Introduction

This book is intended to be a user friendly will and trust manual. I have sought to make the book user friendly by having numerous comments throughout the various provisions of each of the documents. Just consider these comments my conversation with you as you use the forms. Also, I have made references to a number of excellent ABA publications that can assist the reader with some of the more intricate substantive issues of the law concerning wills and trusts. These are excellent publications and will make an important addition to your library.

The book is divided into five basic parts. Part one provides samples of various documents that can be used in client interviews and samples of engagement letters. The assumption is that the reader already uses forms for these purposes, but it is my hope that by providing you with these documents, you will be able to modify your existing forms. While many lawyers do not use engagement letters for will and trust work, it is suggested that you consider an engagement letter for this area of practice. As litigation in the estate and trust area is increasing, it is a wise practice for the lawyer to use an engagement letter to better define the limits of representation and as an aid to your liability protection. The forms provided are based upon an hourly rate being charged. Simple modifications can be made if the fee agreement is a flat fee.

Part two provides a number of basic documents that the lawyer can use for most estate plans. These forms include a master will, a pour over will, a master inter vivos trust for a single grantor and a master inter vivos trust for multiple grantors. These forms have more options than will be needed in most estate plans. You must review these documents in detail in order to be familiar with the various provisions. Then you can delete those provisions not needed when drafting for a given client’s estate plan. Also, you will find basic forms for a power of attorney, an advanced health care directive and several marital agreements.

While part two provides general forms for estate planning, the other three sections deal with specific drafting situations. For example, part three provides multiple options that the lawyer may wish to use for clients who have young children. These include forms specifically designed for families with young children, including both a testamentary and an inter vivos trust. The other two options are ones that are sometimes used by clients when establishing a trust fund for a child’s education. While these forms are not inclusive of all options, they do provide two options that are frequently used.

Part four provides several different options when drafting for a client who has a child with special needs. Both a testamentary trust and an inter vivos trust are provided as sample documents. Both documents include supplemental care trust provisions that will keep the trust beneficiary from losing SSI or Medicaid benefits. The qualifying income trust, or Miller trust, is of limited applicability, but is used in those situations in which the client could qualify for Medicaid to
pay nursing home expenses but has income in excess of the state’s income cap, thus prohibiting the person from receiving Medicaid benefits. The sample trust will allow the person to qualify for Medicaid benefits. The final form in this section is a spendthrift trust. The form is the basic type of trust used for trust beneficiaries who should not receive an inheritance outright due to any number of reasons such as, health, marital, financial, or addiction problems.

Part five provides an irrevocable life insurance trust and a marital-credit shelter trust. These trusts are used when there are federal estate tax considerations that require special drafting. These are basic forms to get the lawyer started. There are a number of variations of each of these trusts. The ones provided are intended to provide one set of options. If the lawyer is going to become deeply involved in estate tax planning, then these forms are a good starting point. But the lawyer is cautioned that there is much more to learn when tax planning is involved. The reader will find the cited ABA resources to be most helpful.

As with all form books, the reader is cautioned to not use them blindly. They are intended to be an aid to you as you customize an estate plan to meet your client’s own particular needs. These forms should be a helpful supplement to those forms you currently use, or for the less experienced lawyer these forms should be a springboard to establishing your own forms.