

Estate Planning 101 For Advisors

Become an Estate Planning
“Expert” in 60 Minutes or Less



KIRKLAND
WOODS &
MARTINSEN LLP



Core Questions

- ▶ What estate planning documents should your clients have in place?
- ▶ What estate planning documents do your clients have in place and what do those documents say?
- ▶ Are your clients maximizing the benefits of their estate plan?



KIRKLAND
WOODS &
MARTINSEN LLP

The Role of the Advisor

- ▶ Issue spot
- ▶ Understand the plan
- ▶ Quarterback



KIRKLAND
WOODS &
MARTINSEN LLP

Why is Estate Planning Important?

- ▶ To avoid the default rules (dying intestate)
- ▶ To simplify administration
- ▶ To control your assets after your death
- ▶ For protection during periods of incapacity
- ▶ To minimize transfer taxes



KIRKLAND
WOODS &
MARTINSEN LLP

Core “Dispositive” Documents

1. Last Will & Testament
2. Revocable Trust Agreement



KIRKLAND
WOODS &
MARTINSEN LLP

What is a Last Will and Testament?

A Will is a document containing instructions as to what is to be done with your assets *after* your death.

1. Applies to assets in your name only
2. Requires going through **Probate**



KIRKLAND
WOODS &
MARTINSEN LLP

What is Probate?

A process:

- ▶ Admit Will (if any)
- ▶ Publish notice to creditors
- ▶ Inventory and appraise assets
- ▶ Administer Estate (sell assets, pay bills)
- ▶ Prepare Settlement
- ▶ Distribute to beneficiaries



KIRKLAND
WOODS &
MARTINSEN LLP

Core “Dispositive” Documents

1. Last Will & Testament
2. Revocable Trust Agreement



KIRKLAND
WOODS &
MARTINSEN LLP

What is a Revocable Trust?

A revocable trust is a written agreement that details instructions for the Trustee in dealing with trust assets and income from those assets, including directions as to who benefits, when and in what amounts.



KIRKLAND
WOODS &
MARTINSEN LLP

How does a Trust avoid Probate?

The individual's assets are payable to, or titled in the name of, the trust, and a successor trustee is provided for in the trust agreement.



KIRKLAND
WOODS &
MARTINSEN LLP

Default “Plan” for Incapacity

1. Guardianship
2. Conservatorship



KIRKLAND
WOODS &
MARTINSEN LLP

Capacity-Related Documents

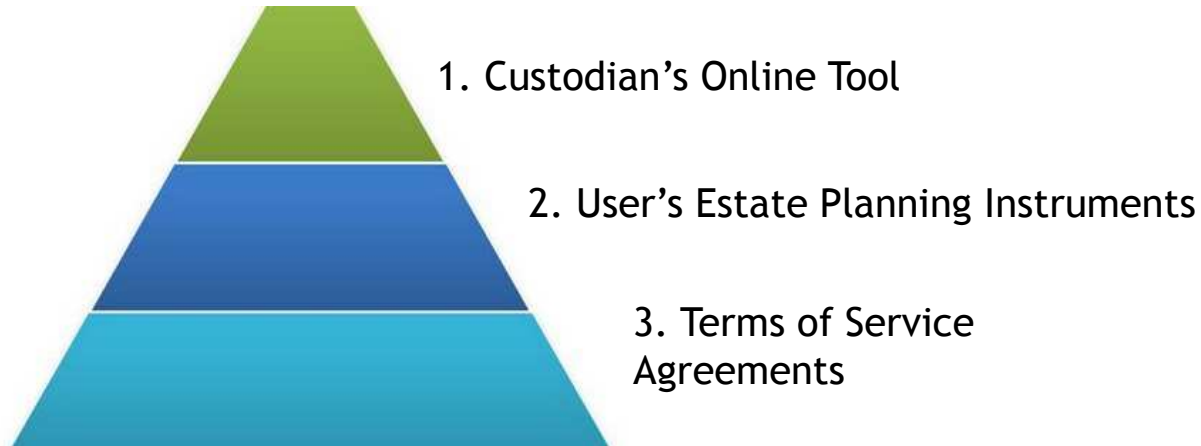
1. Durable Power of Attorney for financial matters
2. Durable Power of Attorney for Health Care
3. Advanced Healthcare Directive/Living Will
4. HIPAA Authorization



KIRKLAND
WOODS &
MARTINSEN LLP

Additional Estate Planning Documents

➤ Digital Asset Authorization



KIRKLAND
WOODS &
MARTINSEN LLP

Estate Plan for Jane Doe

Jane's Pourover Will

- Probate assets (if any) added to Jane Doe Trust at Jane's death
- Appoints guardians and/or conservators if Jane has minor children at death



Jane Doe Trust

- Funeral expenses, debts and estate taxes paid from trust
- Tangible personal property (such as household goods, furniture and personal effects) will be distributed pursuant to a list executed by Jane prior to her death; otherwise such property will be distributed to Sally and George
 - After above payments and distributions, remaining property is divided as provided below



Upon Jane's Death



Dispositive Provisions of Estate Plan

Other Estate Planning Documents

- Durable Power of Attorney for Financial Decisions - Appoints the following individuals to act as attorney-in-fact to manage financial affairs if Jane becomes incapacitated: (1) Sally; (2) George
- Health Care Directions (Living Will) and Durable Power of Attorney for Health Care Decisions - States intentions regarding health care and appoints the following individuals to act as health care agents to make health care decisions if Jane is incapacitated: (1) Sally and George
- Digital Asset Authorization - gives fiduciaries authority to act with respect to digital assets and electronic information

