ABA WILLS AND TRUSTS BASICS
TABLE OF CONTENTS

INTRODUCTION .......................................................................................................................... 1

PROGRAM 1: LIFETIME ISSUES GATHERING INFORMATION, AND PLANNING FOR THE DISPOSITION
OF PROPERTY (Donna L. Otis and Lee-ford Tritt) ...................................................................... 2

PROGRAM 2: BASIC WILL AND TRUST DRAFTING (Ryan Walsh and Karin Prangley) .............. 22

PROGRAM 3: FIDUCIARY ISSUES AND ETHICS (Benetta Park Jensen and Paul S. Lee) ........... 69

FORMS: ....................................................................................................................................... 102

    Last Will
    Engagement Letter
    Withdrawal Letter
    Estate Planning Questionnaire for Married Client
    Illinois Property Power of Attorney
    Illinois Health Care Power of Attorney
    Illinois Living Will
    Capacity Letter

BIOGRAPHIES OF PRESENTERS: .............................................................................................. 148
INTRODUCTION

Why Clients Need Estate Planning

Everyone can benefit from an estate plan, regardless of family circumstances, age or wealth. For both single clients and married clients, it is important to designate who will handle health care decision making in the event of disability and the management and disposition of assets both in the event of disability and upon death. For couples with minor children, it also is important to provide for the long-term management of assets for their children’s benefit and for the personal care of the children. In many states, in the event of the demise of one parent, absent an estate plan, one-half of the decedent’s assets pass to the surviving spouse and one-half of the decedent’s assets pass to the decedent’s children. If the children are minors, court-supervised minors’ guardianships are required. With a basic estate plan, provision can be made for the transfer of property to the surviving spouse and to a custodian or in trust for the benefit of minor children without a court-supervised guardianship. Most importantly, parents can choose who will care for their children if they are not able to do so.

Why Attorneys Need to Know the Fundamentals of Estate Planning

Although attorneys rely on form documents (a form will, trust, powers of attorney, etc), to create an estate plan, it is vital for attorneys to understand the content of these forms, why or why not particular provisions are needed and how these documents operate when a client becomes disabled or dies.
LIFETIME ISSUES, GATHERING INFORMATION, AND PLANNING FOR THE DISPOSITION OF PROPERTY

Presented to:

American Bar Association
Real Property, Trust and Estate Law Section
25th Anniversary of the RPTE Spring Symposia
Ritz Carlton
160 East Pearson Street
Chicago, IL
April 30, 2014

Donna L. Otis, Esq.
Otis Law Group, Ltd.
1525 East 53rd Street
Suite 405
Chicago, Illinois  60615
(773) 363-7300
dotis@otislawgroup.com

Lee-ford Tritt, Esq.
Professor of Law
Director of the Center for Estate Planning
University of Florida College of Law
P.O. Box 117625
Gainsville, Florida 32611-7625
(352) 273-0952
tritt@law.ufl.edu
ESTATE PLANNING BASICS: LIFETIME ISSUES, GATHERING INFORMATION, AND PLANNING FOR THE DISPOSITION OF PROPERTY

How to not commit malpractice… seriously please don’t commit malpractice. We...we just.... we just really can’t stress that enough.

Donna L. Otis, Esq.
Prof. Lee-ford Tritt
A BASIC ESTATE PLAN

<table>
<thead>
<tr>
<th>Client Instruments:</th>
<th>Lifetime Instruments:</th>
<th>Ambulatory Instruments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engagement Letter</td>
<td>Durable Power of Attorney</td>
<td>Will (or a Pour-Over Will and Revocable Trust)</td>
</tr>
<tr>
<td>Questionnaire</td>
<td>Health Care Proxy/Surrogate</td>
<td>Burial Instructions</td>
</tr>
<tr>
<td></td>
<td>Living Will</td>
<td></td>
</tr>
</tbody>
</table>
CREATING AN ATTORNEY/CLIENT RELATIONSHIP

- The initial steps in drafting an estate plan—before any drafting is even commenced—is to:
  1. Create an Attorney/Client Relationship;
  2. Consider the client’s competency;
  3. Explain potential conflicts or ethical issues; and
  4. Obtain as much information as possible about the person’s broad personal and financial objectives.

5. Instruments to consider during this phase:
   - Engagement Letter/Retainer Agreement (with spousal conflict of interests and ethical issues explained)
   - Client Questionnaire
ENGAGEMENT LETTER (SAMPLE IS PROVIDED IN THE MATERIALS)

- Specifically explain the nature of representation and the limits to such representation:

“This letter confirms that I will draft Wills, Health Care Proxies, Living Wills, Durable Powers of Attorney, and Burial Designations for both of you. I look forward to assisting you in these matters. Please understand that my representation will be limited to the above-mentioned matters. Of course, I would be delighted to assist you with other estate planning related matters as well, if the need arises. Attending to any additional matters, however, may require a separate fee agreement.”
Specifically explain fees and costs (including the nature and extent of “disbursements”):

“Generally, my fees for legal services generally are based on the time spent working on a particular matter. Time is recorded and charged based on 1/10th hour increments. Presently, my hourly rate is $[   ]. In addition to fees for legal services rendered, I will bill for reasonable disbursements incurred from time to time including postage costs, photocopying charges, telephone tolls, the costs of using computerized legal research services, court filing fees, messenger delivery fees, transportation charges and other reasonable and necessary out-of-pocket expenses, in accordance with customary practices. I will bill you quarterly, or, if you wish, more frequently as our work progresses. Payment of invoices is due within 10 (ten) days of receipt. Of course, if you have any questions about any invoice, please do not hesitate to let me know. Upon request, I will be happy to provide additional information.”
“As I have mentioned, before rendering any services in this matter I require a retainer in the amount of $[   ] ([   ] Thousand Dollars). I will keep this retainer as a positive balance and as a credit against the final bill for costs and fees in this matter. In the event that payment of your invoice is not received on the due date and a written inquiry regarding your invoice has not been received, all or part of the retainer may be applied toward payment of your invoice. Should this become necessary, you will need to provide our office with sufficient funds to replenish the retainer and bring its balance back to $[   ]. Any amount of the retainer remaining after crediting the same toward the final bill will be promptly reimbursed to you.”
Explain potential spousal conflicts and ethical issues:

“In addition, although it is customary for spouses to employ the same trusts and estates lawyer to assist them in their estate planning, the Rules of Professional Conduct limit my ability to represent multiple clients in certain situations. For instance, I may not represent multiple clients who have conflicting interests. The converse, however, is that I may represent multiple clients who do not have conflicting interests. I must, however, advise you of any reasonably foreseeable adverse effects that may arise in my representation of both of you. In addition, I must obtain the consent of both of you to such representation.

Because you two do not seem to have conflicting interests at this time, I may represent both of you subject to your consent. Please be aware, however, of the following adverse effects from my joint representation of you: ...
“Since I will be representing both of you, each of you will be my client. As a result, matters that one of you might discuss with me might not be protected by the attorney/client privilege from disclosure to the other of you. Therefore, for clarity’s sake, I will not agree with either of you to withhold information from the other. Of course, anything either of you discuss with me is privileged from disclosure to third parties.

If the two of you have a difference of opinion concerning your proposed estate planning activities, I will thoroughly point out and explain the pros and cons of such differing opinions. I will not, however, advocate one of your positions over the other.

Although I doubt that it will happen, if conflicts do arise between the two of you of such nature that is impossible in my judgment to perform my obligations to each of you in accordance with this letter, it would become necessary for me to withdraw as your joint attorney and to advise one or both of you to obtain independent counsel.”
ENGAGEMENT LETTER CON’T

Have clients sign and date the letter. Keep the original copy.
WITHDRAWAL LETTER

In case of divorce or other serious conflict . . . 
(a sample is provided in your materials)
IS THE CLIENT COMPETENT?

- Competency is judged by the following factors
  - **Able** to understand the ordinary affairs of life
  - **Able** to understand the nature and extent of his or her property
  - **Able** to know the persons who are the natural objects of his or her bounty;
  - **Able** to intelligently weight and appreciate his or her natural obligations to those person.

- Undue Influence
  - Pay close attention to your client to make sure they are not being forced to take this action by an outside person.
GATHERING INFORMATION ...
GENERAL “BED-SIDE” MANNER NOTES

- You need to make your client feel comfortable with you.
  - You are asking very personal questions about their family, their money, and their life. Obviously they may be hesitant to tell you.
  - Think about where and how you will ask these questions!
- Ways to make them feel comfortable.
  - Listen to their stories.
    - They will have all sorts of stories about their children and grandchildren. Make sure you are an active listener. When discussing the distribution of their assets call their children and grandkids by names.
  - Apologize for constantly for killing off their entire family.
    - You have to plan for the unexpected, and this is going to include killing off everyone in their entire family and divorcing them from their spouse.
      - Turn the negative into a positive by being overly apologetic for hypothetically killing off their family.
  - Don’t be afraid to say that you don’t know.
    - You may not be an expert yet, and even if you were, you wouldn’t know everything. Feel free to admit that you don’t know and you will check on it.
Gather as much information as possible

- Addresses, phone numbers, emails
- Date of birth
- Social Security Number (maybe)
- Place of birth
- Citizenship
- Previous marriages and ask to provide any spousal or child obligations under a court decree or settlement
- How long been resident in current state
- Marital status, place of ceremony, date of ceremony
- Other Professional Advisors
HEIRS

- Identify all family members (names, ages, address).
  - If disinheriting an heir, consideration should be given to the heir’s rights under state law (spousal election, homestead, family protections)
  - Include children that have passed away
  - Failure to include a child in the will could result in a will contest or otherwise screw up your estate planning.
    - Omitted child statute.
  - Make sure to confirm both parents of a child, if child conceived through Art. Rep. Tech., if client ever made sperm or egg donations, etc.
  - Find out if they have any former spouses (or are separated from current spouses).
  - Citizenships of each family member.
A large portion of your initial consult will deal with what property your client currently owns.

**Property that passes under a Will:**
- Property in decedent’s name which decedent owned outright
- Property owned as tenant in common.
- Property which the decedent directs be paid to the decedent’s estate (beneficiary designations from life insurance, IRAs, deferred compensation or such beneficiary designations)

**Property that does NOT pass under a will**
- Life insurance proceeds payable to designated beneficiary (and other beneficiary designations—IRAs, etc)
- Property held as joint tenant with right of survivorship
- Bank accounts held in trust form (“Totten Trusts”)
Make sure to always ask follow up questions. Don’t make any assumptions.

Ask who is on the title of bank accounts, cars, and land. The answers may surprise you.

Fill out the asset checklist completely.
MAKE SURE TO ASK IF THEY HAVE OTHER WILLS!

- Do not assume that they will volunteer the information
ESTATE PLANNING - THE WILL IS ONLY HALF OF YOUR JOB

- Lifetime Instruments
  - Durable Power of Attorney
  - Living Will
  - Health Care Proxy/Surrogate
  - Capacity Letter
Estate Planning Basics: Basic Will and Trust Drafting

Wednesday, April 30, 2014

ABA Section of Real Property Trust and Estate Law

2014 Spring Symposia, Chicago, Illinois
• Ryan A. Walsh  
  Hamilton Thies & Lorch LLP  
  200 S. Wacker Dr., Suite 3800  
  Chicago, Illinois 60606  
  walsh@htl-law.com

• Karin Prangley  
  Brown Brothers Harriman & Co  
  150 S. Wacker Dr., Suite 3250  
  Chicago, Illinois 60606  
  karin.prangley@bbh.com
Pour over Will

• All the residue of my estate, expressly excluding any property over which I may have a power of appointment, I give to the then acting Trustee of the JOHN DOE LIVING TRUST dated the ___ day of __________, 2014, to be added to the trust property and held and distributed in accordance with the terms of that agreement as in effect at the date of my death.

• I give my tangible personal property and the rest of the property I own at my death (excluding any property over which I have a power of appointment) to the trustee of the JOHN DOE TRUST dated _________________, 2014, previously signed by me, as in effect at my death (my “Revocable Trust”), to be held and administered as provided therein. My executor may distribute directly to any beneficiary under my Revocable Trust any property that, if distributed to the trustee, would then be distributed to the beneficiary.
Tangible Personal Property

- I give all of my clothing, personal effects, jewelry, art objects, pets, automobiles, household goods and furnishings and all my other articles of personal use or adorn-ment, my frequent flyer miles and my club memberships, together with all insurance policies thereon, to my wife, JANE DOE, if she survives me, otherwise to my children who survive me in shares of substantially equal value, to be distributed as they shall agree. If they shall fail to agree within four months from the date of my death, the Executor shall sell the property as to which there is no agreement and add the proceeds to my residuary estate. The guardian of or person in loco parentis to any minor child of mine shall represent him in the division of the property, receipt for any property distributable to that child during his minority and shall deliver said property to the child, or the sales proceeds therefrom, upon his attaining the age of eighteen years.
Tangible Personal Property (Separate Memo)

- **Gifts of Tangible Personal Property.** The trustee shall make gifts of tangible personal property as I direct by any written instrument signed by me. “Tangible personal property” means all personal and household effects, jewelry, automobiles, collections, and other tangible personal property that I own at my death or that is then included as part of the trust estate (including insurance thereon). I may from time to time amend or revoke the written instrument, and any subsequent instrument shall control to the extent it conflicts with prior ones. Any decisions made in good faith by the trustee in distributing tangible personal property shall not be subject to review, and the trustee shall be held harmless from any cost or liability as to those decisions. I shall be deemed to have left only those written instruments that the trustee is able to find after reasonable inquiry within 60 days after my death.
Specific Bequests: Tangible Personal Property

• I give my sterling silver Tiffany & Co. “heart tag” bracelet to my friend, Jane Smith, if she survives me.

• I give my black 2006 Mercury Grand Marquis to my son, John Doe, Jr., if he survives me.
Specific Bequests: Financial Assets

• I give all funds on deposit at my death in my savings account #**********1234 at Citibank to my friend, John Smith, if he survives me.

• I give all of my shares of XYZ Corp. stock that are owned by me at my death to my niece, Jill Doe, if she survives me.
Specific Bequests: Gift of Real Estate

• **Gift of Residence.** If my spouse survives me, I give to my spouse all interest I own at my death or then held by the trust in our residence located at ___________________________, or any successor residence thereto that my spouse and I are using as our primary residence as of my death.
General Bequests

• I give the sum of Ten Thousand Dollars ($10,000) to my friend, John Smith, if he survives me.

