bill dies first. Bill's revocable living trust breaks into two "testamentary" trusts upon his death as indicated in the below diagram. The "Family Trust," otherwise known as a "Credit Shelter Trust," is funded with assets up to the amount of his estate tax exemption on the date of his death. Any overage is directed to the "Marital Trust." Both trusts are held for Bonnie for the rest of her lifetime. Bonnie may also be the trustee of the trust, controlling investment and distribution decisions.

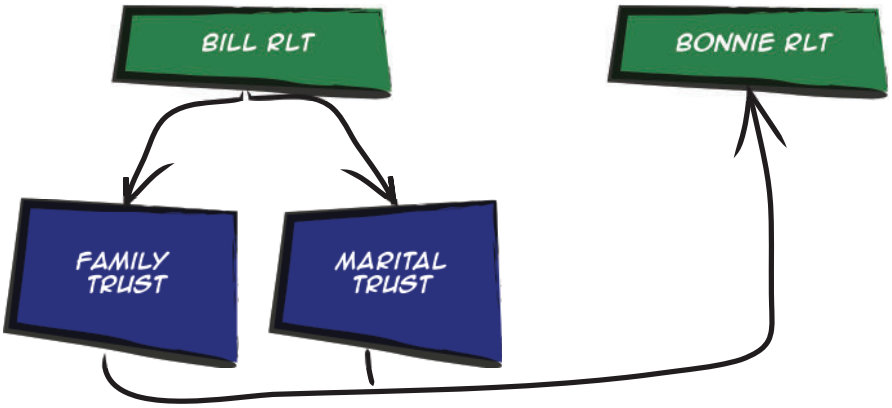
This looks similar to the examples found in Chapter Two, except here we use revocable trusts as the primary documents, not wills. By dividing

his revocable living trust into a Family Trust and a Marital Trust at his death, Bill's estate uses up his federal estate tax exemption yet pays no tax because the Marital Trust qualifies for the marital deduction. Trusts that qualify for the marital deduction do not pay tax until the surviving spouse dies.

A formula in Bill's trust accomplishes this division. These same formulas are often found in wills where revocable trusts are not used. But here's the rub – if the formula only addresses the federal estate tax exemption and is not drafted in such a way as to consider the lower state death tax exemption, then state death tax could be triggered ***on the first spouse's death!***

FIGURE 4.1

REVOCABLE LIVING TRUST (RLTs)



This is also true for the formulas found in wills.

That is exactly what occurred in a file that came to me several years ago. "Bill" and "Bonnie" were New York residents who owned five rental properties in New York State that they rented to third parties. At the time of Bill's death, his estate planning documents drafted before this decoupling law took effect, were not updated.

The formula clause in Bill's trust was based upon the federal exemption, as commonly done. Because New York's state death tax threshold was

lower than the federal exemption, his "Family Trust" was overfunded for the New York State death tax, triggering a significant tax payment due on Bill's death.

Bonnie had no choice other than to sell one of the rental properties to pay the tax. These rental properties provide Bonnie with her retirement income, so the sale of a property to pay a tax was quite devastating to her.

What is so terrible about this whole mess was that a simple two-sentence addition to the formula clause in Bill's estate plan could have remedied the problem. No New York state death tax would have been paid at Bill's death.

Even after decoupling, many attorneys still use a federal-based formula; particularly attorneys who practice in states that do not impose a state level death tax. This can be a problem for Ohio residents who own real estate in states that impose a state level death tax. Without proper drafting, real estate owned in a state that imposes a death tax will trigger the tax if the value of the real estate exceeds the state's exemption amount.

This highlights the urgency of updating your estate planning documents with knowledgeable, qualified estate planning attorneys when you either own real estate in a state that imposes a death tax, or are a resident of such a state.

Portability

Under the pre-2012 federal estate tax law, if a spouse died without using his estate tax exemption, it was lost forever. To illustrate, assume that Donald and Melania jointly owned all of their assets with rights of survivorship. When Donald dies, everything he owned is now owned by Melania. Even if Donald's estate is worth billions, because of the unlimited marital deduction there is no tax on his death. But at Melania's death, their entire net worth would be taxed in her estate. Donald's

exemption was lost because they jointly owned all of their assets with rights of survivorship.

The way to remedy that situation in the pre-2012 law was to divide their assets and implement a "Family Trust" or a "Credit Shelter Trust" (some refer to these as A/B trusts) as I illustrated above in Figure 4.1 of my Bill and Bonnie example.

That all changed in 2012 when "portability" became permanent (or at least as permanent as the federal estate tax law can be). With portability, even if the first decedent spouse didn't set up A/B trusts, the unused portion can be transferred to his spouse. This is accomplished when the estate files a Federal Estate Tax Return Form 706 at the first death and makes an appropriate election on that return.

So if the federal estate tax exemption is $15 million at Donald's death, and he had not used any of his exemption during his lifetime and jointly held everything with Melania at his death, his entire unused exemption could be transferred to Melania resulting in her having a $30 million exemption at her death.

Failure to Update Could Result in More Capital Gains Tax

If your estate plan predates portability, or if your attorney did not consider the effects of portability on estates less than $15 million (or the current exemption amount), it is possible that your beneficiaries won't enjoy the maximum capital gains tax savings.

If dividing assets between spouses' trusts is no longer necessary to achieve estate tax savings, doing so with standard planning ("Family Trust/Credit Shelter Trust") fails to consider the best way to use the step-up in tax cost basis that our estate assets receive at our passing.

Allow me to explain: assume that I purchased a share of Company A stock on the New York stock exchange for $1/share. My tax cost basis in those shares of stock is therefore $1/share. Over time, the value of

that stock increased to $10/share. If I sold the stock during my lifetime at $10/share, then I would realize a $9/share capital gain ($10 selling price minus $1 tax cost basis and pay taxes on that gain when I filed my annual income tax return.

If instead I died still owning those shares at $10/share, my estate receives a "step-up" in tax cost basis equal to the fair market value as of the date of my death. If my estate and/or my beneficiaries sell the stock the day after my death for $10/share, then they realize no capital gain and pay no capital gains tax.

Here is how an estate might pay more tax rather than less. Assume that Donald has a trust worth $2.5 million at the time of his death, and that Melania has a trust worth $1.5 million. At his death, Donald's trust becomes a Family Trust that benefits Melania. Melania filed a federal estate tax return on Donald, even though his estate was not above the filing threshold of $15 million. She received his unused exemption credit of $12.5 million ($15 million exemption minus $2.5 million fair market value of his estate at his death, so her total exemption is now $27.5 million ($15 plus Donald's unused exemption of $12.5).

Assume further that Melania survives Donald by 12 years, and in that time frame Donald's trust has grown from $2.5 million at the time of his death to $3.5 million at the time of Melania's death. During that same time period, Melania's trust has grown to $3 million.

When Melania dies, her estate benefits from a step-up in tax cost basis to $3 million. If her estate or her beneficiaries were to sell the assets in her trust at $3 million, there would be no capital gains tax paid. Further, Melania's estate is far below her exemption of $27.5 million, so no estate taxes are paid either.

While Donald's trust enjoyed a step-up in tax cost basis to $2.5 million at his death, there was no corresponding step-up of the Family Trust assets at the time of Melania's death, when under the Portability law his trust could have been designed to do so. Consequently, the $1 million

of unrealized appreciation between the time of Donald's death and Melania's death could have been wiped out.

Donald's trust, for example, could have included a Marital Trust for the benefit of Melania instead of a Family Trust, or it could have been designed as a beneficiary-deemed owner trust.

While a Marital Trust would not have used Donald's exemption from federal estate tax, the use of his exemption was unnecessary given this fact pattern. By creating a testamentary trust that qualifies for the marital deduction, Donald's trust assets receive a step-up in tax cost basis both at his passing and then again at his wife's death. This eliminates the capital gains tax exposure that is generated during that time frame.

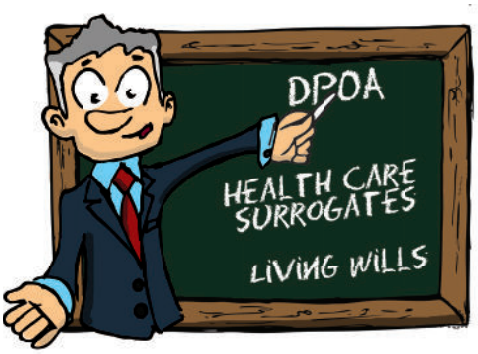
The point I make here is how portability turns traditional estate planning methods on their head when one of the considerations is to minimize taxes – both estate taxes and capital gains taxes.

There are many other laws you should be aware of that have changed in the last few years. I have established very clearly why sticking your estate planning documents in a drawer without keeping them up to date could cause adverse consequences.

In the next chapter I will review what you need to know about updating your powers of attorney and health care documents.

Chapter Five

Powers of Attorney and Health Care Documents



Your will and trust are not the only estate planning documents that should be both reviewed and updated. As each state's laws are different for wills and trusts, they are also different for general durable power of attorneys, health care powers of attorney, living wills, and HIPAA authorizations. The laws that govern these important documents often change.

General Durable Power of Attorney

In 2012, the Ohio statute governing powers of attorney substantially changed the way a General Durable Power of Attorney (GDPOA) can be used in Ohio.

A GDPOA is an important document that everyone should have as a part of his or her estate-planning portfolio. The grantor of a GDPOA names someone who can legally act for the grantor in any number of ways. The person who is granted the power to act is known as the "attorney-in-fact" or "agent." For simplicity's sake, I will refer to that person as the "agent."

The GDPOA may allow the agent to write checks to pay bills, sign deeds, complete beneficiary designations, enter into and/or enforce contracts, open accounts, close accounts, and direct investments.

GDPOAs cease upon the grantor's death. In other words, once the grantor of the GDPOA dies, the document is no longer effective. The "Durable" in the name "Durable Power of Attorney" means that the

powers survive the grantor's ***incapacity***. A General Power of Attorney, in contrast, would cease once the grantor becomes incapacitated such as through dementia or Alzheimer's disease. Most estate plans use the GDPOA since the thought is that the power holder would normally only act if the grantor of the power couldn't.