Advisor Document Review

- ❑ Is there a set of comprehensive estate planning documents, including:
 - ❑ Pourover Will (or Simple Will)
 - ❑ Revocable Trust Agreement
 - ❑ Power of Attorney for Financial Decisions
 - ❑ Power of Attorney for Health Care Decisions
 - ❑ Living Will
 - ❑ HIPAA Authorization
 - ❑ Digital Asset Authorization
 - ❑ Tangible Personal Property List

Advisor Document Review

- ▶ Carefully proofread for basic errors
- ▶ Separate Trusts or Joint Qualified Spousal Trust?



Advisor Document Review

► Common Errors to look for in Dispositive Provisions

- ❑ Failure to dispose of all trust property;
- ❑ Failure to clearly define the beneficiaries;
- ❑ Conflicting dispositive provisions;
- ❑ Failure to include a “catastrophe clause”

Advisor Document Review

► Common Errors Regarding Trustee Succession

- ❑ Failure to clearly provide for a succession of trustees;
- ❑ Failure to provide for a non-judicial determination of disability;
- ❑ Placing the responsibility for appointment of a successor on the trustee and not the beneficiaries;
- ❑ Failure to clearly provide contingencies when trustee succession may be needed;
- ❑ Failure to allow non-judicial approval of accounts;
- ❑ Failure to waive bond and other statutory requirements; and
- ❑ Using incorrect names of trustees.

Advisor Document Review

► Common Errors Regarding Trustee Powers

- ☐ Trustees may not want all of the powers granted if they are burdensome or unreasonable;
- ☐ Failure to provide that the trustees have all of the powers granted to trustees under state law; and
- ☐ Failure to provide for or failure to adequately provide for the payment of the grantor's debts, expenses of administration and death and other taxes owed on account of death.

A word of advice:

► An Estate Plan Should be Review Every 3-5 Years:

- ☑ Has your family situation changed?
- ☑ Has your net worth changed?
- ☑ Has anyone's health changed?
- ☑ Has state or federal law changed?
- ☑ Are any beneficiaries receiving governmental assistance?



KIRKLAND
WOODS &
MARTINSEN LLP

What is “Trust Funding”?

The Act of:

1. Titling assets in the name of a Trust
(current transfer)
2. Adding a beneficiary designation naming a trust
(future transfer)



KIRKLAND
WOODS &
MARTINSEN LLP

Why is Trust Funding Important?

1. To avoid probate
2. To ensure that assets pass to intended beneficiaries
3. To plan for incapacity

Title Trumps!



KIRKLAND
WOODS &
MARTINSEN LLP



Tackling the Beast

1. Inventory property



KIRKLAND
WOODS &
MARTINSEN LLP

Property Inventory

1. Tangible Personal Property
2. Investment Property (Cash Accounts, Certificates of Deposit, Brokerage)
3. Real Estate
4. Business Interests
5. Life Insurance
6. Retirement Accounts
7. Misc. Property



KIRKLAND
WOODS &
MARTINSEN LLP

Tackling the Beast

1. Inventory property
2. Develop a plan
3. Transfer property



KIRKLAND
WOODS &
MARTINSEN LLP

Tangible Personal Property

Personal property can be transferred to a trust by:

1. Assignment
2. Bill of Sale



KIRKLAND
WOODS &
MARTINSEN LLP

Investment Accounts

Investment Accounts can be transferred to a Trust by:

1. Retitling Account

(e.g. Jane Doe, as Trustee of the Jane Doe Trust originally dtd 8-15-19)

2. Addition of Beneficiary Designation (POD or TOD) to Account

(e.g. Successor Trustee of the Jane Doe Trust originally dtd 8-15-19)



KIRKLAND
WOODS &
MARTINSEN LLP

Real Estate

Real estate is transferred to Trust by deed recorded in the county in which the property is located:

1. “Warranty Deed” or “Quit Claim Deed”
(Current Transfer)
2. “Transfer on Death Deed” or “Beneficiary Deed”
(Future Transfer)



KIRKLAND
WOODS &
MARTINSEN LLP

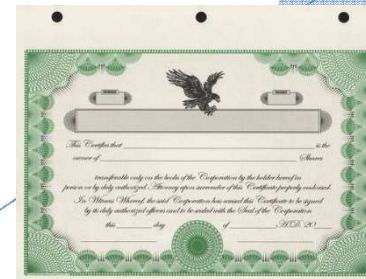
Business Interests

Partnership interest or membership interest in an LLC is transferred to a trust by Assignment

Closely held stock is transferred by canceling the existing certificates, endorsing them or signing stock powers, then surrendering the certificates to the person holding the stock record book.



KIRKLAND
WOODS &
MARTINSEN LLP



Life Insurance

Proceeds of life insurance policies are made payable to a Trust by change of beneficiary forms which are provided by the life insurance company



KIRKLAND
WOODS &
MARTINSEN LLP

Retirement Assets

Think *twice* before naming a trust as the beneficiary of a retirement account!

From an income tax perspective, it is usually best to name the spouse as primary beneficiary and individual beneficiaries as contingent beneficiaries



KIRKLAND
WOODS &
MARTINSEN LLP