• I give One Hundred (100) shares of XYZ Corp. stock to my niece, Jill Doe, if she survives me.
Demonstrative Bequests

- I give Ten Thousand Dollars ($10,000) to my friend, Jane Smith, if she survives me, to be paid to her out of the proceeds of XYZ Life Insurance Company Policy #1234.
Residuary Gifts – Separate Contingent Trusts

- All the residue of my estate, expressly excluding any property over which I may have a power of appointment, I give to my wife, if she survives me, or if my wife does not survive me, such property shall be divided into separate shares of equal value, creating one such share for each child of mine who is living on the date of my death, and one share for the then living descendants, collectively, of each deceased child of mine. A share created for the descendants of a deceased child shall be further subdivided into separate shares for such descendants, per stirpes. Each share created for a descendant of mine (including a child of mine) shall be held as a separate trust named for the descendant, as provided in Paragraph 4 below.
Residuary Gifts – Single Fund Contingent Trust

• **Gift of Residue.** I give the principal of the Trust (including assets received from my probate estate or any other source) reduced by any payments of expenses, debts, and death taxes required to be paid from the Trust and any gifts of specific assets and any pecuniary gifts (including any pecuniary formula gifts) (the “Balance of the Trust Estate”) to my spouse if my spouse survives me. If my spouse does not survive me, I give the Balance of the Trust Estate as follows:

  – (1) **Any Child Under Age 23.** If any child of mine who survives me is under age 23 at my death, I give the Balance of the Trust Estate to the trustee to hold as the Children’s Single Fund Trust; or

  – (2) **All Children Over 23.** If there is no surviving child of mine who is under age 23 at my death, I give the Balance of the Trust Estate to the trustee to allocate in shares of equal value for my surviving children, provided that (i) if a child of mine does not survive me but any descendant of the child survives me, the trustee shall allocate the share that would have been allocated for the deceased child, if living, per stirpes for the child’s descendants who survive me, and (ii) any allocation for a living descendant of mine shall be subject to the Descendant’s Trust provisions.
Contingent Gifts

**Contingent Gifts.** On the death of the last to die of all beneficiaries of any trust (the “termination date”), any of the trust not otherwise distributable shall be distributed half to my heirs and half to my spouse’s heirs. Heirs and their respective shares shall be determined under the laws of descent and distribution of Illinois at my death for property located in Illinois as if my spouse and I had each died on the termination date unmarried and domiciled in Illinois.
Guardian. I name as personal fiduciary and as guardian of the person and estate of any minor child of mine the first of the following who is willing and able to act:

(a) ______________;
(b) ______________; and
(c) ______________.
I authorize the individuals nominated above to remove any minor child of mine and the child’s estate to the individual’s place of residence, even if that place of residence is outside the State of Illinois, in order to seek appointment as guardian by the court of that place of residence in any of the foregoing capacities. The inability of an individual nominated above to serve in one or more of the foregoing capacities because of the individual’s place of residence shall not affect the right of the individual to serve in the other foregoing capacity or capacities. No security, surety, or bond shall be required of any guardian.
Executor Designation

1. I appoint my wife, JANE DOE, as Executor of this Will. If my wife shall be unable or unwilling to act, she shall be succeeded as Executor by my sister, JESSICA DOE.

2. I direct that no Executor or guardian named herein shall be required to give any bond, and if, notwithstanding this direction, bond is required by any law, statute or rule of court, I direct that no surety or other security shall be required on any such bond.

3. I direct that the administration of my estate shall be independent of the supervision of any court.

4. If the Executor shall be unable or unwilling to act as to property located in another jurisdiction, then the Executor shall have the right to nominate an ancillary Executor, to remove such ancillary Executor and to nominate a successor ancillary Executor. Such ancillary Executor shall have the powers granted the Executor to be exercised without court order and at the direction of the Executor.

5. Executor Powers and Elections: See Trustee Powers
Trustee Designation In Will With Trusts

- I appoint JESSICA DOE and JOHN SMITH, one at a time and in the order named, with each to assume office when his predecessor is unwilling or unable to act, as Trustees of all trusts created hereunder. Notwithstanding the foregoing, each descendant of mine who has attained the age of 25 years may, at any time or from time to time, designate himself or one or more other persons and entities to act as sole Trustee, a Co-Trustee or successor Trustee of each trust named for such descendant hereunder and of any trust created therefrom (and in doing so remove any then acting Trustee thereof or revoke any previous successor Trustee designation). Each person or entity designated to act as a Trustee hereunder by a descendant of mine in accordance with the provisions of the preceding sentence may be removed from office by said descendant. The designation of, and removal from office of, a Trustee hereunder shall be by instrument in writing signed by the descendant and delivered to the Trustee. If there is more than one designation of Trustee for a trust hereunder, the latest designation in time shall control.
Trustee Designation in Revocable Trust

1. **Reserved Powers.** During my life I reserve the power, by signed instrument delivered to the trustee: (a) to remove any trustee; (b) to designate additional or successor trustees, who may act consecutively or concurrently, in any stated combination and on any stated contingency; and (c) to amend or revoke any designation. An additional or successor trustee may be a person or a qualified corporation.

2. **Successor Trustee.** When I cease to act as trustee, if no trustee is otherwise acting or designated to act pursuant to the preceding paragraph, my spouse and my daughter __________________, one at a time in that order, shall be the successor trustee.
Trustee Designation in Revocable Trust

3. **Individual Trustee Succession.** All then-acting trustee(s) (unless limited by their designations(s) as trustee(s)) unanimously, by written instrument signed by them and filed with the trust records, (a) may designate one or more persons (other than a descendant of mine who has not attained age ____ with respect to a trust of which such descendant is the primary beneficiary) and qualified corporations to act with or to succeed the trustee consecutively or concurrently, in any stated combination and on any stated contingency, and (b) may amend or revoke a prior designation before the designated trustee begins to act. Acceptance of the designation shall be made by a written instrument signed by the accepting trustee and filed with the trust records. To the extent that a later designation conflicts with a prior designation, the later designation shall control.

4. **Default Trustee.** If at any time no trustee is otherwise acting and no designated trustee is able and willing to act with respect to any separate trust hereunder, then the first of the following who is able and willing to act shall be trustee:

   (a) ____________________;
   (b) ____________________; and
   (c) any person (other than a descendant of mine who has not attained age ____ with respect to a trust of which such descendant is the primary beneficiary) or qualified corporation appointed in an instrument signed by a majority of the income beneficiaries.
Resignation and Removal of Trustees

- **Resignation.** A trustee may resign at any time by signed notice to the co-trustees, if any, and to the income beneficiaries.

- **Corporate Trustee Substitution.** A corporate trustee may be removed at any time by an instrument signed by a majority of the income beneficiaries but only if, on or before the effective date of removal, a qualified corporation has been appointed corporate trustee in the same manner, except that a descendant of mine who has attained age ____ may remove a corporate trustee of any separate trust of which he or she is the primary beneficiary pursuant to paragraph ____ without naming a replacement or successor corporate trustee.
Beneficiary as Trustee

- **Beneficiary as Trustee.** Notwithstanding the provisions of the preceding paragraphs of this Article, a descendant of mine who has reached the age of ___ may, by written instrument filed with the trust records and delivered to the trustee or co-trustee, if any, (a) remove any one or more trustees of any separate trust of which he or she is the primary beneficiary, and (b) designate any person, including himself or herself, or qualified corporation to act as trustee or co-trustee of any separate trust of which he or she is the primary beneficiary.
Co-Fiduciaries

- **Co-Trustees.** The following provisions shall apply whenever there is more than one trustee acting:

  - (a) **Control.** Except as otherwise provided, the “trustee” means all trustees collectively, and a majority of the trustees qualified to participate in an action or decision of the trustees shall control. A co-trustee shall be presumed to have approved a proposed act or a proposal to refrain from acting if that co-trustee fails to indicate approval or disapproval thereof within 15 days after a written notice from the other co-trustee or co-trustees of the proposed action. Any trustee who is not qualified to participate in or dissents from such action or decision shall not be liable therefor.

  - (b) **Delegation to Co-trustee.** Any individual trustee may delegate any or all of that trustee’s powers and duties to a co-trustee, except that no trustee shall be permitted to delegate any discretion with respect to the distribution of income or principal to a beneficiary. Any delegation may be for a definite or indefinite period and may be revoked by the delegating trustee. Any delegation or revocation shall be in writing, signed by the delegating trustee, and delivered to the co-trustee to whom the delegation is made. Any person or institution may rely on the written certification of a co-trustee that the co-trustee has the power to act without concurrence of any other trustee, provided, however, that the co-trustee shall attach to the written certification a copy of the instrument by which the powers and duties have been delegated.

  - (c) **Corporate Co-Trustee; Custody of Assets.** Any corporate trustee shall be the custodian of the trust property and of the books and records of the trust. Any corporate trustee may perform all acts necessary for the acquisition and transfer of personal property and money, including the signing and endorsement of checks, receipts, stock certificates and other instruments, and no person need inquire into the propriety of any such act.
Trustee Powers

- Retention. To retain any property transferred to the trustee, regardless of diversification and regardless of whether the property would be considered a proper trust investment;

- [See Outline]
Indemnification

• **Exoneration of Trustee and Advisors.** Any individual trustee, including an individual co-trustee to whom powers have been delegated, and any individual or committee of individuals with respect to investments and special assets, if any, who are acting in good faith shall not be liable for any act or omission. No trustee shall be liable for any act or omission of another trustee.
Fiduciary Compensation

• **Compensation.** The trustee shall be entitled to reimbursement for expenses and to reasonable compensation.
For all purposes of this Will, one’s children and descendants shall be determined according to applicable law, except to the extent modified as follows:

- **A.** A child adopted before he or she attains eighteen (18) years of age (but not after attaining that age) shall be treated under this Will as a child of his or her adopting parents and a descendant of their ancestors.

- **B.** A biological child shall not be treated as a child or descendant of any biological parent of the child or as a descendant of the ancestors of such biological parent if the child has been surrendered for adoption with the consent of such biological parent and the child’s adoptive parent substitutes for the consenting parent under applicable state law.

- **C.** A biological child born out of wedlock shall not be treated as a child or descendant of his or her biological parent or as a descendant of the ancestors of such biological parent, unless and until acknowledged by such biological parent.

- **D.** Adoptions and marriages that are recognized under this Will shall not affect prior distributions or other interests that have previously vested in possession, but they shall enable a person to receive distributions from remainder or other interests in a trust still in existence.

- **E.** The descendants of a person who is treated as a child or descendant under this Will shall also be treated as descendants of such person’s ancestors. The descendants of a person who is treated as not being a child or descendant under this Will shall also be treated as not being descendants of such person’s ancestors.
Tax Apportionment

- My Executor shall pay the expenses of my last illness and funeral, and all other legal obligations of my estate (other than debts secured by a mortgage of real property or by a collateral assignment of the beneficial interest in a land trust), including all estate and inheritance taxes and generation-skipping taxes on direct skips which are assessed by reason of my death, from the principal of the residue of my estate and may pay the costs of administration, including, but not limited to, the costs of safeguarding and delivering bequests, from either the principal of the residue of my estate or the income generated by my estate, provided that no allocation of administration expenses shall be made to income that would require a reduction in the estate tax marital deduction pursuant to section 2056(b)(4) of the Internal Revenue Code of 1986, or successor provisions thereto (the "Code"). Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. My Executor shall make these payments from my estate without apportionment or reimbursement or charging any direct skip property. Despite the preceding, my Executor shall not pay death taxes caused by:

- Property over which I may have a power of appointment;
- Property in which I may have a qualifying income interest for life, unless for generation-skipping tax purposes the property has an inclusion ratio of zero and is treated as if the qualified terminable interest property election had not been made;
- Proceeds of insurance policies on my life which I did not own at my death; and
- Property constituting a direct skip for generation-skipping tax purposes which is caused by a disclaimer or which is from a trust not created or appointed by me.

The person holding or receiving any of the property described in Paragraphs 1 through 4, above, shall pay, either directly or to my Executor, the amount, if any, by which the death taxes are increased as a result of the taxation of that property. If two or more properties cause an increase in a tax, the increase shall be allocated among the properties in proportion to their respective taxable values.
In the event that any provision of this my last will and testament is contested by any of the parties mentioned herein, the portion or portions of the estate to which such party or parties would be entitled shall be disposed of in the same manner as though such contesting individuals had predeceased me.
Powers of Appointment

• Language Creating Power of Appointment: Upon the death of my wife after my death, the Trustee shall distribute the trust property to, or in trust for the benefit of, such one or more of my descendants, in such manner and such proportions as my wife may appoint under Will by specific reference to this power.

• Language Exercising Power of Appointment: My father, John Doe, created the Kelly Doe Trust on April 7, 1958 (the “Trust”) and in Article IV of the Trust, directed the Trustee the distribute the Trust property remaining upon my death to, or in trust for the benefit of, such one or more of my descendants, in such manner and such proportions as I may appoint under Will by specific reference to this power. I hereby make specific reference to that power granted to me in Article IV of the Trust and provide that all of the Trust assets remaining on my death shall be distributed, outright and free of trust, to my eldest daughter, Lucy Doe.
Will Execution: Attestation Clause and Witnesses

• The foregoing instrument, consisting of eighteen (18) typewritten pages (this and the next page included), each bearing on its margin the initials of JOHN DOE, was, in our presence, at __________, Illinois, this _____ day of ________________, 2014, by the said JOHN DOE, signed, sealed, published and declared to be his Will, and we, at his request and in his presence and in the presence of each other, believing said Testator to be of sound mind and memory, and to have acted freely and voluntarily, have hereto subscribed our names as witnesses.

• ________________________________________Residing at______________________________

• ________________________________________Residing at______________________________

• ________________________________________Residing at______________________________
Will Execution: Self-Proving Affidavit

- We, the undersigned, being the testator and the witnesses, respectively, whose names are signed to the foregoing instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator, in the presence of the witnesses, signed the instrument as his last will and that he signed willingly; and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness and that to the best of his or her knowledge the testator was at that time of legal age, of sound mind and under no constraint or undue influence.