The GDPOA and Your Trust

When your trust owns your assets, your Trustee controls those assets. In your revocable living trust, you are in control. But what about when you become disabled and have assets outside of the revocable trust? We have seen an unfortunate trend in the use of GDPOAs. It is not unreasonable to envision that a bank, financial firm or broker asked to act pursuant to a GDPOA will be suspicious of the document from a liability standpoint. Consider the scenario where daughter Gina walks into her father's financial advisor's office holding the GDPOA and says "I need to transfer $20,000 out of my father's money market account today."

The financial advisor looks at the GDPOA, worried that if it is not authentic he could be liable for following Gina's direction. So he asks Gina, "Why are you using the power? Can I call your dad to see if this is okay?"

Gina answers, "Dad's in the nursing home and is not really able to communicate. I need to write checks to pay a bunch of his bills and that is why I am here."

Dad's financial advisor then reads the GDPOA – and sees that the document was signed five years ago.

"This document was signed five years ago, and it is our policy to not honor any power of attorney older than 24 months," he says. "Your father will have to sign a new power of attorney."

"But Dad has Alzheimer's, and I told you, he is in the nursing home!" Gina exclaims incredulously.

"I am sorry," the financial advisor says, "I have to be very careful as I may have a lot of liability here if for some reason you are not supposed to act," he says. "I will give this to my firm's legal department to sort out."

Gina is frustrated and worried that she will not be able to pay her father's bills on time. "How long will this take?" she asks.

"I do not know," the financial advisor replies.

From there the whole thing can become a circus. The attorney for the financial firm may say they need written proof that dad is incapacitated and can't act. It can take days – if not weeks – to resolve, if the advisor can be satisfied at all.

This scenario is precisely why our clients have their assets owned by their living trusts. Third parties are trained to question and resist powers of attorney… they are not trained to question or resist successor trustees. In fact, most states impose penalties on banks and financial firms if they fail to acknowledge your successor trustee. I will discuss how and why trusts own assets in more detail in Chapter Seven.

Now, this is not to say the GDPOA has no value. Remember how this section started: ***A GDPOA is an important document that everyone should have as a part of his or her estate-planning portfolio***. There is one key asset that cannot be owned by a trust: retirement accounts (IRAs, 401(k)s, 403(b)s, etc.). Who monitors the retirement accounts? Plus, who helps prepare and file dad's tax return? Who picks up mom's medical supplies from the local UPS branch? Who can make updates to mom and dad's trust if the law changes? Who enforces mom and dad's rights under the lease for the rental property?

There are countless scenarios when our clients need assistance in the event of their incapacity. And anyone without a knowledgeable, trustworthy agent, runs the risk of requiring probate court involvement.

Another important provision in the new statute is the requirement that certain powers (called the "hot powers") in a GDPOA must be

expressly included in order for the agent to have those powers. The Ohio General Assembly became concerned that clients were not truly aware of many provisions buried in multi-page documents, and many elderly or incapacitated persons were being taken advantage of. In Ohio, if you want your spouse or your children to have as much authority under the law as you do, it is no longer sufficient for your document to have a generic "catch-all" provision or merely state that your agent can do anything you can do.

These hot powers include the power to make gifts from the grantor's assets, the power to create and amend trusts, and the power to create and amend beneficiary designations. Unfortunately, most attorneys are not aware of the new statute and do not include these essential powers in any GDPOA.

I hope you do not come away from this chapter believing GDPOAs are not essential to anyone's estate plan. They are. This is why I emphasize keeping such a critical document up to date. One of our colleagues even recommends updating the GDPOA every year.

Health Care Directives

Besides the GDPOA, your complete estate plan includes advance directive documents including the health care power of attorney, living will and HIPAA Authorizations. The health care POA names someone to make important health care decisions for you. It allows your agent to sign admission forms to hospitals, rehabilitation and long-term care facilities, as well as to interact with your medical professionals including making decisions regarding your care.

Living Will

The living will document, sometimes referred to as "the right to die" document, enables you to make end-of-life decisions while you are competent regarding the withholding or withdrawing of life-prolonging procedures so long as you meet the statutory precondition.

Ohio's living will law provides that you must be unresponsive in an "end stage" terminal condition, or be in a "permanently unconscious state" with no hope of recovery. This condition must be certified by two physicians and is signed off on by the agent named in your living will, who is typically also your health care agent.

Terri Schiavo was a woman central to one of the nation's most famous living will cases. Terri lived in Florida. She suffered a massive heart attack in 1990 and was resuscitated only to be left comatose in a persistent vegetative state. She had never signed a living will.

Her husband argued that she would not have wanted to live on in this manner and petitioned to have her feeding tubes removed. Her parents disagreed with the medical diagnosis and went to court to stop her husband's direction. After a seven-year court battle, along with her case being made the subject of state and federal politicians' comments, including then President George W. Bush, her tube was removed and she died in 2005.

No one wants the end of his or her life to be the prolonged, emotional struggle that Terri Schiavo's was. The living will document minimizes that possibility. By signing a document indicating what your direction would be if you met the legal preconditions, you are in charge. You let your loved ones and the doctors know exactly what your instructions are, and you do not put that unwanted burden squarely on someone else's shoulders.

HIPAA Authorizations

HIPAA (the Health Insurance Portability and Accountability Act) was enacted in 1996. One of the essential pieces of the legislation was to provide more security for your health care information. HIPAA laws are designed to protect us, but they can pose an obstacle preventing family members from being able to meaningfully communicate with our health care providers. While it is important to determine who the decision-makers will be during your incapacity (the health care agent), it is equally important to determine who among your loved ones you trust

with your private and protected health care information. This level of access to health care providers often results in better communication and coordination of your health care treatment among those providers and your family.

Documents Valid in Other States

If you are a resident of Ohio, then your advance directive documents should comply with Ohio law. Sometimes I am asked by a client, "If I am at my condo in Florida and end up in a hospital there, wouldn't I need Florida documents?"

The answer to that question is, "No." So long as you have documents compliant with your state of primary residence, then any state where you may end up in the hospital will accept your health care directives.

The Family Estate & Legacy Program® includes a review and an update of all of your advance directive documents at the time we update your estate plan. Moreover, as you can see from this chapter, keeping up with the changes in these laws is as important as the changes that affect your will and trust.

Chapter Six

Protection for Yourself, Your Spouse and Your Beneficiaries

At this point in the book, it is my hope I have convinced you that estate planning should not be a "let us take the old documents out of the safe deposit box to review them every 10 years" proposition, particularly for anyone with any assets and people they care about. While working with your legal team to update your plan, I suggest that you also consider adding three key ingredients that your plan may not already have:

- Protection
- Funding
- Maintenance

When I refer to "protection" I separate them into three components – protection for yourself, protection for your spouse, and protection for your beneficiaries such as your children and grandchildren. "Funding" speaks to having your assets owned in the right "bucket." As you'll learn in Chapter Seven, if you never get around to transferring your assets into your trust, you might as well not have a trust. "Maintenance" refers to keeping your legal documents up to date with the constantly evolving estate, trust and tax laws, as well as with your personal and financial situation and your ever-changing goals and concerns.

Ensuring that these three elements are functional inside of your estate plan should provide you and your loved ones with comfort and clarity. In this chapter, we examine the element of protection and then discuss

funding and maintenance in the following chapters.

Protection for Yourself from Creditors

Many clients mistakenly believe that by creating a revocable living trust, they protect their assets from the claims of divorcing spouses, predators and creditors, including nursing homes. This is not the case. When you transfer assets from your name into your revocable trust, you only change the form of ownership. Because you own the trust, the trust assets are still considered yours, therefore you can change the terms of the trust whenever you want, and you control the disposition of trust assets.

Revocable trusts use your social security number as the tax identification number, so there is no separate income tax return to file as long as you are alive. All the income of the trust appears on your federal Form 1040 just as it always has.

Because assets inside of your revocable trust remain legally yours, the trust does not shield you from liability.

This came to light when a client of my firm accidentally killed a motorcyclist while driving her car. A retiree, she had moved to cut expenses, limiting her automobile insurance coverage to 100/300/50, meaning she had coverage of $100,000 bodily injury liability insurance per person, $300,000 total bodily injury liability insurance per accident, and $50,000 property damage liability per accident.

She unfortunately also dropped her umbrella insurance policy. Umbrella insurance is extra liability insurance that stacks on top of your home and auto coverage. It helps protect you from major claims and lawsuits. In today's litigious age umbrella policies are critical to protect your assets and your future. A $2 million umbrella policy, for example, will provide additional coverage above the limits of your liability policies. Usually you must increase your home, auto, and boat coverage to the maximum limits when purchasing an umbrella policy. For most people, umbrella policies are very affordable.

Our client's insurance wasn't adequate to cover the losses associated with her accident. Much to her and her adult children's surprise, this meant that her other assets, including those assets funded into her revocable trust, were at risk in the negligence lawsuits following the incident. The lesson to be learned is to carry adequate insurance, and even if you are retired it makes sense to carry an umbrella insurance policy. Because insurance does not cover certain tortious acts, it is also advisable to consider doing asset protection planning as part of your overall estate plan.

Protection for Yourself from the Nursing Home

Similarly, because the assets inside of your revocable trust are legally yours, the trust does not shield the assets from the nursing home. In other words, these assets are countable for purposes of determining your eligibility for Medicaid to pay your nursing home bill.

For many of our clients, the single greatest threat to their life savings and retirement is the looming cost of the nursing home in the face of a long-term care event. Most people simply do no planning, and as result, those people either go broke (or nearly so), or they pass away on the way to broke.

If you decide that doing no planning for the nursing home – and thus risking going broke – is untenable (which it is), our clients are effectively left with two options to help pay for long term care: 1) planning for government benefits; or 2) insuring the risk.

Government benefits for long-term care, including Medicaid and Wartime Veterans' benefits, come with income and asset restrictions. Many families simply have too many resources to qualify for those benefits. Without planning ahead of time, those families have no choice but to spend the assets down to the threshold in order to qualify. In the context of Medicaid, it means that ***someone going into a nursing home cannot have more than $2,000 in his or her name, no matter how those assets are situated***. Similarly, the VA puts restrictions on the type

and amount of assets and income a Wartime Veteran or his or her spouse can have before offering *any* assistance for the long term care benefit.

We are proficient in the use of irrevocable trusts which allow our clients to retain assets and still qualify for long-term care benefits provided by the government. And if drafted properly, these irrevocable trusts still allow our clients reasonable control over the assets.

Now, there is one kind of asset that cannot be protected in an irrevocable trust: retirement accounts (IRAs, 401(k)s, 403(b)s, etc.). Those clients that have significant retirement assets cannot become government benefit eligible with the help of an irrevocable trust, and they will turn to the use of long-term care insurance (LTCi) for their long-term care needs. Clients who have resources and whose goals lean toward having care at home will utilize LTCi also.

LTCi is done differently now than it used to be. Most people associate LTCi with steadily increasing premiums and the "use it or lose it" reality, both giving understandable heartburn. While there is nothing inherently wrong with insuring any risk and being willing and able to pay the premium, this old "premium-based" version of LTCi has proven to be more difficult, and often unsustainable, for our clients. The new way of doing LTCi is through what is called "asset-based" LTCi. Asset-based LTCi is built on cash-value whole life insurance, and it always comes with a guaranteed benefit. The fear of "use it or lose it" is gone: if the client doesn't need the benefit for long-term care, the death benefit then gets paid to the beneficiaries. Further, the premium is fixed at the time of investment. There are no increasing premiums. Asset-based LTCi also can allow for the payment of premiums through qualified retirement accounts in a tax-friendly manner.

Disability Instructions

While your living trust does not offer liability protection, it offers other types of protections for you. A well-drafted trust includes extensive disability provisions. Since most clients serve as their own trustee, the primary danger often relates to cognitive decline.

I can best illustrate this issue by relating another incident we saw in my office not too long ago. I received a call from one of my client's adult children, "Kevin."

"Ted," he said, "I think we have an issue with Dad."

"What is that?" I asked.

"Well, I am down visiting from Michigan," he began, "and when I arrived here yesterday I found a big pile of unopened mail on his kitchen table. There were unopened bank and brokerage account statements and bills. I became worried and asked if I could open them up and see what was there."

"I understand your worry," I said. "Maybe we need to get a bill paying service."

"I have not told you the worst part yet," Kevin said. "When I opened his bank statement I found a $10,000 check written to his housekeeper. He clearly wrote out the whole check – it was not written in anyone's hand but his own, and the signature is his. But get this – when I asked him about it – and showed him the copy of the check – he did not remember it at all."

"Do you think he may have said that to avoid telling you that he really wanted to give her the money? Maybe he is lonely and got attached to her and felt generous."

"No, I really do not. Dad is 93 and I have noticed him slipping. What do you think we ought to do?"

"Well, it is probably time to remove him as his own trustee on the various accounts. You are the successor trustee, so first we will see if your father wants to resign, or if he is resistant we need to take him to a neurologist to get a clear diagnosis on his condition. At that time, we will convene the disability panel we have built into his trust. Meanwhile I will work to see if we can recover the money he gave the housekeeper."

"Sounds like a plan," Kevin said, somewhat relieved.

Do not take it for granted that your estate plan contains the proper disability protections we used in my client's case. Many trusts contain inadequate provisions to effectively deal with this type of situation.

Defining Disability

First, how is disability defined? Many trusts require a physician to sign a statement that would remove the client from acting as his own trustee. I have had to alter how I draft these provisions because physicians are afraid of liability and will not sign them. So instead I include a provision that requires a physician's diagnosis along with something I refer to as a "disability panel."

This disability panel can include any group of trusted relatives or friends whom the client believes will make informed decisions regarding the client's cognitive decline. If this panel sees that the client could pose financial harm to himself, such as writing $10,000 checks to the housekeeper, the panel can remove the client so that the successor trustee steps in.

Sometimes clients will express concern that their disability panel will remove them even though they are still capable to continue on as their own trustee. Anecdotally, in more than 32 years, I cannot recall that ever occurring. I can, however recall several instances where the family suspected a problem and waited too long to make the change. Further, we make it clear in the trust instrument that although the successor trustee is serving, so long as the client is alive he is the primary beneficiary and the trust assets are not to be used for the ultimate beneficiaries until the client has passed away.

There are related issues to consider, such as when a client is financially supporting someone else, or is making gifts to his loved ones for medical or educational expenses. In those instances, it is important to include provisions allowing the successor trustee to continue on as the client

would have, even though the client is no longer capable of making those decisions.

Giving Your Successor Trustee Help

Another protection for the client that can and should be drafted into the trust instrument concerns the ability of the successor trustee to enlist help when they need it.

An example of this is when you name your daughter Becky to serve as your successor trustee. Let us say that Becky is married with two children along with working in her career. If you were to suddenly need her to step in and serve as your trustee, Becky may be unprepared to take on a host of important responsibilities including writing your checks, paying bills, ensuring money is moved into the proper accounts to do so, watching over your investments, and filing your tax returns. Becky could most likely use some help. So your trust can allow her to appoint agents, or even name a co-trustee temporarily. While most trusts already provide that the trustee can employ professional agents, I do not see many that allow someone like Becky to hire and fire co-trustees.

The reason Becky may want a co-trustee and not an agent rests with the amount of liability and responsibility she can transfer to another party, such as a bank or financial firm. Sharing the responsibility while retaining control and oversight, along with the ability to hire and fire the co-trustee could be an important power you would want to serve as a protective device in the event of your incapacity.

Protection for Surviving Spouse

Protecting yourself is not the only thing that your trust can and should do. Another consideration is to protect the inheritance you leave your surviving spouse. Unlike the trust you create for yourself, it is possible to protect what you leave your spouse against predators, creditors, bad decisions and a variety of other dangers.

One of the most significant decisions you and your spouse will make together is the choice of who your successor trustee will be. Spouses will usually name each other. But is that always the wisest choice?

If your spouse has no experience managing money and you have been a do-it-yourselfer, then you may be setting her up for some big problems. She is likely to search for a financial planner. Who knows whether she ends up with a quality professional who only has her best interests at heart? Wouldn't it be wise to also name a successor co-trustee with her in the document so that is one less decision she would have to make in a time of crisis?

Protecting Inheritance from Remarriage

If that is not an issue – what about protecting your surviving spouse from remarriage troubles? One of the more famous cases involves a relationship between wealthy businessman, J. Howard Marshall and model, Anna Nicole Smith.

Most people know that story. The Texas multi-millionaire who became infatuated with a lady he met at a Houston strip club and ended up marrying her. We all know how that story played out.

Most of us, even those in second marriage situations, hope that our hard-earned estate will benefit our spouse, but then revert to our children and grandchildren when our spouse dies. With Mr. Marshall, his new wife was considerably younger than his children. Even if he created a marital trust for her lifetime, by the time she would be expected to pass away his children also may not likely be around to enjoy any of their inheritance.

As it turns out, Anna Nicole died young. Her drug-addict son was in on her bounty and he died young from an overdose.

Blended Family Issues

While the Marshall/Nicole Smith example is not all that common, there remain a host of very legitimate issues in blended family situations. When a surviving spouse is not the parent of the deceased's children, tying them together through the use of marital trusts can be problematic.

Who is the trustee of the marital trust going to be? If it is the spouse, what if he does whatever he wants and doesn't let the children know? The spouse has reason to do this as he wears two hats. The first hat is supposed to be as an impartial trustee while the second hat is that of a beneficiary. Those two hats have an inherent conflict of interest.

This does not mean you should not name your spouse as your successor trustee. What I am pointing out is that much thought should go into that process to protect your intent as to how you would like to take care of your surviving spouse, and what specifically you would like to leave your children and when.

If, for example, you want your spouse to be the highest priority, even if your trust could be exhausted taking care of her for the rest of her life, then it is important that the trust instrument precisely say so. Without language in the trust stipulating what your intent is, it is left to judges and others to decide. Without clear direction, the trustee, whoever that is, has a legal duty to balance the interests both of the lifetime income beneficiary (typically the surviving spouse) against the remainder beneficiaries (those who get what's left after the surviving spouse dies).

Accounting to the Children

There are even other issues you want to protect your spouse from. One example is an accounting requirement to beneficiaries other than your spouse.

Most state laws, including Ohio, require the trustee of a testamentary (after death) trust, such as a credit shelter trust, to account to all current beneficiaries (including the children) what happened in the trust each year. Having a will instead of a trust does not circumvent this problem as wills can create testamentary trusts for the surviving spouse and children.

An accounting opens with the balance at the beginning of the year, discloses capital gains and losses realized, income received, distributions made (usually to the surviving spouse), expenses paid, significant transactions and ending balance.

Most of my clients do not want their surviving spouse to have to provide a trust report each year to their children. There are legal means to avoid this requirement, but the provisions must be drafted into the will or trust itself. Failure to do so could subject the surviving spouse to financial scrutiny for the rest of his or her life.

These are just a few of the issues that clients should consider to protect their surviving spouse. The facts of your particular situation will reveal what protections and therefore which steps to consider for your spouse.

Protecting Children and Grandchildren

Most wills and trusts I review from my new clients seem, at the surviving spouse's death, to distribute everything outright to the children, unless they are young, in which case the assets are held in trust until the children attain a certain age, such as 21 or 25 before being distributed outright.

I believe that when this happens you have missed a major opportunity in the estate plan. Allow me to explain what I mean.

Protecting Spendthrift Beneficiaries

One of the most common concerns raised by my clients in my conference room centers on whether their children will squander or waste their inheritance. This concern has merit. A Key Private Bank study found that the average inheritance is fully consumed within

17 months. Under current law, many non-spouse beneficiaries must withdraw inherited retirement accounts within 10 years. Special rules still apply for spouses and certain eligible designated beneficiaries, including minor children of the account owner, disabled or chronically ill beneficiaries, and beneficiaries not more than 10 years younger than the account owner.