- __________________________________________
  - JOHN DOE, TESTATOR

- __________________________________________
  - WITNESS

- __________________________________________
  - WITNESS

- __________________________________________
  - WITNESS
Important Notices

• DISCLAIMER: These seminar materials and the related presentation are intended to provide those viewing and listening to the presentation with useful ideas in the area of estate planning and administration. The materials and comments made by the presenters during the presentation or otherwise do not constitute and should not be treated as legal advice regarding the use of any estate planning or other technique, device, or suggestion, or any of the tax or other consequences associated with them. None of Ryan A. Walsh, Karin Prangley, Hamilton Thies & Lorch LLP, nor Brown Brothers Harriman & Co. assumes responsibility for any individual’s reliance on the written or oral information presented in association with this material. Each attendee should verify independently all statements made in the materials and in association with the presentation before applying them to a particular fact pattern, and should determine independently the tax and other consequences of using any particular device, technique, or suggestion before implementation.

• CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US Federal Tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the internal revenue code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent.
I. OVERVIEW OF TESTAMENTARY DOCUMENTS

a. Will or Will and Revocable Trust? For some clients a Will alone is appropriate, while others may need a Will and a Revocable Trust.

i. Will alone: The Will appoints an executor, provides for distribution of property owned by the client at his death, names a guardian for any minor children and provides for the payment of taxes and expenses.

ii. Will and Revocable Trust: If a Revocable Trust is used, the Will is generally shorter and it directs the residue of the client’s estate to the Revocable Trust (the residue of the client’s estate “pours-over” to the client’s Revocable Trust, thus such a Will is called a “pour-over Will”). The Revocable Trust provides for the distribution of property upon death, names a Trustee and provides for the payment of expenses and taxes.

b. Benefits of Revocable Trust.

i. Trust is a private document: once a person dies, their Will must generally be filed with the local probate court and is a public document. In most jurisdictions, Trusts do not have to be filed or registered with the court.

ii. Probate avoidance. If the client’s assets are owned by his Revocable Trust, then at his death, no probate court process is necessary. Probate avoidance is crucial if the client has real estate in more than one state, which would mean that without the use of a Revocable Trust plan more than one probate is potentially needed.

iii. Facilitates beneficiary designations for life insurance and retirement plans. Although it often may not be advisable to name a trust as a beneficiary of a tax deferred
retirement account, naming the trust as beneficiary of those accounts or life insurance policies can be helpful, particularly if the testator has minor children.

II. **Tangible Personal Property Provision**

a. Term “tangible personal property” means a person’s property that can be physically touched; contrast to “real property” and “intangible property.”

b. Term “tangible personal property” is generally synonymous with “personal and household effects,” though in some jurisdictions “personal effects” may be construed to include intangibles.

c. Includes:

i. Personal items (clothing, jewelry, etc.).

ii. Household items (artwork, furniture, decorations, etc.).

iii. Vehicles (automobiles, boats, planes, etc.).

iv. Pets.

v. Does not include Cash and stock certificates (in most states).

d. Drafting Considerations:

i. Generally, the tangibles are provided for in a specific clause, and do not pass with the residue. This is because property that is specifically disposed of in a separate provision generally does not carry out distributable net income to the beneficiary thereof. People often don’t want their beneficiaries to have to pay income tax attributable to the estate/trust when they receive a small tangible item such as a piece of furniture.

ii. Be as specific as possible “my diamond ring” versus “my platinum two carat Tiffany & Co. diamond engagement ring given to me by my late husband, John Doe.”

iii. But avoid referencing where the item is kept, except in the case of a safe deposit box from which the testator will not remove the item.

iv. Reference (and use) separate writing in states where permitted; see UPC 2-513. If your state does not permit this, this might be another reason to use a revocable trust and pour over will instead of just a will.

v. Must be signed by testator; can be changed at any time without will formalities.
e. Selecting Beneficiaries:

i. Most tangible personal property has sentimental value; testator must consider to whom the property is going and who is responsible for managing the estate (i.e., the executor) in order to avoid conflict.

ii. When “equal shares” are bequeathed, must consider how tangible personal property will be divided into shares.

iii. Tax apportionment. Be careful to coordinate the disposition of the tangible personal property with the tax apportionment clause.

iv. Many times, clients do not want tangible personal property to be sold in order to produce liquidity to pay estate taxes.

v. If division among a class of beneficiaries. - What if beneficiaries cannot agree? Is Executor ultimate decision maker or is property sold? What if Executor is member of class? Draw lots?

f. Consider whether costs of distribution (moving expenses, storage, insurance) should be borne by the beneficiary or the estate.

g. Future valuation issues. - If two items of personal property have similar values currently, but dramatically different values at time of death should a general legacy be given to beneficiary with less valuable asset.

III. Real Estate Provision

a. Consider whether real estate should be transferred to the client’s revocable trust during life (see benefits described in I. above).

b. Consider how specifically devised property should be described (i.e., address or metes and bounds).

c. Should beneficiary inherent free from or subject to the liability?

d. How will payments of mortgage, property taxes, etc. be made during estate administration?

e. “Co-ops”:

i. A “co-op” is technically not real estate, but is instead stock in a corporation and a proprietary lease in a particular unit that entitles the shareholder to “ownership” of that unit.
Transfers of a “co-op” can be very difficult because it often requires the consent of the “co-op” board.

The “co-op” board may set difficult criteria for the transfer of the stock.

It may be possible to have a nominee agreement that transfers beneficial ownership but keeps legal ownership in the name of the approved owner.

f. Homestead:

i. In certain jurisdictions, homestead is an individual’s principal place of residence which is subject to certain restrictions on devise.

ii. Homestead also may provide real estate tax preferences and creditor protection.

iii. Restrictions (e.g., Fla. Stat. 732.4015) One spouse who is the sole legal owner may be prevented from transferring the property without the consent of the other spouse.

iv. Surviving spouse may have vested right to homestead (i.e., a life estate).

v. Minor children may have vested right to homestead (i.e., a remainder).

vi. Waiver of homestead by spouses may be restricted.

vii. If property is homestead, it may pass by operation of law and not be subject to devise in a will or revocable trust.

viii. If homestead is waived, it may be possible to transfer to revocable trust; however, it may not qualify as homestead subsequent to the transfer unless the client retains certain rights during life and provides beneficiaries certain rights after death.

IV. PRE-RESIDUARY DEVISES AND BEQUESTS

a. Old Terminology:

i. A devise meant a transfer of real property by will.

ii. A bequest or legacy meant a transfer of personal property by will.

iii. A devisee meant a person to whom real property is transferred by will.

iv. A legatee meant a person to whom personal property is transferred by will.

b. Today, there is no real distinction between “devise” and “bequest.”
c. Types of Pre-Residuary Testamentary Bequests.

i. Specific Bequest:

1. A testamentary gift of a specific, easily identifiable item of property.

2. I give my sterling silver Tiffany & Co. “heart tag” bracelet to my friend, Jane Smith, if she survives me.

3. “I give all funds on deposit at my death in my savings account #1234 at Citibank to my friend, John Smith, if he survives me.”

4. Specific Bequest - 7 Title Vests on Testator’s Death.

5. Shares in gain and loss from date of death until receipt.

6. Include stock dividends and stock splits.

7. Commissions generally not payable on property that is the subject of a specific bequest. See e.g., New York-SCPA §2307(2).

8. Ademption: If the subject of a specific bequest is not in existence at the testator’s death the legatee takes nothing. Does not apply to general bequests or to demonstrative bequests.

   a. Different states may have different rules to determine whether a gift is adeemed. “Intent” theory vs. “identity” theory.

9. Does Ademption Apply or Should it Be Waived? Consider:

   a. Specific bequest of bank account Bank acquired by another bank.

   b. Account moved from one bank to another.

   c. Contract of Sale.

ii. General Bequest:

1. A testamentary gift which is paid out of the general assets of the estate.

2. “I give the sum of Ten Thousand Dollars ($10,000) to my friend, John Smith, if he survives me.”
3. **Specific vs. General:**

   a. **Specific:** “I give all of my shares of XYZ Corp., stock that are owned by me at my death to my niece, Jill Doe, if she survives me.”

   b. **General:** “I give One Hundred (100) shares of XYZ Corp. stock to my niece, Jill Doe, if she survives me.”

4. In New York, no interest is paid on specific bequests, but interest is paid on general bequests beginning 7 months after the issuance of letters. In Illinois, no interest is paid on general bequests unless in trust or to surviving spouse.

   iii. **Demonstrative Bequest:**

      1. A testamentary gift which must be paid from a specific fund.

      2. “I give Ten Thousand Dollars ($10,000) to my friend, Jane Smith, if she survives me, to be paid to her out of the proceeds of XYZ Life Insurance Company Policy #1234.”

   d. **Lapse/Anti-Lapse:**

      i. **Lapse** = Failure of bequest or devise if the devisee or legatee predeceases the testator.

      ii. **Anti-Lapse statutes** = Legislation that provides for a substitute gift to descendants of certain relatives if they predecease the testator.

   iii. **Uniform Probate Code:**

      1. **UPC §2-603** Applies to grandparents and descendants of grandparents, the testators stepchildren and, In the case of a power of appointment exercised by the testator’s will, the testator’s or the donor’s grandparents and their descendants and the testator’s or donor’s stepchildren.

      2. Also applies to single generation class gifts.

      3. **Illinois:** Applies to descendants of testator and to class gifts.

   iv. **Examples:**

      1. “I give the sum of Ten Thousand Dollars ($10,000) to my brother, Jim Doe.” - If Jim predeceases the Testator, his issue share the bequest if UPC version of anti lapse statute applies, but not in Illinois (depends on state law).
2. “I give the sum of One Hundred Thousand Dollars ($100,000), in equal shares, to such of my cousins Jack Doe, Mary Doe, and Jeff Doe who survive me.” - Anti lapse statute does not apply because of survivorship language.

e. Cy Pres Doctrine: Disposition to charity does not fail by reason of indefiniteness or uncertainty of the designated beneficiary.

f. Consider effect of simultaneous death: create presumption of who died first.

V. Residue

a. Dividing residue into Formula or fractional shares for estate tax reasons.

b. Outright or in trust.

c. Why have a bequest placed in trust?

   i. Estate planning considerations (e.g., to save estate tax when the beneficiary himself dies).

   ii. Creditor protection for beneficiaries.

   iii. Management for minors, disabled individuals or other beneficiaries who need assistance

d. How long should trust go for? Depends on reason for trust. Possible lengths:

   i. Life of income beneficiaries or successive lives.

   ii. Life of another person.

   iii. Until beneficiary reaches a certain age or ages (1/3 at each of three ages).

   iv. Specific number of years.

e. Should the beneficiaries have any special powers?

   i. Power to withdraw from trust.

   ii. Power to invade for own benefit based upon an ascertainable standard.

   iii. Power to remove and/or appoint trustees.

f. Final gift over, also known as “Taker of Last Resort” or “Nuclear Bomb Clause.” - Who takes if all residuary beneficiaries predecease testator - charity, intestate takers, other?
VI. **GUARDIAN DESIGNATION**

a. The testator designates a guardian of minor children if no parent is living.

b. Court typically gives deference to testator’s designation, although the court always has the ability to make an independent assessment of what is in the child’s best interest.

c. Testator can designate a guardian of the person who will have physical custody of the child and guardian of the estate who will have control of the child’s assets.

VII. **EXECUTOR DESIGNATION**

a. In some jurisdictions, the term “Personal Representative” is instead used.

b. Executor duties:
   
   i. Gathers decedent’s property.

   ii. Invests and manages the property in the estate.

   iii. Pays debts and taxes.

   iv. Disposes of property in accordance with a will.

c. Typically the Executor designations mirror the successor Trustee designations in Revocable Trust.

d. Executor Designation: Executor may be an individual or a corporate fiduciary.

e. The Will should waive requirement of executor to post bond.

f. The Will should direct independent administration if available in your state.

VIII. **TRUSTEE**

a. Often the same individual or corporate trust company or bank.

b. Duties of Trustee:
   
   i. Makes distributions to the beneficiaries of the trust.

   ii. Invests and manages the trust assets.

   iii. If no Executor is appointed by a court, may have duty to pay and file taxes and/or expenses.
IX. **Executor/Trustee (aka “Fiduciary”) Combinations**

a. Single individual fiduciary.
b. Single corporate fiduciary.
c. Individual and corporate co-fiduciaries.
d. Two or more individuals as co-fiduciaries.
e. Different trustees for different types of trusts.
f. Spouse or child as Trustee of trust for his or her own benefit.
g. Co-Trustees of separate trust when child reaches certain age and then flip to child as sole.
h. Beneficiary sometimes is appointed as Trustee of his own separate trust at certain age.

X. **Fiduciary Succession Plans (Providing for a Person to Act as a Successor to the Initially Named Fiduciaries)**

a. Named by Testator or Grantor in document (see Exhibit 3).
b. Give then acting fiduciary power to name a successor fiduciary.
c. Give beneficiary or other third party the right to name a successor fiduciary.
d. Could limit right to appoint corporate or non-related party.
e. If there is a failure of fiduciary, give court with jurisdiction over estate or trust power to name a successor fiduciary.

XI. **Removal and Resignation of Fiduciaries**

a. Resignation:
   i. How is it implemented? Written notice delivered to certain individuals (successor fiduciary, beneficiaries, etc.).
   ii. Acceptance by successor?

b. Removal:
   i. Who has the power?
ii. Power to name successor individual or corporation?

iii. How is removal implemented?

XII. **CO-FIDUCIARIES**

a. How are disagreements and deadlocks resolved?

b. Majority rules? Unanimity?

c. Corporate or family member trumps all?

d. Staggered co-Trustee designations.