Protection from Creditors

Protecting from spendthrift tendencies is not the only danger. Proactively protecting your children from creditors could be another issue. When the real estate market crashed in 2007, for example, several of my client's adult children suffered through foreclosure proceedings when they purchased homes at the height of the market and then lost their jobs. When a foreclosure sale occurs on the steps of the courthouse, there are often deficiencies between the amount of the loan outstanding and the sales price. This results in a deficiency judgment against the borrower that accrues interest over time.

Beneficiaries who inherit assets outright when they have an outstanding deficiency judgment (or any other judgment) against them risk losing the inheritance to the judgment creditor. There are all kinds of judgments that could linger for years against your intended beneficiaries, including student loan debt, business deals gone sour, alimony, child support, negligence and malpractice cases just to name a few.

To protect your loved ones' inheritance from these dangers isn't all that difficult, only a change of your mindset from leaving the inheritance outright to leaving it in a continuing trust, otherwise known as a "testamentary," or after-death trust.

Tailor to Specific Needs

Testamentary trust provisions are built inside of your revocable living trust and spring into effect upon your death, or upon the death of the survivor of you and your spouse depending upon the terms. There is no "boilerplate" or "one-size-fits-all" trust. A testamentary trust may be drafted to meet your specific goals and concerns.

If, for example, a spendthrift beneficiary is your concern, then you are likely to name a third-party trustee to manage the investments and consider the distributions to that beneficiary. A third party trustee might be an investment firm, bank or trust company, an attorney, CPA, or other trusted professional, a competent friend or other family member.

Avoid Setting Family Up for Conflict

Be careful that you do not name a son or daughter to act as a gatekeeper to one (or more) of their siblings' inheritance. That is a recipe for disaster. I explore this and related topics more in depth in my *Selecting Your Trustee* book.[iii]

To illustrate, assume that you named your son Bob to act as trustee over his sister Jennifer's trust share. Jennifer asks Bob "I need $40,000."

Bob asks, "Why do you need this money?"

"Why is it your business?" Jennifer replies.

"Because Mom and Dad selected me as your trustee and I need to know as I have a duty to protect your inheritance from you spending it away."

"I just need it, okay?" Jennifer says in an agitated voice.

"Well then, no, I am not distributing it to you!" Bob says. You can see how these situations can put a strain on the relationship. Do not blindly do this to your kids.

Liberal or Conservative Distribution Provisions

When you direct your attorney to draft these trusts you leave behind for your children and grandchildren, you will want to discuss how tight the purse strings might be. You can direct, for example, that the trust annually-earned income (the interest and dividends) may be

a required distribution to the spendthrift beneficiary, but it does not have to be. The testamentary trust could be written to allow for discretionary distributions, meaning that the beneficiary must request a distribution and justify the reason for it.

You can have the testamentary trust written to direct the trustee to be liberal with distributions or more tight-fisted. In one situation I had a client who wanted the inheritance to primarily benefit her daughter's retirement years. She therefore had me draft the testamentary trust to only distribute for educational purposes, or for health or support emergencies until her daughter attains age 65. Until that time any extraordinary distribution requests had to be fully justified, and the daughter had to show that she had no other income or assets of her own to satisfy the request. Once the daughter attains age 65, however, the provisions of the trust loosen, allowing the trustee to even make distributions for travel, clothing and other enjoyable pursuits.

More Reasons for Testamentary Trusts

Continuing testamentary trusts are even a great idea for those beneficiaries who do not need a gatekeeper, and who may be superb at managing their own money. No one knows what the future brings. Divorce, bad business deals, a malpractice case or a host of other dangers could threaten a child's inheritance. Further, for those über-successful beneficiaries, outright inheritances could only add to existing estate tax issues. Leaving your daughter, the neurosurgeon, your wealth might only create additional estate taxes when she dies.

How about the circumstance where you leave wealth to your son, but upon his death he leaves everything he owns to his wife who later remarries? Here the family wealth you have accumulated may not end up with your grandchildren, rather it could all end up benefiting a family tree you do not even know.

In all of these instances, building a continuing testamentary trust for your beneficiaries will serve to protect the inheritance from these dangers. Instead of naming a third-party trustee gatekeeper, however, you can name the beneficiary as his own trustee to serve along with a distribution trustee. So long as discretionary distributions are wholly discretionary, even if the beneficiary controls the investment decisions, the assets remain protected and outside of her estate for federal estate tax purposes.

Separate Shares vs. Common

When you build a testamentary trust for your beneficiaries, you should direct your attorney to draft a separate trust share for each beneficiary as opposed to having *only* a common trust for all. Your beneficiaries are likely to have separate goals, concerns, assets, risk tolerance, need for income and so on. Upon your death, or the death of the survivor of you and your spouse, the assets will be divided proportionately into the separate trust shares, with each being governed separately from that point forward.

Common trusts may be appropriate for similarly situated beneficiaries, and if done correctly, they typically provide for a singular purpose and last for only a finite amount of time (e.g. grandchildren's education). But a common trust should rarely, if ever, exist alone and should never be the default setting for your testamentary trust.

Opportunity Lost

Some clients say "I do not want to go through the hassle of creating a testamentary trust inside of my trust and having my children deal with those complexities. If they want a trust, they can create one like I am right now and put their assets into that trust." Allow me to address both points.

First, while each testamentary trust may have its own separate tax identification number and therefore need to file a separate tax return,

governing the trust should not be all that difficult. Your attorney can provide the initial instructions, with your CPA or tax return preparer doing their job annually. Trust formalities are important, but rarely pose considerable problems.

Second, your children cannot easily create protected trusts for themselves as you can for them. That ability, for the most part, dies with you. If you have not created protected trusts inside of your own estate plan, then your family will have lost out on that opportunity. Recall a few pages ago where I informed that your revocable trust offers no protections for yourself. The same holds true when your children create their own revocable trust.

Giving Children Power to Appoint

Finally, clients sometimes object to testamentary trusts as "reaching out from the grave." While a valid concern, there are provisions you can include which mitigate that entirely. You can give your children and grandchildren (and any other beneficiary) a "power of appointment" over their trust share at their death. What this means is that the current beneficiary can alter the default beneficiaries you name for each trust share (normally down the generational line).

An example of this is where you leave assets in trust for your son, Bob. On Bob's death the assets are to be held and distributed to or for the benefit of Bob's children, Cindy and Dan, who become the "default beneficiaries." If nothing else happens, when Bob dies the trust share splits in two for Cindy and Dan.

You choose, however, to leave Bob a power of appointment so he can leave amounts to his spouse, Bonnie, or alter the proportions or amounts he leaves to his descendants, or he can even leave the entire amount to charity. Bob can exercise this power of appointment inside of his will or trust.

So what have you done when you left amounts in a testamentary trust for your children naming each child as trustee for his or her own share with a power of appointment to each child at their death? You have given your child the ability to control his own inheritance along with the ability to also direct the inheritance upon his death. Sounds like an outright distribution, doesn't it? In effect, it is not that far off from an outright distribution, but it can provide the protections we reviewed here together.

Chapter Seven

Asset Alignment

One of the most overlooked aspects of estate planning, and in particular with trust planning, is the transfer of the assets to the trust. This can be best illustrated with a true story that occurred in my office just a few years ago when a very nice couple visited me having moved to Ohio from Michigan. Their Michigan attorney, also licensed in Ohio, had just completed a revision of their revocable trusts, general durable powers of attorney, health care powers of attorney, living wills, and pour-over wills.

They wanted me to represent them since they had become permanent Ohio residents. However, they were quick to say they had the utmost of confidence in their Michigan attorney who they assured me had taken the necessary steps to update their documents to Ohio law. This couple simply wanted to meet with me towards obtaining my help in the future should something happen to either of them.

"Normally I would review your documents and your assets to ensure that your plan is up to date and congruent with your intent now that you live here," I said.

"No thank you. We will call you when we need you," the husband replied.

That was the last I heard until recently when the wife called me to tell me of her husband's passing. I asked her to provide me current deeds

and financial statements so we could implement the testamentary trusts found within their revocable trusts.

That is when we discovered that nothing was ever transferred into either her trust or his trust. "The assets in your husband's name alone will be subject to a probate proceeding in order to get them into the trust for you," I advised.

"But we were told that our trust avoids the probate process," she said.

"It does. That is only when the accounts and properties are titled into the trust name," I continued. "Here, there are accounts in your husband's name. So his pour-over-will catches those assets and deposits them into his revocable trust, but only through a probate process does that occur."

Needless to say, the wife was very aggravated with all the obstacles that appeared before her during a most difficult time – after losing her husband. All of these problems could have been avoided with a review of the trust and the assets and corresponding action taken before anything happened to the husband.

Instruction Sheets Without Follow Up

While you might be thinking that the Michigan attorney could have done more, one does not know the extent and scope of his representation. Perhaps he was not engaged to also transfer the assets to the trusts he created. There are attorneys who simply hand the client an instruction sheet how to transfer their assets to the trust with no further instruction or follow up.

In fact, my firm used to only hand out an instruction sheet. Clients would tell us they will make the transfers themselves, or rather rely on their financial advisor to so assist. They did not want to pay us to complete this important step.

As you will see in Chapter Nine, The Family Estate & Legacy Program® includes a specific step involving transferring your assets into your trust.

We require that you attend a funding workshop or hire our firm to do the funding. The reason we insist on accomplishing this most important task is because of our experience working with clients who came to our office who either did not understand funding or attempted to do it on their own without any guidance or support from a highly skilled estate planning team. Even in cases where clients were given generic instruction sheets from their former lawyer, we found that one of three things happened: the transfer of the assets got completed, but incorrectly; or it was only halfway completed; or worse yet, nothing was done at all.

Assets that Should Be Transferred to the Trust

What types of assets need to be transferred into your trust? Your banking accounts, investment accounts, residences and properties, business interests, including closely held business and partnership interests, and titles to vehicles and boats.

As I pointed out with the Michigan couple, when the assets are not properly transferred, adverse consequences can result.

Importance of Beneficiary Designations

It is not just the transfer of the assets that may be at issue. Some clients own significant IRA, 401(k) and pension accounts. Those accounts name a beneficiary which on its face appears to be easy to accomplish. Your will and revocable living trust rarely govern those accounts, but as clients accumulate more and more of their net worth inside of those types of accounts, the estate planning behind them, including preservation of the assets and income tax planning, becomes vitally important.

Estate and income tax planning with annuities and retirement account assets is beyond the intended scope of this book since I will publish another book on that topic. However, keep in mind that "funding" may also include completing your beneficiary designations so they fit hand-in-glove with your entire estate plan.

Which Trust Should Receive the Assets?

One issue related to the transfer of the assets is into which trust bucket do you choose, or do you do away with your separate trusts and create a new joint trust? Some estate plans between married couples force a choice between transferring the assets into husband's trust, wife's trust and splitting them into proportions of each.

Now that the estate tax rules include "portability" provisions, allowing for unused estate tax exemptions to be transferred from the deceased spouse to the surviving spouse, how to split the assets between a married couple's revocable trusts is not as consequential as it once was for estate tax purposes. Therefore, some clients choose to create a new joint trust.

That does not mean that determining which trust to fund the assets into is without consequence. The death of the grantor of a trust results in a step-up in tax cost basis, meaning that the fair market value at the date of death determines the new cost basis for capital gains.

Assume, for example that David bought Coca Cola stock in a regular investment account (as opposed to an IRA or 401(k) account) at $1/share. Assume further that the current price of Coca Cola stock is $10/share. If David sells the stock, he recognizes a $9/share capital gain ($10 sales price less $1 tax cost basis). If David instead died owning the stock whose price on the date of death was $10/share, and the stock was bequeathed in trust to his wife, Rachel, then she inherits the stock at $10/share. If she subsequently sells the stock for $10/share, then she recognizes no capital gain.

Which trust the assets are funded into may have income tax consequences as described above, and there still could be other kinds of issues. Consider, for example, a situation where husband and wife are in a second marriage with children from prior marriages whom they wish to include inside of their estate plan. Therefore, husband's trust and wife's trust contain different beneficiaries. When this is the case, which assets are funded into what trust will have real economic effect to the beneficiaries.

Spousal Elective Share Issues

Yet another funding issue relates to spousal elective shares. Most states impose laws that require spouses to leave one another a certain percentage of their estate depending upon a variety of factors. Failure to leave your surviving spouse the minimum required amount could cause the surviving spouse to consider the election to take their minimum lawful share instead of what the estate plan otherwise provided to him or her.

The Ohio elective share law may be circumvented with a valid nuptial agreement or the funding of the assets into separate trusts. It is very important to consider this result when preparing an estate plan.

Finally, there could be trusts other than revocable living trusts involved. If a client institutes an irrevocable life insurance trust (ILIT) as part of her estate plan, then it would be important to change the ownership and beneficiary designations of the policies intended for that trust. Determining which assets go to what trust would have broad ramifications in instances such as this.

We Help You Fund Your Trust

As you can see, funding is an important element to estate planning, and this is why The Family Estate & Legacy Program® includes a funding module. It does not end there. How many of us will have the same specific bank accounts, investment accounts, real properties, and other assets today we had five years ago? How do we ensure that our newly acquired assets are properly funded into our trusts?

Not only does your personal financial situation change, but the trust laws and the tax laws change constantly. You should frequently review who you selected to serve as your disability trustee and your death trustee to ensure that they remain capable and willing to serve in that role. You may also have new children or grandchildren you want to include as beneficiaries to your estate plan since you signed your documents.

The list goes on. Sticking your estate plan in a drawer to gather dust year after year begs for problems. How do you keep up with the changes you not only know of, but those that you don't? We'll address that in the next chapter.

Chapter Eight

Keeping Your Plan Current

You cannot avoid rapid change in today's world. Those little silicon chips that appear in everything from our automobiles, to our smartphones to our home thermostats have dramatically changed how we live, mostly for the better. If you consider what your life looked like a mere five years ago and what it looks like today, chances are you find it amazing how different your personal life is today than it was then.

In Chapter Four we reviewed several legal and tax changes that merit vigilance to keep your estate plan up to date. But your personal situation changes too, doesn't it? Residences are bought and sold, investment and retirement accounts are opened and sometimes moved from one firm to another. Children grow up and grandchildren are born.

All of these changes affect your estate plan. Yet, how long has it been since you have dusted off those documents to take a look with a qualified professional? Two years? Five? Ten? Twenty?!

Do not do that!

Especially if you have just moved to Ohio, now is the time to take a fresh look at your estate planning documents. The estate, trust, power of attorney and health care document laws have all undergone significant change in recent years. Failure to keep up with those changes could cause significant, costly headaches for you and your loved ones.

Do you remember whom you have named as your personal representative in your will or as successor trustee in your trust? If you have named a bank, brokerage or financial institution, are you still happy with that decision? Does that institution still exist or has a national firm with whom you no longer have any accounts swallowed it?

Alice's Story

A few years ago I had a client, "Alice" who had been with her stockbroker through three financial firm changes. She did not really care which firm he worked at because she had great confidence in his abilities. And he did a fine job for her.

It was fortunate that Alice came in to my office. As a part of our plan review, we asked her to bring copies of her brokerage accounts. As it turns out, in the haste to move with her advisor from the old firm to the new, his assistant filled out all the paperwork placing the accounts in Alice's name individually, as opposed to as trustee for her revocable trust. They had unfunded her trust. If Alice had died those accounts would have had to go through the probate process.

We also found that while Alice's IRA moved to her advisor's new firm, she had not completed new beneficiary forms. Consequently, under the standard custodial agreement governing the account, the default beneficiary was Alice's estate. While Alice's children were the beneficiaries of Alice's estate plan, the result would have been disastrous.

When an estate is named as the beneficiary of an IRA, the account may lose more favorable beneficiary treatment. Under current law, many non-spouse beneficiaries must withdraw inherited retirement accounts within 10 years. Special rules still apply for spouses and certain eligible designated beneficiaries, including minor children of the account owner, disabled or chronically ill beneficiaries, and

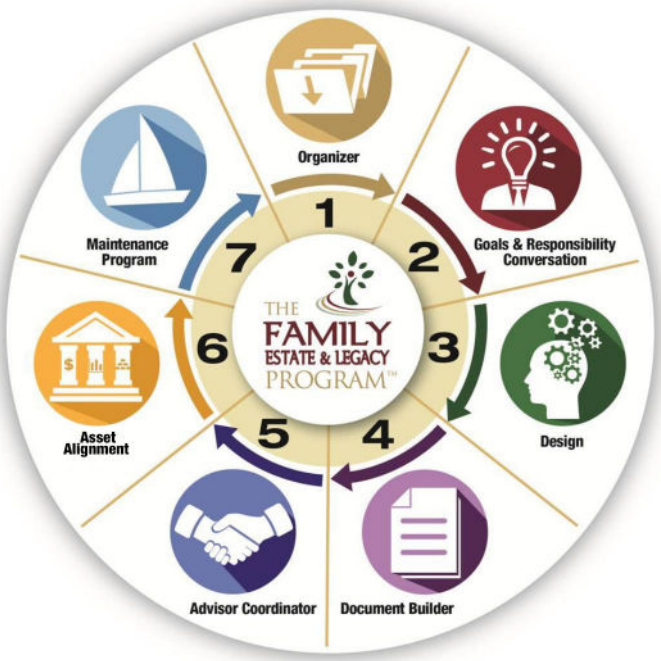
beneficiaries not more than 10 years younger than the account owner. Because Alice's IRA was over $500,000, a poor beneficiary designation could have caused unnecessary income tax acceleration and loss of continued tax-deferred growth.

We worked with Alice's financial advisor to properly fund her regular investment account into her revocable trust. Alice completed forms naming Alice's children as the proper beneficiaries to her IRA. Disaster averted.

More than ever, you can now see how regular maintenance of your estate plan is vitally important. The Family Estate & Legacy Program® has a maintenance program – the Legacy Club™ – included, as I will describe in the next chapter.

Chapter Nine

The Family Estate & Legacy Program®



We have covered a lot of ground throughout these pages. You have learned why it is important to view your estate plan as an ongoing project as opposed to a once-a-decade (or less) exercise. We have explored how a good estate plan may not only provide protection, comfort and clarity for your spouse, children, grandchildren, and other loved ones, but can also save you money, taxes and afford you important protections during your lifetime.

So how do you go about choosing an attorney and a law firm that will navigate these difficult legal, tax and financial waters? To assist you with this important choice, I have created a unique, trademarked process entitled The Family Estate & Legacy Program®. This is a seven-step process that takes you from where you are today to where you need to be for now and into the future.

Client Organizer

The first step is our Client Intake Process including our Client Organizer. You may already be familiar with tax organizers that CPAs send out

prior to filing your annual Form 1040 Federal Income Tax Return. Our Client Organizer is similar, except it is geared to gather the information necessary for you to make informed decisions relative to your estate plan. For us, as your legal team, the organizer serves to provide us relevant information to maximize your results.

Completing a personal balance sheet is an important element of our organizer. Some new clients push back at this requirement, wondering why we need this information to plan your estate. Realize that a good estate plan is fashioned to the family situation and the type and value of assets they own. An estate plan for someone whose IRA is a larger portion of their net worth, for example, will look very different than an estate plan for a client who may have commercial real estate, which will look different than one in which a family business makes up a large portion of the net worth. The type of assets and their relative values determines the legal strategies that may or may not work for you and your family.

The legal team working under The Family Estate & Legacy Program® understands that spending valuable meeting time gathering information isn't the best use of time. When the Client Organizer is instead completed ahead of the initial meeting, the attorney and his client are likely to have a more productive initial consultation. We ask that your completed Client Organizer be returned to our office along with a copy of your current wills and/or trusts at least three business days prior to the initial consultation.

Scan the QR code to complete your Client Organizer online.

Goals & Responsibility (G&R) Conversation

We start our initial consultation with a conversation eliciting your goals and concerns. Why are you updating your documents? Did you recently

move to Ohio? Has your family or financial condition changed? Did you read about tax laws that may affect your family? Are you concerned that one of your children's spouses may have their eyes on your child's future inheritance?