XIII. **TRUSTEE POWERS**

a. Default trustee powers are generally provided by statute. *See,* for example:


   iv. UTC: Section 816.

b. Trust provisions can override or add to statutory trustee powers.

c. Powers typically specifically enumerated in the document:

   i. Retention of property.

   ii. Sale of property.

   iii. Dealing with property.

   iv. Borrowing.

   v. Investing.

   vi. Allocating property for distribution.

   vii. Rights as to securities.

   viii. Conservation of assets.
ix. Delegation.

x. Payment of expenses and taxes.

xi. Waiver of prudent investor rule.

xii. Determination of principal and income.

xiii. Dealings with other fiduciaries.

xiv. Compromising claims.

xv. Nominee Arrangements.

xvi. Elections under retirement plans.

xvii. Making Loans.

xviii. Purchasing Insurance.

xix. Accepting additional property.

xx. Environmental matters.

xxi. Closely-held business interests.

xxii. Stock options.

xxiii. S Corporation Stock.

xxiv. Farm and Forest.

xxv. Conservation Easements.

xxvi. Tax Elections.

xxvii. Catchall “other actions.”

d. Examples of language re: enumerated powers:

i. Retention. To retain any property transferred to the trustee, regardless of diversification and regardless of whether the property would be considered a proper trust investment;

ii. Real and Tangible Personal Property. To make leases and subleases and grant options to lease, although the terms thereof commence in the future or extend
beyond the termination of any trust; to purchase, operate, maintain, improve, rehabilitate, alter, demolish, abandon, release or dedicate any real or tangible personal property; and to develop or subdivide real property, grant easements, and take any other action with respect to real or tangible personal property that an individual owner thereof could take;

iii. Joint Investments; Distribution; Determination of Value. To make joint investments for two or more trusts held by the same trustee; to distribute property in cash or in kind or partly in each; and to allocate or distribute undivided interests, different property or disproportionate interests to the beneficiaries, and to determine the value of any property so allocated or distributed; but the trustee need not make any adjustment to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes, and no action taken by the trustee pursuant to this paragraph shall be subject to question by any beneficiary;

iv. Delegation. To employ agents, attorneys, accountants, investment advisors and proxies of all types (including any firm in which a trustee or his or her spouse or relative of mine or his or her spouse is a partner, associate or employee or is otherwise affiliated) and to delegate to them any powers the trustee considers advisable;

v. Determination of Principal and Income. To determine in cases not covered by statute the allocation of receipts and disbursements between income and principal, except that (a) if the trust is beneficiary or owner of an individual account in any employee benefit plan or individual retirement plan, income earned after death in the account shall be income of the trust, and if the trustee is required to pay all trust income to a beneficiary, the trustee shall collect and pay the income of the account to the beneficiary at least quarterly (and to the extent that all income cannot be collected from the account, the deficiency shall be paid from the principal of the trust); and (b) reasonable reserves for depreciation, depletion, and obsolescence may be established out of income and credited to principal only to the extent that the trustee determines that readily marketable assets in the principal of the trust will be insufficient for any renovation, major repair, improvement or replacement of trust property that the trustee considers advisable;

vi. Elections Under Retirement Plans. To elect, pursuant to the terms of any employee benefit plan, individual retirement plan or insurance contract, the mode of distribution of the proceeds thereof or change the beneficial ownership, and no adjustment shall be made in the interests of the beneficiaries to compensate for the effect of the election or change;

vii. Tax Elections. To make elections under tax laws and employee benefit plans and to make allocations of any available GST exemption as the trustee deems advisable; provided that no adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for any such election or allocation;
viii. **Tax Elections.** The trustee may make, and where an appointed executor is required to act may direct my executor to make, elections and allocations as follows:

(a) **Portability.** On the death of the first of us, to elect to have the amount of the deceased spousal unused exclusion amount under Code Section 2010(c)(4) taken into account on the surviving spouse’s estate tax return under Code Section 2010(c)(S). The trustee is authorized to pay any expense or costs associated with making such election. If the election is made, the surviving spouse shall be notified that such election was made, and shall be provided with evidence of such election, including the total deceased spousal unused exclusion amount for which the election was made.

(b) **Other Elections.** To make allocations of any available exemption from the federal generation-skipping transfer tax; to consent to a gift being taxed as if made one-half by each of us; to join in the execution and filing of any joint income tax return; to elect to treat any fraction or all of any trust as qualified terminable interest property for federal or state estate tax purposes; to make elections regarding the mode of and to make any other tax election that is permitted under federal or state laws. The decision to make or not to make an election or allocation, whether directed by the trustee or decided by an executor, shall be final and not subject to question by any beneficiary. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for any election or allocation made pursuant to this paragraph.

XIV. **Indemnification of Fiduciaries**

a. Typically, statutes impose a duty of good faith on fiduciaries.

b. **Uniform Trust Code Provisions:**
   
   i. Duty to Administer UTC §801.

   ii. Duty of Loyalty UTC §802.

   iii. Duty of Impartiality UTC §803.

c. A will or trust may limit or expand the duty imposed on the fiduciary.

d. However, a trust may not relieve a trustee of liability a breach committed in bad faith or reckless indifference to the purposes of the trust. UTC §1008.

e. How protected should a fiduciary be by the terms of the governing instrument?

f. Exoneration of Fiduciaries: Successor fiduciaries are not liable for acts of their predecessors.
XV. **Fiduciary Compensation**

a. Executors and Trustees are generally entitled to “reasonable compensation.” What does this mean?

   i. For individual fiduciaries, this means actual time spent at a reasonable hourly rate. Contemporaneous time records are a good idea and may be required in supervised administration.

   ii. Hourly rate can depend on experience or profession of individual acting as fiduciary

   iii. Corporate fiduciaries are often paid based on their “regularly adopted schedule of compensation” or “schedule of compensation it effect from time to time.” Often a percentage of assets in the estate or trust. In some states (like Illinois), individual fiduciaries are expressly prohibited from charging fees on this basis.

b. All fiduciaries are entitled to reimbursement for actual out of pocket expenses that are properly incurred in managing estate or trust property.

XVI. **Miscellaneous**

a. Definitions of child/descendant:

   i. Does the term child/descendant include adopted children, especially children adopted after age 18?

   ii. What about children born out of wedlock and children who had no parent-child relationship with the person to/from whom they are inheriting?

   iii. How are stepchildren and posthumously conceived children treated?

b. Tax apportionment clause:

   i. Who should pay the taxes?

   ii. Are there gifts made outside the will that will generate tax.

   c. In *Terrorem* clauses (also called No Contest clauses). Is a contest possible or likely? An *in terrorem* clause provides that a beneficiary who contests the Will or Trust loses any benefit under the Will or Trust. Many states limit the application of *in terrorem* clauses.
d. Powers of Appointment. If you client has a power of appointment that will be exercised, pay close attention to the language granting the power.

i. Rule #1 when exercising powers of appointment is to comply with the language granting the power as to how it must be exercised.

ii. Almost always the power with required “specific reference” to the power of appointment in order for it to be successfully exercised.

iii. If the power is a testamentary power of appointment, it must be exercised in a will, not a trust.

e. Document Execution:

i. If using a pour over will and revocable trust, execute the trust first!

ii. Witnesses cannot be related or beneficiaries. Testator must sign “in the presence” of the witnesses.

iii. Self-proving affidavit.
ABA ESTATE PLANNING BASICS
FIDUCIARY ISSUES IN ESTATE PLANNING

Paul S. Lee, J.D., LL.M.
National Managing Director, Bernstein Global Wealth Management
paul.lee@bernstein.com
New York, NY

Benetta P. Jenson, J.D., Adjunct Professor
Managing Director, J.P. Morgan Private Bank*
benetta.p.jenson@jpmorgan.com
Chicago, IL
Fiduciary Issues in Estate Planning

Estate Planning Basics
American Bar Association Section of Real Property, Trusts & Estates
2014 Spring Symposia

Paul S. Lee, J.D., LL.M.
National Managing Director, Bernstein Global Wealth Management
paul.lee@bernstein.com
New York, NY

Benetta P. Jenson, J.D., Adjunct Professor
Managing Director, J.P. Morgan Private Bank*
benetta.p.jenson@jpmorgan.com
Chicago, IL

“J.P. Morgan Private Bank” is a marketing name for private banking business conducted by J.P. Morgan Chase & Co. and its subsidiaries worldwide. JPMorgan Chase & Co. and its affiliates and/or subsidiaries do not practice law, and do not give tax, accounting or legal advice, including estate planning advice. See further disclaimer at the end of the presentation.
Agenda

I. What is a Fiduciary?

II. Executor / Personal Representative

III. Trustee - Duties & Powers Generally

IV. Trustee vs. Other Officeholders

V. Select Trustee Issues

VI. Ethics Issues – Who Do You Represent?
What is a Fiduciary?

■ Definition

● A **fiduciary** is a legal or ethical relationship of trust between two or more parties. Typically, a fiduciary prudently takes care of money for another person. - *Wikipedia;* [http://en.wikipedia.org/wiki/Fiduciary](http://en.wikipedia.org/wiki/Fiduciary)

● A **fiduciary** is someone who has undertaken to act for and on behalf of another party in a particular matter in circumstances which give rise to a relationship of trust and confidence. – Lord Millet, *Bristol and West Building Society v. Mothew*, 1996 EWCA Civ. 533, 1998 Ch. 1 (24 July 1996)

■ Types of Fiduciaries

● Executor / Personal Representative
● Trustee
● Guardian of the Person & Estate (of minor children or disabled adults)
● Agent under Powers of Attorney for Property and Health Care
● Custodian (under Uniform Transfers or Gifts to Minors Acts)
Executor / Personal Representative

- An **Estate** is a legal entity that is created as a result of a person’s death. An estate is comprised of all assets that the deceased individual had an interest in at the time of his or her death.

- The laws of the state where the decedent was domiciled at the time of death will control how the decedent’s assets will pass.

- Assets are either probate assets or non-probate assets:
  - **Probate assets** are assets that were owned and titled in the decedent’s name; they will pass pursuant to the terms of the decedent’s Will.
  - **Non-probate assets** will pass outside the Will pursuant to either the manner of title (joint with another individual) or by the terms of the contract (life insurance policy, annuity, beneficiary designation or trust agreement)

- Once the decedent’s Will is probated, the **Executor** is officially appointed and authorized to act on behalf of the estate to:
  - Collects, values and safeguards all estate assets
  - Pays all of the decedent’s debts and administrative expenses
  - Files all required estate and income tax returns and pays taxes
  - Distribute assets in accordance with the terms of the Will
Trustee - Duties & Powers Generally

- Fiduciaries
  - Executors/Personal representatives
  - Guardians
  - Custodians
  - Trustees

- Duties vs. Powers
  - Obligation/requirement vs. Authority/right
To Whom Does a Trustee Owe a Duty? Who Do You Represent?

Settlor/Grantor/Trustor

Current Beneficiaries

Future/After-Born Beneficiaries

Remainder Beneficiaries

Contingent Beneficiaries
Primary Duties of Trustees to Beneficiaries

Duty of Loyalty
- Act with good faith
- Avoid self-dealing
- Avoid conflicts of interest

Duty of Impartiality
- Among current beneficiaries
- Current and future/after-born
- Current and remainder

Duty of Prudence
- Exercise care and diligence with property
- Act with care and skill of “prudent person”
- Invest prudently

Duty to Preserve and Protect Trust Property
- Collect and administer trust property
- No commingling
- Insure, maintain and repair
## Other Duties & Exceptions to

### Other Duties
- Administer property according to trust terms
- Provide information and accountings
- Maintain accurate records
- Enforce and defend claims
- Confidentiality
- File tax returns
- Not to delegate

### Exceptions to Trustee Duties

#### Waivers of:
- Self-Dealing
- Conflicts of Interest
- Prudent investment and diversification requirements

#### Exculpatory Clauses
- Absent bad faith or willful misconduct, determinations made by the trustee shall be conclusive…

#### State Law
- Delegation of investment authority
Other Trustee/Fiduciary Roles

Settlor/Grantor/Trustor

Co-Trustees
Directed Trustees
Special Trustees
Trust Protectors
Independent Trustees
Distribution Committees
Investment Committees

Current Beneficiaries
Future/After-Born Beneficiaries
Remainder Beneficiaries
Contingent Beneficiaries
Myriad of Trusts and Beneficiary Needs

Current Beneficiary
- Stability of Distributions
- Sustainability of Distributions

Example: Support Trust

Both Beneficiaries
- Division of Assets
- Purchasing Power
- Remaining Assets

Example: Marital Trust

Remainder Beneficiary
- Purchasing Power
- Remaining Assets

Example: Dynasty Trust

Main Concern
- Current Distributions
- Sharing of Wealth
- Maximize Remainder Value

Metrics
- Preservation
- Growth

Source: AllianceBernstein
Trustee Duties & Powers

- **Source of Trustee Powers**
  - State law (Uniform Trust Code in some jurisdictions)
  - Trust instrument
  - Common law

- **Basic Powers**
  - Property receipt/retention
  - Investments
  - Contracts
  - Business affairs
  - Delegation
  - Distributions
  - Administrative

- **Special Powers**
  - Grantor trust powers
  - Trust amendment
  - Decanting
Trustee vs. Other Officeholders

- Traditional Trusts vs. Directed and Other Multi-Participant Trusts
  - A **Traditional Trust Model** recruits a single trustee exercising all fiduciary and administrative trust powers.
  - A **Multi-Participant Trust Model** recruits multiple individuals who:
    - may or may not be fiduciaries,
    - have specific, trust-instrument-assigned roles, responsibilities, authority and duties (sometimes overlapping), and
    - must communicate, cooperate and coordinate in order to accomplish the purposes of the trust and further the interests of the beneficiaries.
  - A **Directed Trust Model** is a type of Multi-Participant Trust Model – It is a trust which separates specified trust functions from the trustee’s administrative duties (e.g., separating investment and/or distribution decisions that a trustee typically would make and allocating those responsibilities to others, such as an “Adviser” or “Trust Protector”, who directs the Directed/Administrative Trustee.

* Source: This section on “Trustee vs. Other Officeholders” is from “Achieving the Promise and Avoiding the Pitfalls of Multi-Participant Trusts” by Anita M. Sarafa, of J.P. Morgan Private Bank, and John P.C. Duncan, Kozusko Harris Duncan (September 2012).
Trustee vs. Other Officeholders (continued)

- Trust Roles in Directed and Other Multi-Participant Trusts:
  - Sole, Full Trustee
  - Co-Trustee
  - Directed / Administrative Trustee
  - Investment Adviser
  - Distribution Adviser
  - Trust Protector
Trustee vs. Other Officeholders (continued)

- **Trust Roles in Directed and Other Multi-Participant Trusts:**
  - **Sole, Full Trustee:** An individual or entity given authority to manage all aspects of trust administration including making discretionary distributions and full investment management responsibility
  - **Co-Trustee:** A co-trustee may be given all of the responsibilities of a full trustee or may have a narrower set of responsibilities. (Specific ability to limit co-trustee’s responsibilities varies by state)
    - Under common law, joint and several liability
    - Restatement (Third) allows for majority vote for decisions, but historically, unanimity has been required
    - Dissenters are typically protected
  - **Directed/Administrative Trustee:** A trustee required under the terms of the trust document to follow the directions of a third party
    - The Uniform Trust Code (UTC) dictates that the directed trustee has overall responsibility of seeing that terms of trust are honored, but has minimal oversight responsibility
    - The UTC also states that directed trustees are generally not liable for following direction of trust advisor or protector, but may be liable if exercise is contrary to terms of the trust or if trustee knows the exercise would be a serious breach
Trust Roles in Directed and Other Multi-Participant Trusts (continued):

- **Investment Adviser:** An Investment Adviser typically has authority to make investment decisions with respect to all investment assets or sometimes with regard to special assets such as:
  - A family business;
  - A concentrated position; and
  - Alternative assets

  The Trustee follows the directions of the Investment Adviser and performs the administrative functions, such as custody of assets, executing investment purchases and sales, sending statements, etc.

- **Distribution Adviser:** The Distribution Adviser is solely responsible for exercising discretion over distributions to beneficiaries and directs the Trustee to make them:
  - Separate from both administrative and investment advisory roles
  - Often focuses on the “soft” needs of beneficiaries (e.g. career ambitions, financial independence, social and personal maturity)
  - Use of a distribution advisor can allow for a broad, case by case, interpretation of the trust document and such party may be best positioned to understand and act in a manner which reflects the intention of the grantor in the exercise of his or her discretion

- **Trust Protector:** A Trust Protector is any disinterested individual or entity with the power to change, amend, modify, or review any component of the trust itself or any party involved in trust management (e.g., to modify or amend the trust instrument because of changes in law, to appoint or remove a trustee, to consent to trustee actions). The Trust Protector’s decision typically is binding on all parties.
Select Trustee Issues

- Multi-Participant Trust Issues
- Allocations Between Principal & Income – Unitrust and Power to Adjust
- Decanting
Multi-Participant Trust Issues*

A fully-realized multi-participant trust structure could look like this:

- **Settlor**
  - Advises Trust Counsel
  - Creates Trust Agreement
    - Empowers Protector
    - Empowers Direct Trustee
      - Directs Protector
      - Directs Investment Advisor
      - Directs Distribution Advisor
      - Delegates Custodian/Tax Preparer/etc.
    - Empowers Beneficiaries Holding Powers (e.g., trustee removal; trust amendment)
  - Empowers Investment Advisor
  - Empowers Distribution Advisor

* Source: This section on "Multi-Participant Trust Issues" is from “Achieving the Promise and Avoiding the Pitfalls of Multi-Participant Trusts" by Anita M. Sarafa, of J.P. Morgan Private Bank, and John P.C. Duncan, Kozusko Harris Duncan (September 2012).
Multi-Participant Trust Issues (continued)

- Considerations with Other Multi-Participant Trusts:
  - Lack of clarity regarding roles, responsibilities and authority of participants
  - Uncertainty as to their duties, standards and liability (fiduciary vs. non-fiduciary)
  - Inadequate communication and coordination among them
  - Disharmony among participants
  - Compensation and reimbursement uncertainty
  - Unfilled vacancies of participants
  - Exposure of the trust to multi-jurisdictional taxation by multiple participant domiciles
  - Unanticipated duties to monitor, report or correct misdeeds of other trust participants or to warn beneficiaries
  - Joint decision-making and implementation complexity without clear assignments of responsibility and authority

- Importance of Drafting, Selection of Jurisdiction/Governing Law & Taxation, Selection of Participants, Coordination, Communication, Decision-Making Processes, Dispute Resolution Provisions, etc.
Managing a “Total Return Trust” Is a 3 Variable Problem*

*Source: This section on Total Return was prepared by Paul S. Lee, “Prudent Investor Practices and the Prudent Investor Rule”, FOX Trustee Workshop (November 2013).
### Prudent Investor Act

- Grantor’s Intent
- Contrary Trust Provisions
- Total Return
  - No limitations on investments
  - No limitations on income vs. growth
  - Consider overall investment strategy
- Balance “risk and return”
- Diversification
- Preserve purchasing power
- Investment skill & expertise
  - Required of fiduciary
  - Delegation authorized

### Fiduciary must consider...

- General economic conditions
- Effect of inflation or deflation
- Tax consequences
- Role each investment plays in the portfolio
- Total return from income or capital
- Need for liquidity and regularity of income
- Need for capital preservation or appreciation
Principal & Income Act
- Duty to administer trust “impartially”
- Duty to be “fair and reasonable”
- May make an “equitable adjustment” between income and principal if:
  - Investing for “total return”
  - Distribution based on “income”
  - No longer fair and reasonable to the beneficiaries
- States passed unitrust conversion
  - Deemed reasonable and equitable

Discretionary Distributions
- Distribute income and principal:
  - “Health, education, maintenance, and support” (“HEMS” standard)
  - Reasonable comfort
  - Maintain lifestyle to which beneficiary had become accustomed
  - As trustee determines with full discretion
  - Taking into account other resources available to the beneficiary
- Fiduciary Duty
  - Duty of impartiality
  - Duty to be fair and treat beneficiaries equitably
<table>
<thead>
<tr>
<th>State</th>
<th>Power To Adjust</th>
<th>Unitrust Conversion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>✔</td>
<td>No (safe harbor at 4%)</td>
</tr>
<tr>
<td>New York</td>
<td>✔</td>
<td>4%</td>
</tr>
<tr>
<td>Florida</td>
<td>✔</td>
<td>3–5% or ½ of 7520 rate*</td>
</tr>
<tr>
<td>Delaware</td>
<td>✔</td>
<td>3–5%</td>
</tr>
<tr>
<td>Illinois</td>
<td>No?</td>
<td>4% default; 3–5% if all agree</td>
</tr>
</tbody>
</table>

*Unitrust % for each year is ½ of Jan 7520 rate (min 3%; max 5%)*
Internal Revenue Code

- **Taxable Trusts**
  - Undistributed income paid by trust
  - Distributed income taxed to beneficiary

- **Distributable Net Income (DNI)**
  - Capital gain not included in DNI
  - Capital gain paid by the trust

- **May Elect to Distribute Capital Gain**
  - Investing for “total return”
  - “Reasonable and consistent exercise of discretion”
  - Power to adjust allows annual flexibility
  - Unitrust conversion policy is set and irrevocable unless IRS allows change

New Tax Legislation

- **American Taxpayer Relief Act**
  - Raised top income tax brackets
  - 23.8% capital gain/43.4% ordinary
  - $406,750/$457,600 income (individuals)
  - $12,150 income (taxable trusts)

- **Health Care Act**
  - 3.8% Medicare Surcharge
  - Investment Income
  - $200,000 to $250,000 income (individuals)
  - $12,150 income (taxable trusts)
Taxable trusts are at the highest income tax bracket at $12,150 of taxable income

Trust beneficiaries benefit from “running the brackets”

“Running the Brackets”: $42,954 tax savings $53,247 tax savings

<table>
<thead>
<tr>
<th>STCG/Ordinary Rate</th>
<th>Single</th>
<th>Joint</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>$0-$9,075</td>
<td>$0-$18,150</td>
</tr>
<tr>
<td>15%</td>
<td>$9,076-$36,900</td>
<td>$18,151-$73,800</td>
</tr>
<tr>
<td>25%</td>
<td>$36,901-$89,350</td>
<td>$73,801-$148,850</td>
</tr>
<tr>
<td>28% / 31.8%</td>
<td>$89,351-$186,350</td>
<td>$148,851-$226,850</td>
</tr>
<tr>
<td>33% / 36.8%</td>
<td>$186,351-$405,100</td>
<td>$226,851-$405,100</td>
</tr>
<tr>
<td>35% / 38.8%</td>
<td>$405,100-$406,750</td>
<td>$405,101-$457,600</td>
</tr>
<tr>
<td>39.6% / 43.4%</td>
<td>$406,751+</td>
<td>$457,601+</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LTCG/QD Rate</th>
<th>Single</th>
<th>Joint</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>$0-$36,900</td>
<td>$0-$73,800</td>
</tr>
<tr>
<td>15%</td>
<td>$36,901-$200,000 AGI</td>
<td>$73,801-$250,000 AGI</td>
</tr>
<tr>
<td>18.8%</td>
<td>$200,001 AGI-$406,750</td>
<td>$250,001 AGI-$457,600</td>
</tr>
<tr>
<td>23.8%</td>
<td>$406,751+</td>
<td>$457,601+</td>
</tr>
</tbody>
</table>

State Income Tax

Distributions: Beneficiary Residence
No Distributions: Trust Situs

§ 643(a) Election: Include Capital Gain

"Running the Brackets" implies that by structuring distributions from a trust to beneficiaries, one can strategically take advantage of lower marginal tax rates, potentially resulting in significant tax savings.
Savings Can Be Significant

Growth of $10.0 Million—Year 30*
Median Outcome, Nominal
80/20 Allocation, $ Millions

<table>
<thead>
<tr>
<th>$ Million</th>
<th>High Income Tax State Trust</th>
<th>Single High Income Tax State Beneficiary</th>
<th>Single No Income Tax State Beneficiary</th>
<th>Four High Income Tax State Beneficiaries</th>
<th>Four No Income Tax State Beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>$55.3</td>
<td>$55.3</td>
<td>$58.7</td>
<td>$61.0</td>
<td>$65.4</td>
<td>$70.7</td>
</tr>
</tbody>
</table>

Trust Distributes Fiduciary Accounting Income to Beneficiaries
Max $250K per Beneficiary**

*80/20 modeled as 80% stocks and 20% bonds. Stocks are modeled as 63% US large-cap, 7% US small-/mid-cap, 22.5% developed international and 7.5% emerging markets stocks. Bonds are modeled as intermediate-term municipals. **Assumptions: trust distributes pretax annual income and capital gains up to $250,000 per year (nominal) to each beneficiary; beneficiary invests after-tax distributions in 80/20 portfolio. It further assumes each beneficiary has no outside income or other assets and is not subject to estate tax in the future. Based on Bernstein’s estimates of the range of returns for the applicable capital markets over the periods analyzed. See Notes on Wealth Forecasting System at the end of this presentation for further details. Data do not represent past performance and are not a promise of actual future results or a range of future results.
Best Practices for Trustees

*Trustees are guardians of process, not guarantors of success…*

- **Prudent investor act and fiduciary duty**
  - Does not require investment success
  - Process is more important than investment results

- **Documentation is critical**
  - Clearly set investment, distribution and tax policy
  - Trust investment policy statements are highly recommended

- **Communication**
  - Set expectations with beneficiaries
  - Share rationale for decision
  - Understanding needs and situation of beneficiaries

- **Monitor and adapt**
  - Capital market changes
  - Tax law changes
  - Change in beneficiary needs and situation
Decanting*

“Decanting”: Pouring of a liquid, such as wine, from one vessel to another. In the context of trusts, “decanting” refers to the power a trustee may have to invade the principal of one irrevocable trust (the “first trust”) and transfer that property to another irrevocable trust (the “second trust”). The second trust could be a pre-existing trust or a new trust.

**Background/Theory of Decanting:**

- Many trusts permit distributions to *or for the benefit of* a beneficiary. Arguably, that authority allows a distribution to another trust for the benefit of the beneficiary.

- In addition, a trustee with the absolute power to invade the principal of a trust is similar to the trustee holding a special power of appointment. In general, the holder of a special power of appointment may appoint property in further trust. In the case of decanting, unless the trust instrument provides otherwise, the trustee holds a special power of appointment in favor of the beneficiary or beneficiaries for whom the trust principal may be invaded.

**Purpose:** To provide a trustee with the ability to effectively modify an existing irrevocable trust through a non-judicial approach and in order to meet a family’s changing needs. Decanting is a useful and powerful addition to the tools already existing under many state’s laws for modifying irrevocable trusts (e.g., non-judicial settlement agreements, trust division and merger).

Uses of Decanting - Examples

Correct Drafting Errors or Ambiguities without the necessity to Go to Court

Update/Modify Administrative Provisions
- Trustee or Other Officeholder Provisions
  - Provide for or change provisions regarding resignation, removal and appointment of trustees without court approval
  - Add Directed Trust provisions (add Investment Advisers, Distribution Advisers or Trust Protector provisions)
  - Supplement trustee provisions (e.g., include trustee deadlock resolution procedures)
- Modify Investment Provisions
  - Add Investment powers to engage in particular financial transactions or strategies
  - Vary the investment strategies for different beneficiaries based on their varying needs

Change Trust Situs/Principal Place of Administration and/or Governing Law
- Choose a preferred state’s law (e.g., benefit from one state’s broader trust investment powers)
- Facilitate trust administration
Uses of Decanting – Examples (continued)

- Address Changes in Circumstances
  - Changes in federal and state tax laws
  - Changes in substantive trust laws
  - Unanticipated changes in a beneficiary’s circumstances

- Qualify a trust as a S Corporate shareholder

- Other
Decanting Issues & Considerations

- Each State Law Is Different

- Restrictions
  - Perpetuities Period
  - Be careful not to jeopardize tax savings provisions (e.g., marital deduction, charitable deduction, annual exclusion or GST tax)
  - Be careful not to jeopardize S Corporation shareholder eligibility

- Tax Consequences
  - GST Tax
  - Gift Tax
  - Estate Tax
  - Income Tax
Ethics Issues

- Trap for the Unwary - Who Do You Represent? Grantor vs. Trust vs. Trustee or Other Officeholder vs. Beneficiaries
Important Information

The material herein is not in any way endorsed or approved by J.P. Morgan, or any affiliate thereof. The views set forth herein were the personal views of the author and do not necessarily reflect those of J.P. Morgan, its employees and its affiliates.

Except as specifically provided otherwise, this information has not been created or verified by J.P. Morgan and in no way constitutes J.P. Morgan research or represents a J.P. Morgan position on the topics discussed herein. These materials do not constitute legal advice and the author assumes no responsibility for any reliance on them. All statements, and original sources, should be verified and facts and other issues not addressed herein should be considered by the reader. Nothing contained in this outline is intended to imply a standard of care with respect to an action or omission.

Any tax advice expressed in this outline by J.P. Morgan Chase Bank was not intended to be written to be used, and cannot be used, by any taxpayer to avoid U.S. federal tax penalties. If such advice was written or used to support the promotion or marketing of the matter addressed herein, then each offeree should seek advice from an independent tax advisor.
SAMPLE FORMS
LAST WILL

OF

JOHN DOE

I, JOHN DOE, a resident of Illinois, declare this to be my Will and revoke all my prior Wills and Codicils.