What is it that prompted sitting down w us? We want to hear the answer to that question. That is because we real how important it is to listen to your goals and concerns before launching into a discussion as to the advantages of living trusts or what provisions you might consider for your will.

It is refreshing to be heard, and to voice the concerns you may have about your estate plan. Once those goals and concerns are thoroughly discussed, your legal team is ready to identify legal and tax opportunities available to you and your family.

A knowledgeable professional will break down the many moving parts that go into a first-class estate plan, and explain your choices in simple, easy to understand language. One of the most significant issues that many attorneys do not spend enough time on is specifically who will act in what capacity inside of your estate plan.

In your revocable living trust, for example, you are normally your own trustee until you are no longer capable of serving. So then who should act? Your spouse, perhaps? Is he or she equipped to manage your investments, run the family business or conduct your affairs as you have throughout your lifetime? If not, how should the legal document be drafted to provide him or her all the help needed? Many are wary of banks and trust companies, for example. Be reassured there are ways to accomplish these goals without your beneficiaries having to plead to some corporate institution for a distribution.

How are you going to protect yourself during a period of incapacity? Think about the following questions: What are the crucial issues to your welfare? Who will be your successor trustee? Who will hold your durable power of attorney? Who do you want to make health care decisions for you? Moreover, what powers do you wish to confer on those you name, and what restrictions will be important?

When you leave amounts to your children, other considerations come to the forefront, depending upon their age, financial savvy, marital status and a host of other factors. Too frequently attorneys gloss over these issues. In The Family Estate & Legacy Program® we take the time to explore all the possibilities, many of which you may not have previously considered.

In fact, another book on this subject – Selecting Your Trustee is a part of The Family Legacy Series™ used to explore this important topic in depth.

Design

Based upon your Client Organizer and the results from our Goals and Responsibility Conversation, we design your estate plan together. We will work together to design a will or trust package that meets your needs, given your family and financial situation, and your goals and concerns. There is no such thing as a "one-size-fits-all" estate plan. The Design element will consider the types of assets you own, how you own them, and the relative tax consequences of your holdings in creating your individualized plan.

Typically, your plan will include a revocable living trust, pour-over will, durable powers of attorney, health care power of attorney, living wills, and a host of other ancillary documents necessary to effectuate a solid foundation. It may include an irrevocable living trust if your goals include asset protection.

For those clients who wish to protect large IRA balances for their loved ones, a Retirement Plan Trust may also figure into the mix.

While many clients may all have these documents, the contents of each document will be specific to you and your loved ones' needs. Married clients may have a variety of marital/credit shelter trusts depending upon their goals and the relative values of their estate. Clients who leave amounts to their children and grandchildren may have continuing trusts to protect the inheritance they leave their loved ones.

All of those marital, credit-shelter, and continuing trusts will have different provisions depending upon the client's goals and concerns. Some distribution provisions may be drafted more liberally, allowing distributions for most any purpose while others may be drafted to be conservative towards protecting a spendthrift beneficiary, or other issues.

Upon zeroing in on a plan, a fixed fee quote is provided. There is no need to worry about how many hours you are spending with the attorney and legal team. The goal of The Family Estate & Legacy Program® is to provide you comfort and clarity. If you feel that every phone call, every email, and every other contact with the firm will result in a higher fee, you may be unwilling to ask all of your questions.

It is important to us you feel you have adequate time to consider your options during this estate planning process.

When you sign the Terms of Service Agreement, we are on to the next stage.

Document Builder

We build all of your documents and send you a Design Chart. The Design Chart gives you an easy-to-read, quick reference of your plan. If you want the actual trust drafts,

we will forward those to you, but we prefer that we meet with you to review them.

Our experience is that when we forward the trust drafts themselves (as opposed to the flow chart), our clients feel they must first read and understand all of the documents before they visit with the attorney again. While we strive to write documents that can be easily understood, there are legal and tax concepts that require us to use language found in the statute books or in the tax law that are not intuitive for those not well versed in these laws.

That is why we want to take the time to review the actual documents with you. And if it takes more than one review session, we will do that.

Once you see the design in black and white, you can change certain details. That is why the review sessions are so valuable.

Once your documents receive your approval, we will proceed towards signing. Once signed, your documents will be scanned into our system, and organized into a binder complete with tabs and flowcharts.

But we are not done yet.

Advisor Coordinator

We realize that you may have a trusted attorney from your former hometown, a CPA, and maybe a financial advisor that you would like included in this process. We are happy to include anyone you want If they are local, they can attend our conferences. If not, or if it is otherwise more convenient, we can video conference them into our conferences.

Remember our most ultimate goal is to provide you comfort and clarity. One giant obstacle to this goal is when a client is receiving conflicting advice. This problem is eliminated when those individuals that you

trust are involved in your estate planning process, taking part at every opportunity. We value their input.

For those clients in transition that are looking for a trusted CPA or financial professional, we can recommend trusted and reliable advisors to you. Since we have been practicing in our communities for decades, we know those who may serve you well.

Asset Alignment

Transferring (or "funding") your assets into your revocable trust is time-consuming, tedious, and fraught with technicalities.

They work with you to ensure that everything is in the right "basket" so your estate plan runs smoothly. It is natural for clients to procrastinate funding their trusts, but assets that are not properly aligned with your estate plan would not avoid the public probate process. So we build into The Family Estate & Legacy Program® a Funding Process that includes a client-oriented Funding Workshop. The Workshop explains how to fund various assets and provides you with funding documents.

Unlike many firms who may, if they do anything, hand you a sheet of instructions how to transfer (or "fund") your assets into your trust, we teach you. And if you need additional funding assistance, upon request and payment of our modest funding fee, we will do it for you. Our team includes dedicated funding assistants who are well versed in the intricacies of each different financial firm's requirements. They work with you to ensure that everything is in the right "basket" so your estate plan runs smoothly.

This is another way that our unique process provides you confidence, comfort and clarity.

The Legacy Club™

The feature of The Family Estate & Legacy Program® of which we are proudest is our Legacy Club™. This unique feature is built to provide you a cost-effective way to ensure that your documents do not fall out of date with the ever-changing legal, tax and financial world.

Many clients stick their estate plans in a drawer for years, if not decades. This often leads to disaster when the client becomes sick or dies. We know that you do not want to visit with your estate-planning attorney every year, so we created a way for us to come to you.

The Maintenance Program works to ensure that your plan keeps up with the changes to your family and financial situation. When you open a new account or acquire a new asset, our team will work with you to ensure that it is titled correctly and fits into your plan.

We host an annual review for clients, where we will advise as to changes in the trust and tax laws, and if such a law affects your plan, maintenance includes the update. Your estate plan is all about you, so we welcome the opportunity to meet with you so you can tell us about any changes to your family or financial condition that may also affect your planning. The Legacy Club is our promise to our clients and their families that the plan will work when and how it is supposed to.

Chapter Ten

Your Mindset

What does it take to have a successful estate plan? One of the first things mentioned in this book is that estate planning is not about the documents. It is about creating and maintaining a legal and financial plan that protects you and your family; it is about aligning yourself with a qualified team and investing the time and energy into making sure the plan works how it is supposed to, *when* it is supposed to. The only way to truly achieve your goals is to have a positive mindset. A positive mindset in anything in life will lead you to a positive result. Through the many years we have worked with folks like you, we have discovered that those clients that have the right mindset end up achieving the best estate planning results.

So what are the different mindsets?

The Do-It-Yourself-er

The first type of client is what we call the "Do-It-Yourself-er." Let us face it, many of us have engaged in DIY activities: changing your own oil, replacing a light fixture, or maybe even trying to navigate the financial markets! Maybe we have success, and maybe we do not. Maybe we even save a little money upfront by not having to hire a professional. But what happens when things go wrong? Did we have the expertise we really needed? Did we invest enough time into ensuring that things are done correctly? How much will it cost us to fix a problem we created, assuming it can be fixed at all? And almost always the cost to fix is significantly more than if we had just hired the professional from the beginning!

The estate planning DIY-er is typically focused on the lowest cost, not necessarily the best result. The DIY-er approaches estate planning as a simple, quick transaction: pay a few bucks, get a few boilerplate documents, and be done with it. A DIY-er truly does not need

a specialized estate planning team, as online resources or general practitioners can produce simple documents at low cost.

The Minimalist

The next type of client is the "Minimalist." The Minimalist Googles the local lawyer, makes the call to schedule an appointment, and then at the appointment meets the lawyer's assistant to give some basic information on himself and his 2 adult daughters. He tells the assistant that he looked around online a little at forms, but he felt better about having the documents drafted by a lawyer. At the meeting with the assistant, the Minimalist tells the assistant he only has 3 assets: a house, a bank account, and an IRA. He has already named the kids as beneficiaries on the IRA, so all he wants is a simple will naming his oldest daughter as the executor and leaving everything to his daughters equally. It is just that easy. The assistant drafts the will, the lawyer gives it a once-over, and the Minimalist comes back into the office for a 15-minute meeting to sign the will and pay the bill.

The Minimalist looks at his situation as simple and "just like everyone else." There is nothing unique about the family or circumstances in the mind of the Minimalist. To be fair, the Minimalist appreciates a simple estate plan that clearly directs an executor how to distribute the remaining assets after he passes away, but he wants the documents created with as little effort on his part as possible. And because the Minimalist does not see anything complicated or unique about his family or situation, and he is not interested in learning about planning opportunities, including protecting the inheritance or minimizing taxes. The need for a highly-qualified estate planning team just is not there. The Minimalist may find comfort in having a set of simple documents created by a law firm, but there is not much need for any ongoing relationship or support.

The Signature Client

Now, there are clients who do recognize the value of a dedicated and well-trained estate planning team. They are looking for guidance and direction, recognizing that they do not know what they do not know…

but they are eager to learn what is out there. These clients, whom we call "Signature" clients, are interested in creating an estate and financial plan to address the unique circumstances that face their families.