ARTICLE FIRST

My Executor shall pay the expenses of my last illness and funeral, and all other legal obligations of my estate (other than debts secured by a mortgage of real property or by a collateral assignment of the beneficial interest in a land trust), including all estate and inheritance taxes and generation-skipping taxes on direct skips which are assessed by reason of my death, from the principal of the residue of my estate and may pay the costs of administration, including, but not limited to, the costs of safeguarding and delivering bequests, from either the principal of the residue of my estate or the income generated by my estate, provided that no allocation of administration expenses shall be made to income that would require a reduction in the estate tax marital deduction pursuant to section 2056(b)(4) of the Internal Revenue Code of 1986, or successor provisions thereto (the “Code”). Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. My Executor shall make these payments from my estate without apportionment or reimbursement or charging any direct skip property. Despite the preceding, my Executor shall not pay death taxes caused by:

1. Property over which I may have a power of appointment;

2. Property in which I may have a qualifying income interest for life, unless for generation-skipping tax purposes the property has an inclusion ratio of zero and is treated as if the qualified terminable interest property election had not been made;

3. Proceeds of insurance policies on my life which I did not own at my death;

and

4. Property constituting a direct skip for generation-skipping tax purposes which is caused by a disclaimer or which is from a trust not created or appointed by me.

The person holding or receiving any of the property described in Paragraphs 1 through 4, above, shall pay, either directly or to my Executor, the amount, if any, by which the death taxes are increased as a result of the taxation of that property. If two or more properties cause an increase in a tax, the increase shall be allocated among the properties in proportion to their respective taxable values.
1. I give all of my clothing, jewelry, personal effects, art objects, automobiles, household goods and furnishings and all my other articles of personal use or adornment, my frequent flyer miles and my club memberships, to the extent transferable, together with all insurance policies thereon to my wife, JANE DOE (“my wife”), if she survives me, otherwise to my children, in shares of substantially equal value, to be distributed as they shall agree. If they shall fail to agree within four months from the date of my death, the Executor shall sell the property as to which there is no agreement and add the proceeds to my residuary estate. The guardian of or person in loco parentis to any minor child of mine shall represent him in the division of the property, receipt for any property distributable to that child during his minority and shall deliver said property to the child, or the sales proceeds therefrom, upon his attaining the age of eighteen years.

2. I give the sum of One Hundred Thousand Dollars ($100,000) to my sister, JESSICA DOE, if she survives me.

3. All the residue of my estate, expressly excluding any property over which I may have a power of appointment, I give to my wife, if she survives me, or if my wife does not survive me, such property shall be divided into separate shares of equal value, creating one such share for each child of mine who is living on the date of my death, and one share for the then living descendants, collectively, of each deceased child of mine. A share created for the descendants of a deceased child shall be further subdivided into separate shares for such descendants, per stirpes. Each share created for a descendant of mine (including a child of mine) shall be held as a separate trust named for the descendant, as provided in Paragraph 4 below.

4. The following provisions shall apply to a trust named for a descendant of mine:

   A. The Trustee may pay to or use for the benefit of the descendant for whom the trust is named such part or all of the income and principal of the trust as the Trustee deems necessary or advisable for the descendants maintenance, education; health and support. In making discretionary distributions of income and principal to or for the benefit of a descendant, the Trustee shall take into account all other income and assets of the descendant known to the Trustee to be available for such purposes.

   B. Upon the death of the descendant for whom the trust is named, the Trustee shall distribute his trust, as then constituted, to, or in trust for the benefit of, such appointee or appointees (other than the descendant for whom the trust is named, his estate, his creditors or the creditors of his estate), in such manner and such proportions as the descendant for whom the trust is named may appoint in his Will by specific reference to this power.

   C. Notwithstanding the foregoing:

      (i) If any portion of the trust, in the absence of any power of appointment granted under this instrument, would immediately be subject to the
federal generation-skipping tax upon the descendant’s death as a result of a taxable termination, then the descendant may appoint that portion to the creditors of his estate. To the extent that the foregoing general power of appointment is in existence on the descendant’s death, then unless the descendant directs otherwise by Will, the Trustee shall pay to the executor of the descendant’s estate, from the portion of the trust to which the power pertains, the amount, if any, by which the estate and inheritance taxes payable in any jurisdiction by reason of the descendant’s death shall be increased as a result of the inclusion of that portion in the descendant’s estate for tax purposes, as certified in writing by that executor.

(ii) Any trust property not effectively appointed shall, upon the descendant’s death, be distributed to the descendant’s then living descendants, per stirpes, or, if there are none, to the then living descendants, per stirpes, of the descendants nearest lineal ancestor who is a descendant of mine and of whom one or more descendants then are living, or if none, to my then living descendants, 00 stirpes, provided, however, that each such distribution shall not be distributed outright to such descendant but shall instead be held as a separate trust named for such descendant to be held and distributed on the same terms and provisions as the trust held under this Paragraph 4.

ARTICLE THIRD

Upon the death of the last to die of all of my descendants, my wife, and me, any part of my estate or any trusts created hereunder not effectively disposed of by any of the above provisions shall be distributed as follows:

1. Seventy percent (70%) thereof shall be divided equally amongst each then living niece and nephew of mine and each then living niece and nephew of my wife; and

2. The balance thereof, after making the distribution provided in the immediately preceding Paragraph 1, shall be distributed to MY FAVORITE CHARITY, of Chicago, Illinois, for its general charitable purposes.

ARTICLE FOURTH

1. Trust property otherwise distributable under any Article of this Will to a person for whose benefit another trust is then held by the Trustee shall be added to such other trust, and if there is no such trust and the person is under the age of 21 years, then such property shall indefeasibly vest in such person but the Trustee may distribute the property by creating or adding to an existing custodial account under a Uniform Transfers to Minors Act or he may withhold possession of such property until the person attains the age of 21 years, in the meantime, paying to or using for the benefit of such person such part or all of the income and principal thereof as the Trustee deems necessary or advisable for the support, maintenance, education, general welfare and comfortable living of such person.
2. Accrued income not distributed or distributable shall be added to principal from time to time.

3. The Trustee’s discretionary use of income or principal may be based on a beneficiary’s previous standard of living and his other available income known to the Trustee. In making a discretionary payment of income or principal for one or more beneficiaries, the Trustee may exclude any or all of them, and need not make equal payments among them.

4. The Trustee hereunder shall have the following powers and any other powers granted Trustees under Illinois law as in effect on the date of this instrument:

   A. To retain any property received even though not of the land, quality or diversification considered proper for a Trustee.

   B. To manage, sell, contract to sell, grant or exercise options to purchase, convey, exchange, transfer, abandon, improve, repair, insure and otherwise deal with all property, real or personal, in such manner, for such prices and on such terms and conditions as the Trustee shall decide.

   C. To borrow money and to mortgage, pledge or otherwise encumber any part or all of the trust estate.

   D. To buy, sell and trade in securities of any nature, including but not limited to short sales, puts, calls, options, covered or uncovered, on margin or otherwise, and for such purposes to maintain and operate margin accounts with brokers and to pledge any securities held or purchased by the Trustee with such brokers as security for loans and advances made to the Trustee.

   E. To abandon any property, real or personal, which the Trustee deems to be worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of taxes, water, rents, assessments and upkeep of any such property; to permit all such property to be lost by tax sale or other proceedings, or to convey any such property for a nominal consideration or without consideration.

   F. To invest and reinvest in bonds, notes, debentures, mortgages, preferred or common stock, or other property, real or personal, wherever located without being limited by Illinois law or any other statute or rule of law.

   G. To become a partner or a limited partner.

   H. To transfer the sites of the trust property to such other place as the Trustee deems necessary and for this purpose, appoint, remove and reappoint successor Trustees and agents and delegate to them such powers and duties as the Trustee deems appropriate.
I. To hold separate trusts created from any trust hereunder as a single fund for the convenience of administration or investment, divide the income proportionately among them, assign undivided interests in assets to them and make joint investments of their separate funds.

J. To establish from income and credit to principal reasonable reserves for the depreciation of tangible property.

K. To decide, despite rules of law, how and in what proportions any receipts or disbursements shall be credited, charged or apportioned as between principal and income.

L. To employ attorneys, agents and investment advisors, with or without discretionary powers, and to delegate to them such powers as the Trustee deems advisable.

M. To do each and every other act that I could do individually with my own property.

5. Despite any provision to the contrary herein:

A. No power of appointment given to a beneficiary of a trust created hereunder shall be used to change the disposition of any assets (and the investment and reinvestment thereof) received by a trust hereunder as a distribution from an individual retirement management under section 408 or 408A of the Code, a tax-sheltered annuity under section 403 of the Code, any amount held or payable pursuant to a plan (of whatever type) qualified under section 401 of the Code or any other benefit subject to the minimum distribution rules of section 401(a)(9) of the Code (hereafter, a Retirement Plan®) unless such distribution is to an individual who is no older than the oldest living beneficiary of the trust subject to the power of appointment.

B. In the event that any interest in a Retirement Plan is an asset of any trust created hereunder, then notwithstanding any other provision herein to the contrary, each year, beginning with the year of my death, the Trustee shall withdraw from said Retirement Plan the Required Minimum Distribution (ARMD®) (as provided in section 401 of the Code and the Treasury Regulations thereunder) for such year, plus such additional amount or amounts that the Trustee may withdraw from time to time consistent with the terms of the trust. All amounts so withdrawn (net of expenses properly charged thereto) shall be distributed to the then living beneficiary or beneficiaries of such trust, in such proportions as are consistent with the terms of such trust. By this paragraph, I intend that each trust hereunder which is designated as a beneficiary of any Retirement Plan qualify as a Conduit trust® and that the RMDs are calculated using solely the life expectancy of the eldest living beneficiary and not the contingent or remainder beneficiaries. If it shall become necessary at any time to amend the terms of any trust created hereunder to permit the RMDs to be calculated based solely upon the eldest living

Form - Will
beneficiary’s life expectancy, I hereby grant the Trustee the limited power to so amend any trust which is designated as a beneficiary of Retirement Plan.

6. The Rule Against Perpetuities shall not apply to any trust created under this Will or to any trust created by the exercise of a power of appointment granted under this Will (and, accordingly, the Trustee of said trust shall have the power to sell, lease or mortgage property for any period of time beyond the Statutory Rule Against Perpetuities), unless such exercise of a power of appointment hereunder will result in the imposition of a federal estate tax or generation-skipping tax that would not otherwise be imposed on said trust.

7. The powers and duties of the Trustee and all questions of interpretation of this document shall be governed by the laws of the State of Illinois.

8. The interest of a beneficiary in income or corpus shall not be voluntarily or involuntarily assigned, alienated or encumbered, be subject to claims for alimony, separate maintenance, support, creditor claims or claims of any other kind, and shall not be subject to any legal process.

9. If at any time the principal of a trust has a value of less than $50,000.00, the Trustee (other than a beneficiary hereunder while acting as Trustee) may terminate the trust by distributing the trust property proportionately to the persons then entitled to receive or have the benefit of the income from it and if their interests are indefinite... to such persons in equal shares.

10. Third parties dealing with the Trustee need not see to the application of any money or property paid or delivered to the Trustee or inquire into the necessity or expediency of any act of the Trustee. Every act of the Trustee shall be conclusive evidence in favor of every person relying thereon that the trust is in effect and that the act is within the Trustee’s powers.

11. If at any time the Trustee hereunder is holding a trust for the primary benefit of any person or persons for whose primary benefit the Trustee is holding any other trust upon substantially the same terms, the Trustee may, in his discretion, commingle them and administer them as a single trust.

12. I authorize (but do not direct)my Trustee to divide any trust established under this Will at any time, into two separate trusts in order that the federal generation-skipping transfer tax inclusion ratio for each trust shall be either zero or one.

13. A. If the Trustee considers that any distribution from a trust hereunder other than pursuant to a power to withdraw or appoint is a taxable distribution subject to a generation-skipping tax payable by the distributee, the Trustee shall augment the distribution by an amount which the Trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates.

B. If the Trustee considers that any termination of an interest in trust property hereunder is a taxable termination subject to a generation-skipping tax, the Trustee shall pay the
tax from the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

14. Despite any other provision of this Will, if property which has an inclusion ratio of more than zero for generation-skipping tax purposes would otherwise be added to a trust which has an inclusion ratio of zero for such purposes, the Trustee shall decline to make the addition and shall instead administer the property as a separate trust with provisions identical to the exempt trust.

15. Despite any provisions to the contrary herein, no individual Trustee shall participate in the exercise of any discretion as to the distribution of income or principal to or for the benefit of any person he is obligated to support (other than himself) or participate in the apportionment between principal and income of the receipts and disbursements of any trust of which he is a beneficiary, unless such apportionment is in accordance with the Illinois Uniform Principal and Income Act.

16. I recognize that under the Internal Revenue Code and various other statutes Executors and Trustees have obligations and duties which they must discharge by the exercise of judgment, and that this judgment must often be based on incomplete records and information as well as a present determination of future events. Accordingly, it is my explicit direction that neither the Executor, Trustee, nor any of their successors shall be liable for any loss or damage that may be incurred by the estate or by any trust created hereunder, whether as a result of losses in the value of assets purchased, sold or held by the trust, the operation of a business, depreciation in the value thereof, defaults, defalcation, errors in judgment of agents or employees of such business or of any Executor or Trustee, or on account of any other cause, unless such loss or damage shall be caused by the willful default or gross negligence of an acting Executor or Trustee. Neither the Executor nor the Trustee, nor any of their successors acting hereunder, shall be liable or responsible in any manner for the acts or defaults of any prior or other fiduciary. Any successor Trustee may accept, without examination or review, the accounts rendered and the property delivered by or for a predecessor Trustee without ________ any liability or responsibility for prior acts or defaults.

17. I recognize that a fiduciary hereunder has certain tax elections, the exercise of which may vary the relative interests of the beneficiaries in principal, income, income tax basis of assets and in other ways. The fiduciary shall exercise such elections as he deems advisable. He shall not make compensating adjustments between income and principal or among various beneficiaries and he may exercise these elections even if the burden of taxes may be increased. The fiduciary shall not be liable to any person for making any such election.

18. I direct that no Executor or guardian named herein shall be required to give any bond, and if, notwithstanding this direction, bond is required by any law, statute or rule of court, I direct that no surety or other security shall be required on any such bond.

19. I direct that the administration of my estate shall be independent of the supervision of any court.
20. I direct that with respect to an accounting or other proceeding with respect to my estate, service upon any person under a legal disability need not be made when such person=s parent or legal guardian is a party to the proceeding and, in the opinion of my Executor, has substantially the same interest as the person under the disability. The person under the disability shall nevertheless be bound by the results of the proceeding. The same rule shall apply to non-judicial settlements, releases, exonerations and indemnities. If, notwithstanding this direction, it shall be necessary to designate a legal representative or personal fiduciary in any proceeding with respect to my estate. I hereby appoint that person=s parent or legal guardian to act in such capacity.

21. If the Executor shall be unable or unwilling to act as to property located in another jurisdiction, then the Executor shall have the right to nominate an ancillary Executor, to remove such ancillary Executor and to nominate a successor ancillary Executor. Such ancillary Executor shall have the powers granted the Executor to be exercised without court order and at the direction of the Executor.

22. The Executor may file income and gift tax returns and consent to gift splitting with my spouse or my spouse=s executor and pay such share of any tax as the Executor shall determine. The decision of the Executor shall be conclusive and binding on the beneficiaries of my estate. The Executor may take such action even if additional liabilities are incurred.

23. Except as otherwise expressly provided herein to the contrary, any beneficiary hereunder who dies within thirty (30) days following the date of my death shall be deemed to have predeceased me for all purposes of this Will.

24. For all purposes of this Will, one=s children and descendants shall be determined according to applicable law, except to the extent modified as follows:

A. A child adopted before he or she attains eighteen (18) years of age (but not after attaining that age) shall be treated under this Will as a child of his or her adopting parents and a descendant of their ancestors.

B. A biological child shall not be treated as a child or descendant of any biological parent of the child or as a descendant of the ancestors of such biological parent if the child has been surrendered for adoption with the consent of such biological parent and the child=s adoptive parent substitutes for the consenting parent under applicable state law.

C. A biological child born out of wedlock shall not be treated as a child or descendant of his or her biological parent or as a descendant of the ancestors of such biological parent, unless and until acknowledged by such biological parent.

D. Adoptions and marriages that are recognized under this Will shall not affect prior distributions or other interests that have previously vested in possession, but they shall enable a person to receive distributions from remainder or other interests in a trust still in existence.
E. The descendants of a person who is treated as a child or descendant under this Will shall also be treated as descendants of such person’s ancestors. The descendants of a person who is treated as not being a child or descendant under this Will shall also be treated as not being descendants of such person’s ancestors.

25. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

**ARTICLE FIFTH**

1. I appoint my wife, JANE DOE, as Executor of this Will. If my wife shall be unable or unwilling to act, she shall be succeeded as Executor by my sister, JESSICA DOE.

2. I appoint JESSICA DOE and JOHN SMITH, one at a time and in the order named, with each to assume office when his predecessor is unwilling or unable to act, as Trustees of all trusts created hereunder. Notwithstanding the foregoing, each descendant of mine who has attained the age of 25 years may, at anytime or from time to time, designate himself or one or more other persons and entities to act as sole Trustee, a Co-Trustee or successor Trustee of each trust named for such descendant hereunder and of any trust created therefrom (and in doing so remove any then acting Trustee thereof or revoke any previous successor Trustee designation). Each person or entity designated to act as a Trustee hereunder by a descendant of mine in accordance with the provisions of the preceding sentence may be removed from office by said descendant. The designation of, and removal from office of, a Trustee hereunder shall be by instrument in writing signed by the descendant and delivered to the Trustee. If there is more than one designation of Trustee for a trust hereunder, the latest designation in time shall control.

3. The Executor shall have the following powers and any other powers granted by law, all to be exercised without court order:

   A. To retain, sell, convey, mortgage, pledge, improve and lease for any term, all property held in the estate;

   B. To invest and reinvest in bonds, notes, debentures, mortgages, preferred or common stock or other property, real or personal, wherever located without being limited by any statute or rule of law;

   C. To employ agents, counsel or investment advisers, with or without discretionary powers, and to delegate to them such powers as the Executor deems advisable;

   D. To prosecute, compromise or abandon claims in favor of or against the estate;

   E. To lend or borrow money;

Form - Will
F. To exercise any or all ownership rights as to securities held;

G. To distribute any portion of my estate otherwise distributable to a person under 21 years of age to a custodian under a Uniform Transfers to Minors Act or comparable statute of any jurisdiction;

H. To distribute directly to any beneficiary any portion of my estate which would, when delivered to the Trustee, be immediately distributable to such beneficiary;

I. To exercise any or all of the powers granted herein to the Trustee; and

J. To exercise all rights of disclaimer of which I would be entitled were I living, and my Executor shall be entitled to exercise such rights without leave or approval of any court, regardless of how such disclaimer affects the distribution of the disclaimed property.

4. If my wife does not survive me, or dies after my death without providing for the custody of any minor child of mine, I nominate my wife’s brother JOHN SMITH, and his wife, MARY SMITH, as guardian of the person of such minor child of mine. If JOHN and MARY SMITH are both unable or unwilling to act as guardians, then I appoint my sister, JESSICA DOE, as guardian.

I HAVE SIGNED this, my Will, this day of __________, 2014.

..............................................................................................................................................(Seal)

JOHN DOE
The foregoing instrument, consisting of eighteen (18) typewritten pages (this and the next page included), each bearing on its margin the initials of JOHN DOE, was, in our presence at __________, Illinois; this ___ day of __________, 2014, by the said JOHN DOE, __________, sealed, published and declared to be his Will, and we, at his request and in his presence and in the presence of each other, believing said Testator to be of sound mind and memory, and to have acted freely and voluntarily, have hereto subscribed our names as witnesses,

Residing

Residing at

Residing at

Form - Will
AFFIDAVIT

STATE OF ILLINOIS )
COUNTY OF __________ )

We, the undersigned, being the testator and the witnesses, respectively, whose names are signed to the foregoing instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator, in the presence of the witnesses, signed the instrument as his last will and that he signed willingly and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness and that to the best of his or her knowledge the testator was at that time of legal age, of sound mind and under no constraint or undue influence.

____________________________________
JOHN DOE, TESTATOR

____________________________________
WITNESS

____________________________________
WITNESS

____________________________________
WITNESS

Signed and sworn to before me by JOHN DOE the Testator, and, ___________ and, ___________ and ___________, the witnesses, this _____ day of __________, 2014.

Notary Public: __________________________

My commission expires: ___________________
[ENGAGEMENT LETTER]

[Date]

VIA E-MAIL

[Name]
[Address]
[City, State Zip]

Re: Estate Planning for ______________________

Dear [Clients’ Names]:

I am honored that you are considering having me work on your estate planning matters. I believe that I can only be effective, though, if I have your full confidence. Therefore, I seek to make the basis for my legal fees perfectly clear at the outset of our relationship. Accordingly, please review this fee proposal and sign the agreement if it meets with your approval. Your signature below indicates your agreement with the terms of this engagement.

NATURE OF REPRESENTATION

This letter confirms that I will draft Wills, Health Care Proxies, Living Wills, Durable Powers of Attorney, and Burial Designations for both of you. I look forward to assisting you in these matters. Please understand that my representation will be limited to the above-mentioned matters. Of course, I would be delighted to assist you with other estate planning related matters as well, if the need arises. Attending to any additional matters, however, may require a separate fee agreement.

FEES AND COSTS

Generally, my fees for legal services generally are based on the time spent working on a particular matter. Time is recorded and charged based on 1/10th hour increments. Presently, my hourly rate is $[ ]. In addition to fees for legal services rendered, I will bill for reasonable disbursements incurred from time to time including postage costs, photocopying charges, telephone tolls, the costs of using computerized legal research services, court filing fees, messenger delivery fees, transportation charges and other reasonable and necessary out-of-pocket expenses, in accordance with customary practices. I will bill you quarterly, or, if
you wish, more frequently as our work progresses. Payment of invoices is due within 10 (ten) days of receipt. Of course, if you have any questions about any invoice, please do not hesitate to let me know. Upon request, I will be happy to provide additional information.

**Retainer**

As I have mentioned, before rendering any services in this matter I require a retainer in the amount of $[ ] ($[ ] Thousand Dollars). I will keep this retainer as a positive balance and as a credit against the final bill for costs and fees in this matter. In the event that payment of your invoice is not received on the due date and a written inquiry regarding your invoice has not been received, all or part of the retainer may be applied toward payment of your invoice. Should this become necessary, you will need to provide our office with sufficient funds to replenish the retainer and bring its balance back to $[ ]. Any amount of the retainer remaining after crediting the same toward the final bill will be promptly reimbursed to you. Please enclose your retainer when you return this executed letter.

**Additional Terms**

In addition, although it is customary for spouses to employ the same trusts and estates lawyer to assist them in their estate planning, the Rules of Professional Conduct limit my ability to represent multiple clients in certain situations. For instance, I may not represent multiple clients who have conflicting interests. The converse, however, is that I may represent multiple clients who do not have conflicting interests. I must, however, advise you of any reasonably foreseeable adverse effects that may arise in my representation of both of you. In addition, I must obtain the consent of both of you to such representation.

Because you two do not seem to have conflicting interests at this time, I may represent both of you subject to your consent. Please be aware, however, of the following adverse effects from my joint representation of you:

1. Since I will be representing both of you, each of you will be my client. As a result, matters that one of you might discuss with me might not be protected by the attorney/client privilege from disclosure to the other of you. Therefore, for clarity’s sake, I will not agree with either of you to withhold information from the other. Of course, anything either of you discuss with me is privileged from disclosure to third parties.

2. If the two of you have a difference of opinion concerning your proposed estate planning activities, I will thoroughly point out and explain the pros and cons of such differing opinions. I will not, however, advocate one of your positions over the other.

3. Although I doubt that it will happen, if conflicts do arise between the two of you of such nature that is impossible in my judgment to perform my obligations to each of you in accordance with this letter, it would become necessary for me to withdraw as your joint attorney and to advise one or both of you to obtain independent counsel.
If this letter satisfactorily sets forth the understanding of my joint representation of both of you, I would appreciate each of you signing this letter and returning it to me along with the retainer check.

I sincerely appreciate the opportunity to represent you and I look forward to a pleasant and successful relationship.

With best regards.

Very truly yours,

[Attorney Name]

Agreed to and accepted by:

_______________________ Dated: April __, 2014

[Name Spouse 1]

_______________________ Dated: April __, 2014

[Name Spouse 2]
[WITHDRAWAL LETTER]

[WASHINGTON LETTER]

[DATE]

VIA E-MAIL

[Name]
[Address]
[City, State Zip]

Re: Withdrawal of Representation

Dear [Clients’ Names]:

We were saddened the news of your recent divorce and know that this is a difficult and stressful time for both of you. It is therefore with great regret that we are compelled to withdraw from representing you in your estate planning matters.

As you know, our law firm was engaged by both of you, as spouses a very common type of joint legal representation in the estate planning area of law. Since our representation was joint, our duty of loyalty to our client extends to both of you individually.

Under certain facts and circumstances the ethical rules may require the attorney to maintain certain duties and loyalties even after a representation is terminated. Thus, our duties to both of you as former clients continue in some respects even after termination of representation. This makes it impossible to continue to adequately represent either or both of you as your attorneys and therefore compels us to withdraw from our representation.

Following an important life event, such as a divorce, it is almost always prudent to review existing legal documents. We recommend that newly divorced clients engage legal counsel to review your planning documents in light of your new non-marital status. *It is very important for you to review your estate planning documents under your current non-marital status and, if necessary, to revise those documents.*

Since our law firm has a former client relationship with each of you, and there are potential conflicts of interest, we would suggest that each consider retaining your own independent legal counsel. If you would like, our office can provide you with names of several estate planning attorneys who you may consider.
We are happy to cooperate with your new attorneys with regard to your estate plan. Please notify our office if you would like your original estate planning documents returned to you or forwarded directly to your new attorney.

It has been our pleasure to serve as your attorneys and we deeply regret the necessity of our withdrawal. We wish the very best to you and your family.

Very truly yours,

________________________________
[Attorney Name]
[MARRIED CLIENT QUESTIONNAIRE]

[LAW FIRM LETTERHEAD]

MARRIED CLIENT INFORMATION

CLIENT NAMES: _________________________________________________

CLIENT NUMBER: ______________________________________________

MATTER: ______________________________________________________

MATTER NUMBER: _____________________________________________

Referred By: __________________________________________________

Date: _________________________________________________________

Originating Attorney: __________________________________________

1. First Spouse’s Full Name: _____________________________________

   D.O.B ____________________________

   S.S.# _____________________________

   Place of Birth: _____________________

   Citizenship: _______________________

   Primary E-Mail: ________________ [confidential docs: YES/NO]

   Cell Phone #: _____________________

   Any Prior Marriages: YES/NO. If yes, year married: ______; year terminated: ______

   Please describe any continuing obligations under a divorce decree or settlement.

2. Second Spouse’s Full Name: ________________________________

   D.O.B ____________________________

   S.S.# _____________________________

   Place of Birth: _____________________

   Citizenship: _______________________

   Primary E-Mail: ________________ [confidential docs: YES/NO]

   Cell Phone #: _____________________

   Any Prior Marriages: YES/NO. If yes, year married: ______; year terminated: ______

   Please describe any continuing obligations under a divorce decree or settlement.
3. Primary Home Address: ______________________________________________________

4. Home Phone #: ____________________________________________________________

5. Relationship Status: Married: YES/NO; Domestic Partners: YES/NO; Civil Union: YES/NO
   Year of Ceremony: __________________________
   State of Ceremony: __________________________

6. Date Residency Established in State: __________________

7. Do you have existing Wills or Trusts: YES/NO

8. Client’s Other Professional Advisors:
   C.P.A.: __________________________
   Broker(s): __________________________
   Insurance: __________________________

9. Marital Children: full names and ages and TOWN AND STATE, (if not living at home)

<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY, STATE &amp; PHONE#</th>
<th>DOB</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

10. Children from previous marriages or non-marital children: full names and ages and TOWN AND STATE, (if not living at home)

<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY, STATE &amp; PHONE#</th>
<th>DOB</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
11. Grandchildren: full names and ages:

<table>
<thead>
<tr>
<th>NAME</th>
<th>PARENT</th>
<th>DOB</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12. Other living next of kin (parents, brothers and sisters, nieces or nephews of deceased brothers and sisters): names ages, city, state, relationship, and country of citizenship:

<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY/STATE</th>
<th>RELATIONSHIP</th>
<th>DOB</th>
<th>CITIZENSHIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

13. Other Pertinent Family Information (i.e., any child conceived by Artificial Reproductive Technology; if any child is adopted, is the child adopted by both spouses; any step-children; any “family” members who are not legally related; any family member suffering from a disability or incapacity, etc.)