The Signature client wonders what happens to his son's inheritance if the son passes away before her and whether and how his share would get to the grandkids. The Signature client feels a little overwhelmed by all the things she has been reading about the new tax laws and wonders how they impact her small business and retirement. The Signature client wants to know if a trust is a good fit for her, but has concerns about relinquishing control of her assets. But most importantly, the Signature client wants to connect with a team that will help her answer those questions and figure out the best strategies that help her meet her goals. The Signature client is a good candidate for The Family Estate & Legacy Program®.

The Transformative Client

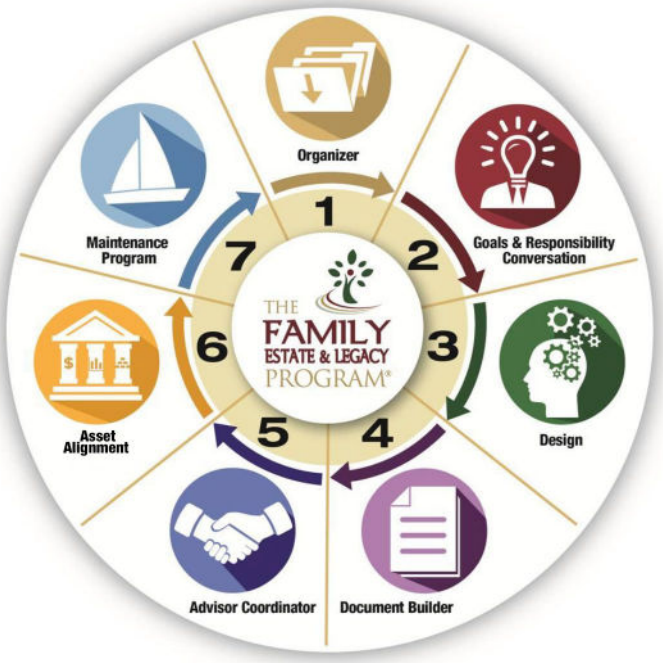
The Transformative client has all the same traits as a Signature client, but also is looking for the right estate planning team: one that is focused, skilled, *and* compassionate. The Transformative client seeks out advisors who provide comfort and clarity in this complex personal and legal lifetime process. The Transformative client wants to build a relationship with a law firm who will guide her and her family and will be one of the family's trusted advisors during her lifetime and in future generations. The Transformative client wants to know that her hard-earned assets will be protected during her lifetime and for her children. She appreciates a well-thought-out and tested process to develop and maintain an effective estate plan. The Transformative client thrives in The Family Estate & Legacy Program®.

So, how do you approach estate planning? We have a quiz we have included on the foldout in the back of the book. We recommend you take the quiz and figure out your mindset, because your mindset will tell you how to move forward in your own estate planning process.

Epilogue

Getting Started

Hopefully these pages have encouraged you to get the most out of your estate plan. If you are interested in beginning your Family Estate & Legacy Program™ journey, contact our office to receive your Welcome Letter. We will send you a letter or an email to get things started and ask that you complete three easy steps:



Attend or Watch our Workshop

Our firm gives workshops several times a year outlining important and relevant estate planning issues we want you to consider and be prepared to discuss at our initial conference.

You can access the on-demand version via this QR code. To access the recording, you will need to change the 'Event Schedule' to 'Watch instant replay' and then register by entering your full name and email address.

If you have already attended our workshop or have seen the recording we appreciate you taking the time and being interested in our passion: estate planning done the right way. And you are one step closer to peace of mind!

Complete Your Client Organizer

It is important that we receive a completed Client Organizer at least three business days prior to our first meeting. The information you provide us is confidential and is essential in order for us to have a meaningful conversation. We can forward you a hard copy of the Client Organizer, or a digital one is available with the Welcome Letter email or you can scan the QR code to complete.

Bring Copies of Your Current Planning Documents

When you attend your initial consultation, you will need to bring copies of the following documents:

- Current will
- Irrevocable trust
- Federal Gift Tax Return Form 709, if applicable
- Federal Estate Tax Return Form 706 for your spouse, if applicable
- Federal Income Tax Return Form 1040

If you do not have these documents, bring us what you have.

OHIO TAX ADDENDUM

Residency Requirements

Ohio resident taxpayers include individuals who are domiciled in Ohio, subject to Ohio's statutory domicile rules.

Ohio Rev. Code Ann. §§ 5747.01(I)(1), 5747.24.

Ohio's domicile rules include contact-period tests and a statutory presumption of non-Ohio domicile for individuals who meet the requirements of Ohio Rev. Code Ann. § 5747.24(B)(1) and timely file the required statement with the tax commissioner.

Factors that may be considered in determining an individual's domicile include:

1. The number of contact periods the individual has in Ohio;
2. The individual's activities in Ohio in tax years other than the year or years at issue;
3. Whether the individual failed to meet any requirements for the statutory presumption of non-Ohio domicile;
4. The jurisdiction in which the individual is registered to vote; and
5. Any other relevant fact, other than a prohibited fact, that the tax commissioner may consider.

Ohio Rev. Code Ann. § 5747.24; Ohio Admin. Code § 5703-7-16(B).

State Income Tax Rate for Residents

For taxable years beginning in 2026 and thereafter, Ohio imposes no individual income tax if an individual's Ohio adjusted gross income, less taxable business income and exemptions, is $26,050 or less. If that amount exceeds $26,050, the tax is $332.00 plus 2.75% of the amount over $26,050.

Taxable business income is taxed separately at 3%, after applicable deductions.

Ohio Rev. Code Ann. § 5747.02(A).

State Income Tax Rate for Nonresidents

Nonresidents are subject to Ohio income tax if they earn or receive income in Ohio or otherwise have nexus with Ohio. For taxable years beginning in 2026 and thereafter, the individual income tax on income other than taxable business income is $332.00 plus 2.75% of the amount over $26,050, applied under Ohio's income tax rules.

Taxable business income is taxed separately at 3%, after applicable deductions.

Ohio Rev. Code Ann. §§ 5747.01(J), 5747.02(A).

Ohio Individual Income Tax (Tax Years Beginning 2026+)

Income Type	Tax Base	Tax Rate / Calculation
Individual Income	Ohio adjusted gross income, **less taxable business income and exemptions**	**-$0 tax if ≤ $26,050 -If > $26,050 → $332 + 2.75% of amount over $26,050**
Taxable Business Income	Taxable business income after applicable deductions	**Flat 3% rate**

Estate and Gift Tax Rate

Ohio does not impose an estate tax on estates of individuals dying on or after January 1, 2013.

Ohio Rev. Code Ann. § 5731.02.

Ohio does not impose a separate state gift tax.

Ohio Income Taxation of Trusts

Ohio imposes an annual income tax on every trust residing in Ohio, earning or receiving income in Ohio, earning or receiving certain Ohio lottery, casino, or sports gaming winnings, or otherwise having nexus with Ohio.

Ohio Rev. Code Ann. § 5747.02(A).

For Ohio income tax purposes, a trust may be treated as an Ohio resident trust, in whole or in part. If only part of a trust resides in Ohio, the trust is treated as a resident only with respect to that part.

Ohio Rev. Code Ann. § 5747.01(I)(3).

Resident Trusts

A trust resides in Ohio to the extent that the trust consists, directly or indirectly and in whole or in part, of assets, net of related liabilities, transferred or caused to be transferred to the trust by certain Ohio-connected persons or sources.

In general, a trust may be treated as an Ohio resident trust if assets were transferred to the trust by:

1. A person, court, governmental entity, or instrumentality on account of the death of a decedent, but only if the trust is a testamentary trust or otherwise meets Ohio's statutory requirements for certain qualifying transfers;

2. A person who was domiciled in Ohio when assets were transferred to an irrevocable trust, but only if at least one qualifying beneficiary is domiciled in Ohio during all or part of the trust's current taxable year; or

3. A person who was domiciled in Ohio when the trust document or instrument, or part of it, became irrevocable, but only if at least one qualifying beneficiary is domiciled in Ohio during all or part of the trust's current taxable year.

Ohio Rev. Code Ann. § 5747.01(I)(3)(a).

A trust is irrevocable for this purpose to the extent that the transferor is not treated as the owner of the trust's net assets under Internal Revenue Code §§ 671 through 678.

Ohio Rev. Code Ann. § 5747.01(I)(3)(b).

Trust Tax Base

For trusts, Ohio income tax is measured by the trust's modified Ohio taxable income.

Ohio Rev. Code Ann. §§ 5747.01(AA)(4), 5747.02(A)(1), 5747.02(B)(1).

Modified Ohio taxable income applies only to trusts and is determined under Ohio's trust-specific rules. Those rules include the trust's modified business income, qualifying investment income, qualifying trust amounts, and modified nonbusiness income, subject to Ohio's allocation and apportionment rules.

Ohio Rev. Code Ann. § 5747.01(AA).

Ohio Trust Income Tax Rate

For taxable years beginning in 2026 and thereafter, the Ohio tax on a trust is computed using the rate structure applicable to trusts under Ohio Rev. Code Ann. § 5747.02.

Ohio Trust Income Tax Rates (Tax Years Beginning 2026+)

Modified Ohio Taxable Income (Trust)	Tax Calculation
$26,050 or less	1.27448% of income
Over $26,050	$332 + 2.75% of amount over $26,050

Ohio Rev. Code Ann. § 5747.02(A)(1), (A)(2), (A)(3)(c), (B)(1).

Credit for Taxes Paid to Other States

A resident trust may claim a credit against Ohio income tax for certain income tax paid to another state or the District of Columbia on the trust's modified nonbusiness income. The credit is limited by Ohio law and does not apply to the portion of the trust's nonbusiness income that is qualifying investment income.

Ohio Rev. Code Ann. § 5747.02(B)(2).

If a credit is available to a trust and the trust distributes income for that taxable year, the credit is shared by the trust and its beneficiaries under applicable federal Treasury regulations.

Ohio Rev. Code Ann. § 5747.02(B)(3).

Trust Income Distributed to Beneficiaries

A trust may distribute income to beneficiaries or retain income at the trust level. In general, income retained by the trust may be taxed to the trust, while income distributed or required to be distributed to beneficiaries may be reported to the beneficiaries under federal fiduciary income tax rules.

For Ohio purposes, the trust's income, deductions, gains, losses, credits, allocation, and apportionment must be analyzed under Ohio's trust income tax rules, including the rules for Ohio taxable income, modified Ohio taxable income, modified business income, modified nonbusiness income, qualifying investment income, and qualifying trust amounts.

Ohio Rev. Code Ann. §§ 5747.01(S), 5747.01(AA), 5747.02(B).

Pass-Through Entity Income Held by a Trust

If a trust owns a direct or indirect interest in a pass-through entity, the trust generally must include its distributive or proportionate share of the pass-through entity's business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, sales, deductions, tax items, and credits when computing its Ohio tax.
Those items are included in the same form as recognized by the pass-through entity.

Ohio Rev. Code Ann. § 5747.231.

Certain pass-through entity items may require additional Ohio adjustments, including additions related to tax paid by an electing pass-through entity.

Ohio Rev. Code Ann. §§ 5747.01(S), 5747.01(AA), 5747.231.

Excluded Trusts

For purposes of Ohio's trust income tax rules, the term "trust" generally means a trust described in Subchapter J of Chapter 1 of the Internal Revenue Code. Ohio excludes certain trusts from that definition, including trusts that are not irrevocable under Ohio's statutory definition and that have no modified Ohio taxable income for the taxable year, charitable remainder trusts, qualified funeral trusts, certain preneed funeral contract trusts, endowment and perpetual care trusts, qualified settlement trusts and funds, designated settlement trusts and funds, and trusts exempt from taxation under Internal Revenue Code § 501(a).

Ohio Rev. Code Ann. § 5747.02(C).

Practical Planning Note

Trust taxation is not determined only by where the trustee lives or where the trust is administered. Ohio's rules also look to the domicile of the person who transferred assets to the trust, whether the trust is irrevocable for Ohio income tax purposes, whether the trust has Ohio qualifying beneficiaries, whether the trust has Ohio-source income, and whether the trust owns pass-through entity interests.

A trust with Ohio connections should be reviewed with qualified tax counsel or a CPA before assuming that no Ohio fiduciary income tax return is required.

Acknowledgments

Ted Gudorf, J.D., LL.M.

My estate planning journey began when I met attorneys Robert Esperti and Renno Peterson in Omaha, NE in 1998. They had written *The Loving Trust* handbook and invited me to join the National Network of Estate Planning Attorneys and then the Academy of Multidisciplining Practice at Michigan State University. These two attorneys gave me the vision and encouragement to change the way America plans. For their inspiration and guidance, I will be forever grateful.

I owe a debt of gratitude to my colleagues at WealthCounsel who thankfully believe in a world of abundance. While too numerous to mention all of them, I want to particularly express my gratitude to attorneys Cecil Smith and Cliff Rice. More than anyone else, these two influenced my vision and approach to my practice.

Lastly, I want to thank my law firm team, as well as my son Danny Gudorf for his infinite patience and intellect, who understands my needs more so than any other human being.

Craig R. Hersch

My very capable estate planning staff, including Maria Reimer, Dorothy Berry, Regina Sadoski, Aimee Balcer, and Justin Braveman kept files moving while Maureen Phillips made sure the network hummed along. Donald V. (DJ) Wik, Jr. and Leah N. Whitcomb of my team were instrumental in the design, layout and editing of this book.

Finally, I wish to express my love and appreciation for my wife, Patti, who endures the endless tippity taps of my laptop when I should be paying attention to her and the rest of the family.

About the Authors

Ted Gudorf, J.D., LL.M.

Ted Gudorf, J.D., LL.M. is the founder and managing attorney of Gudorf Law Group, LLC, which was established in 1992. With over 35 years of legal experience, he concentrates his practice in the areas of estate planning, probate, elder law, and related matters.

Throughout his career, Ted has demonstrated a commitment to professional development so that he can offer his clients the most knowledgeable guidance. He was the first attorney in the state of Ohio to obtain a Master of Laws (LL.M.) degree in estate planning and elder law. He was also one of the first attorneys to be board certified by the Ohio State Bar Association in estate planning, trust, and probate law. Fewer than two hundred attorneys in Ohio have achieved this status.

Ted's accomplishments have been recognized by the legal community. In 2012, Ted received a Martindale Hubbell® AV Preeminent rating. Only the top 5% of attorneys nationwide receive this honor, which is based on ratings from other attorneys who have knowledge of a recipient's abilities, experience, and ethics. He has also been selected for inclusion in Ohio Super Lawyers since 2010. Colleagues describe Ted as "an exceptionally skilled lawyer" with "superior analytical, communication, and advocacy skills."

Because of his experience and reputation, Ted is a sought-after speaker on estate planning and related topics. He has made hundreds of presentations throughout Ohio and the United States, and has co-authored two publications and numerous articles on estate planning and asset protection.

When not practicing law, Ted is active in the Dayton community, where he has been a longtime resident. He is a founding trustee of the Greater Dayton Volunteer Lawyers Project and previously served as the first mayor of the city of Clayton, Ohio.

Ted is married to his wife, Sandy; and they have two wonderful and accomplished children, Danny and Annie.

Craig R. Hersch

Craig R. Hersch is a Florida Bar Board Certified Wills, Trusts & Estates attorney, CPA, and is a founding shareholder and originating board member of a private trust company in Fort Myers, Florida. Mr. Hersch is a principal in his law firm, and has created several trademarked processes tied to his estate planning and administration practice, including The Family Estate & Legacy Program®, The Estate Settlement Program®, The Advanced Planning Expander™ and The Transitional Event Sequence™. All of these unique processes are designed to provide his clients comfort and clarity when navigating the complex legal, tax and financial concerns associated with planning and administering an estate.

In addition to this book, Hersch has authored *Common Cents Estate Planning*, *Legal Matters When a Loved One Dies*, *Selecting Your Trustee*, and *The Estate Planner's Guide to Practice Development*. His work has appeared in several professional journals, including The Practical Tax Lawyer, Trusts & Estates Magazine, and The Florida Bar Journal. Hersch has been a featured lecturer at continuing education programs sponsored by the Florida Bar, the Florida Institute of CPAs, The Estate Planning Councils of Lee & Charlotte Counties and The National Business Institute.

Mr. Hersch writes a nationally published column on practice development for wealthmanagement.com, a website produced by *Trusts & Estates Magazine*, a prestigious trade journal for lawyers, CPAs and trust officers. He is also a member of *Trusts & Estates Magazine* Editorial Advisory Board on The Modern Practice. Moreover, he authors a weekly estate planning column geared to laymen published in Sanibel's Island Sun newspaper and which appears on his firm's blog at www.sbshlaw.com/blog.

He is married to wife Patti, and has three daughters, Gabrielle, Courtney and Madison of whom he is very proud.

Endnotes

For other relevant books written by the authors:

[i] *See Selecting Your Trustee*
[ii] *See When A loved One Dies: A Legal Guide™*
See Asset Alignment
See Medicaid Secrets (Ohio Edition).

Additional Resources

For Ted Gudorf's podcast:

Go To: Repair The Roof

https://www.youtube.com/@gudorflawandfinancialgroupllc

For Gudorf Law Group, LLC website:

www.DaytonEstatePlanningLaw.com

For Gudorf Financial Group, LLC website:

www.Gudorffinancial.com

For Gudorf Tax Group, LLC website:

www.GudorfTaxGroup.com

MINDSET QUIZ SCORING

THE DO-IT-YOURSELFER

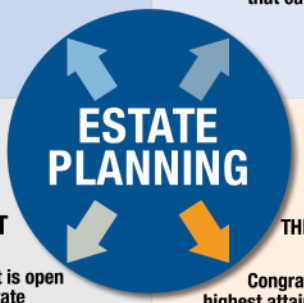
You view the creation of a will or trust package as a simple transaction that should not take much time or effort. If you choose to work with a law firm, you may be happiest looking for a firm with a steeply discounted rate structure – that usually means a "one size fits all" estate plan, which you feel is adequate. You may be happiest working within a web-based online document preparation resource or with a generalist lawyer who is adept at putting together simple wills.

SCORE < 28

THE MINIMALIST CLIENT

While you may seek a law firm to assist you with your estate plan, you believe that your situation is simple and routine. You don't believe that a highly qualified estate planning attorney can add much value to your situation, so you're not looking to establish a long-term relationship with any particular lawyer or law firm. You are most content getting the transaction accomplished with as little effort on your part as possible. You may be quite satisfied working with a low level law associate or working directly with a paralegal at a firm that caters to clients who share this viewpoint.

SCORE 28-51



THE SIGNATURE CLIENT

Congratulations! Your mindset is open to get the most out of your estate planning experience! You are a good candidate for working within our firm's seven-step unique process, THE FAMILY ESTATE & LEGACY PROGRAM® to address your concerns and achieve your goals. You can easily envision the value created by having a team guided by board certified trust and estate attorneys open your eyes to opportunities that you didn't know existed and taking the steps necessary to protect yourself and your loved ones when navigating the ever-changing will, trust and tax laws. You seek a long-term relationship with a highly qualified and specialized estate planning firm that will provide you and your loved ones with comfort and clarity now and into the future.

SCORE 52-75

THE TRANSFORMATIVE CLIENT

Congratulations! Your mindset is the highest attainable and is likely to result in a successful estate planning experience! You'll soon realize the value of working within our seven-step unique process, THE FAMILY ESTATE & LEGACY PROGRAM® created by board certified attorneys specializing in estates and trusts. You can easily envision how a team of trained professionals can provide comfort and clarity while adding continuing value as your estate plan adjusts to an ever changing legal, tax and financial world in addition to meeting the needs of evolving family dynamics. Further, you want to build a relationship with our highly qualified team giving you and subsequent generations of your family a strong group of trusted advisors to rely upon. You'll be intrigued with the various options that you may not have known existed, often resulting in tax savings for you and your loved ones, as well as protecting their inheritance from a variety of dangers.

SCORE > 75