________________________________________________________________________

________________________________________________________________________

Form - Estate Planning Questionnaire for Married Client
14. Safe Deposit Boxes:

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>INSTITUTION</th>
<th>SIGNATORIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Box 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Box 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Box 3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

15. Do you and your spouse have any marital agreements (e.g. prenuptial agreements)?
   Yes/No. If so, please provide a copy.

16. If you own your primary residence, how is it titled?
   Is there a mortgage or lien on your primary residence?  Yes/No

17. Have you ever lived in a community property state?  Yes/No

18. Have you ever filed gift tax returns?  Yes/No

19. Do you have long term health care insurance?  Yes/No
   Do you have life insurance (including employer provided)?  Yes/No
   Do you have “IRA”s, “401K”s or any other beneficiary designated accounts?  Yes/No
   *Please provide copies of all Beneficiary Designation Forms related to the above*

20. Other Asset Information (ie., vacation homes (location and how titled), other real property owned (located and how titled), bank accounts, investments accounts, retirement accounts, powers of appointments, royalties, intellectual property, social, media accounts, and any other special assets):

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

Form - Estate Planning Questionnaire for Married Client
21. Basic Fiduciary Provisions:

**PERSONAL REPRESENTATIVES**

<table>
<thead>
<tr>
<th>NAME</th>
<th>RELATIONSHIP</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIRST SPOUSE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[SECOND SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CORPORATE PR Provision?</td>
<td>□ Yes □ No</td>
<td></td>
</tr>
</tbody>
</table>

**TRUSTS**

<table>
<thead>
<tr>
<th>NAME</th>
<th>RELATIONSHIP</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIRST SPOUSE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[SECOND SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child Trust or Own Trust?</td>
<td>□ Yes □ No</td>
<td></td>
</tr>
<tr>
<td>Corporate PR Provision?</td>
<td>□ Yes □ No</td>
<td></td>
</tr>
</tbody>
</table>
**GUARDIANS**

<table>
<thead>
<tr>
<th>NAME</th>
<th>RELATIONSHIP</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**HEALTHCARE SURROGATES**

<table>
<thead>
<tr>
<th>NAME</th>
<th>RELATIONSHIP</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIRST SPOUSE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[SECOND SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Discuss with clients about Living Wills and life sustaining measures

**POWER OF ATTORNEY**

<table>
<thead>
<tr>
<th>NAME</th>
<th>RELATIONSHIP</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIRST SPOUSE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[SECOND SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. [SURVIVING SPOUSE]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ADD EXPANDED GUARDIAN PROVISION?**

- Yes □  No □  House □

- Yes □  No □  Gifting □  Estate Planning □
22. Specific Bequests of Items or Amounts:

<table>
<thead>
<tr>
<th>BENEFICIARY</th>
<th>AMOUNT/DESCRIPTION</th>
<th>CONDITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

23. Charitable Bequests:

<table>
<thead>
<tr>
<th>BENEFICIARY</th>
<th>SHARE</th>
<th>CONDITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

24. Residuary Beneficiaries:

<table>
<thead>
<tr>
<th>BENEFICIARY</th>
<th>AMOUNT/DESCRIPTION</th>
<th>CONDITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

25. Other Provisions:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Form - Estate Planning Questionnaire for Married Client
ILLINOIS POWER OF ATTORNEY

Statutory Short Form Power of Attorney for Property
Eff. 7/1/11

Text of Section after amendment by P.A. 96-1195) Sec. 3-3. Statutory short form power of attorney for property.

(a) The form prescribed in this Section may be known as “statutory property power” and may be used to grant an agent powers with respect to property and financial matters. The “statutory property power” consists of the following: (1) Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Property; (2) Illinois Statutory Short Form Power of Attorney for Property; and (3) Notice to Agent. When a power of attorney in substantially the form prescribed in this Section is used, including all 3 items above, with item (1), the Notice to Individual Signing the Illinois Statutory Short Form Power of Attorney for Property, on a separate sheet (coversheet) in 14-point type and the notarized form of acknowledgment at the end, it shall have the meaning and effect prescribed in this Act.

(b) A power of attorney shall also be deemed to be in substantially the same format as the statutory form if the explanatory language throughout the form (the language following the designation “NOTE:”) is distinguished in some way from the legal paragraphs in the form, such as the use of boldface or other difference in typeface and font or point size, even if the “Notice” paragraphs at the beginning are not on a separate sheet of paper or are not in 14-point type, or if the principal’s initials do not appear in the acknowledgement at the end of the “Notice” paragraphs.

The validity of a power of attorney as meeting the requirements of a statutory property power shall not be affected by the fact that one or more of the categories of optional powers listed in the form are struck out or the form includes specific limitations on or additions to the agent’s powers, as permitted by the form. Nothing in this Article shall invalidate or bar use by the principal of any other or different form of power of attorney for property. Non-statutory property powers (i) must be executed by the principal, (ii) must designate the agent and the agent’s powers, (iii) must be signed by at least one witness to the principal’s signature, and (iv) must indicate that the principal has acknowledged his or her signature before a notary public. However, non-statutory property powers need not conform in any other respect to the statutory property power.

(c) The Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Property shall be substantially as follows:

“NOTICE OF THE INDIVIDUAL SIGNING THE ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR PROPERTY.
PLEASE READ THIS NOTICE CAREFULLY. The form that you will be signing is a legal document. It is governed by the Illinois Power of Attorney Act. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

The purpose of this Power of Attorney is to give your designated “agent” broad powers to handle your financial affairs, which may include the power to pledge, sell, or dispose of any of you, real or personal property, even without your consent or any advance notice to you. When using the Statutory Short Form, you may name successor agents, but you may not name co-agents.

This form does not impose a duty upon your agent to handle your financial affairs, so it is important that you select an agent who will agree to do this for you. It is also important to select an agent wholly you trust, since you are giving that agent control over your financial assets and property.

Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the directions in this form. Your agent must keep a record of all receipts, disbursements, and significant actions taken as your agent.

Unless you specifically limit the period of time that this Power of Attorney will be in effect, your agent may exercise the powers given to him or her throughout your lifetime, both before and after you become incapacitated. A court, however, can take away the powers of your agent if it finds that the agent is not acting properly. You may also revoke this Power of Attorney if you wish.

This Power of Attorney does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.

The powers you give your agent are explained more fully in Section 3-4 of the Illinois Power of Attorney Act. This form is a part of that law. The “NOTE” paragraphs throughout this form are instructions.

You are not required to sign this Power of Attorney, but it will not take effect without your signature. You should not sign this Power of Attorney if you do not understand everything in it, and what your agent will be able to do if you do sign it.

Please place your initials on the following line indicating that you have read this Notice:

______________________________________________________________
Principal’s initials

(d) The Illinois Statutory Short Form Power of Attorney for Property shall be substantially as follows:
“ILLINOIS STATUTORY _________ FORM
POWER OF ATTORNEY FOR PROPERTY

1. I, ______________________, (insert name and address of principal) hereby revoke all prior powers of attorney for property executed by me and appoint:

(insert name and address of agent)

(NOTE: You may not name co-agents using this form.)
as my attorney-in-fact (my “agent”) to act for me and in my name (in any way I could act in person) with respect to the following powers, as defined in Section 3-4 of the “Statutory Short Form Power of Attorney for Property Law” (including all amendments), but subject to any limitations on or additions to the specified powers inserted in paragraph 2 or 3 below:

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category you must draw a line through the title of that category.)

(a) Real estate transactions.
(b) Financial institution transactions.
(c) Stock and bond transactions.
(d) Tangible personal property transactions.
(e) Safe deposit box transactions.
(f) Insurance and annuity transactions.
(g) Retirement plan transactions.
(h) Social Security, employment and military service benefits.
(i) Tax matters.
(j) Claims and litigation.
(k) Commodity and option transactions.
(l) Business operations.
(m) Borrowing transactions.
(n) Estate transactions.
(o) All other property transactions.

(NOTE: Limitations on and additions to the agent’s powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent.)

3. In addition to the powers granted above, I grant my agent the following powers:

Form - Illinois Power of Attorney for Property
NOTE: Here you may add any other delegable powers including, without limitation, power to make gifts, exercise powers of appointment, name or change beneficiaries or joint tenants or revoke or amend any trust specifically referred to below.

NOTE: Your agent will have authority to employ other persons as necessary to enable the agent to properly exercise the powers granted in this form, but your agent will have to make all discretionary decisions. If you want to give your agent the right to delegate discretionary decision-making powers to others, you should keep paragraph 4, otherwise it should be struck out.

4. My agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

NOTE: Your agent will be entitled to reimbursement for all reasonable expenses incurred in acting under this power of attorney. Strike out paragraph 5 if you do not want your agent to also be entitled to reasonable compensation for services as agent.

5. My agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

NOTE: This power of attorney may be amended or revoked by you at any time and in any manner. Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time this power is signed and will continue until your death, unless a limitation on the beginning date or duration is made by initialing and completing one or both of paragraphs 6 and 7.

6. ( ) This power of attorney shall become effective on

(Note: Insert a future date or event during your lifetime, such as a court determination of your disability or a written determination by your physician that you are incapacitated, when you want this power to first take effect.)

7. ( ) This power of attorney shall terminate on

(Note: Insert a future date or event, such as a court determination that you are not under a legal disability or a written determination by your physician that you are not incapacitated, if you want this power to terminate prior to your death.)

(Note: If you wish to name one or more successor agents, insert the name and address of each successor agent in paragraph 0.)
8. If any agent named by me shall die, become incompetent, resign or refuse to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such agent:

For purposes of this paragraph 8, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated incompetent or disabled person or the person is unable to give prompt and intelligent consideration to business matters, as certified by a licensed physician.

(NOTE: If you wish to, you may name your agent as guardian of your estate if a court decides that one should be appointed. To do this, retain paragraph 9, and the court will appoint your agent if the court finds that this appointment will serve your best interests and welfare. Strike out paragraph 9 if you do not want your agent to act as guardian.)

9. If a guardian of my estate (my property) is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

10. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

(NOTE: This form does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.)

11. The Notice to Agent is incorporated by reference and included as part of this form.

Dated: ______________________

Signed ______________________

(principal)

(NOTE: This power of attorney will not be effective unless it is signed by at least one witness and your signature is notarized, using the form below. The notary may not also sign as a witness.)

The undersigned witness certifies that __________________, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant, or any spouse of such parent, sibling, or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage, or adoption; or (d) an agent or successor agent under the foregoing power of attorney.
Dated: __________________________

________________________________
Witness

(NOTE: Illinois requires only one witness, but other jurisdictions may require more than one witness. If you wish to have a second witness, have him or her certify and sign here:)

(Second witness) The undersigned witness certifies that ______________________, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant, or any spouse of such parent, sibling, or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage, or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

Dated: __________________________

________________________________
Witness

STATE OF ____________
SS.
COUNTY OF ____________

The undersigned, a notary public in and for the above county and state, certifies that ______________________, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the witness(es) ______________________ (and ______________________) in person and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth (, and certified to the correctness of the signature(s) of the agent(s)).

Dated: __________________________

________________________________
Notary Public

My commission expires

(NOTE: You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)
Specimen signatures of agent (and successors) I certify that the signatures of my agent (and successors) are genuine.

______________________________  ________________________________
(agent)  (principal)

______________________________  ________________________________
(successor agent)  (principal)

______________________________  ________________________________
(successor agent)  (principal)

(Note: The name, address, and phone number of the person preparing this form or who assisted the principal in completing this form should be inserted below.)

Name: __________________________________
Address: __________________________________
                    __________________________________
Phone: ____________________________________

(e) Notice to Agent, The following form may be known as “Notice to Agent” and shall be supplied to an agent appointed under a power of attorney for property.

**NOTICE TO AGENT**

When you accept the authority granted under this power of attorney a special legal relationship, known as agency, is created between you and the principal. Agency imposes upon you duties that continue until you resign or the power of attorney is terminated or revoked.

As agent you must:

1. do what you know the principal reasonably expects you to do with the principal’s property;

2. act in good faith for the best interest of the principal, using due care, competence, and diligence;

3. keep a complete and detailed record of all receipts, disbursements, and significant actions conducted for the principal;

4. attempt to preserve the principal’s estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal’s best interest; and
5. cooperate with a person who has authority to make health care decisions for the principal to carry out the principal’s reasonable expectations to the extent actually in the principal’s best interest. As agent you must not do any of the following:

   (i) act so as to create a conflict of interest that is inconsistent with the other principles in this Notice to Agent;

   (ii) do any act beyond the authority granted in this power of attorney;

   (iii) commingle the principal’s funds with your funds;

   (iv) borrow funds or other property from the principal, unless otherwise authorized;

   (v) continue acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney, such as the death of the principal, your legal separation from the principal, or the dissolution of your marriage to the principal.

If you have special skills or expertise, you must use those special skills and expertise when acting for the principal. You must disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name “as Agent” in the following manner:

“(Principal’s Name) by (Your Name) as Agent “

The meaning of the powers granted to you is contained in Section 3-4 of the Illinois Power of Attorney Act, which is incorporated by reference into the body of the power of attorney for property document.

If you violate your duties as agent or act outside the authority granted to you, you may be liable for any damages, including attorney’s fees and costs, caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice from an attorney.”

(f) The requirement of the signature of a witness in addition to the principal and the notary, imposed by Public Act 91-790, applies only to instruments executed on or after June 9, 2000 (the effective date of that Public Act).

(Note: This amendatory Act of the 96th General Assembly deletes provisions that referred to the one required witness as an “additional witness”, and it also provides for the signature of an optional “second witness”.)

(Source: P.A. 96-1195, eff. 7-1-11.)
ILLINOIS
DESIGNATION OF HEALTH
CARE SURROGATE

Statutory Short Form Power of Attorney for Health Care
Eff. 1/1/15

(Text of Section after amendment by P.A. 96-1195, PA 97-148) Sec. 4.-10. Statutory short form power of attorney for health care.

(a) The form prescribed in this Section (sometimes also referred to in this Act as the “statutory health care power”) may be used to grant an agent powers with respect to the principal’s own health care; but the statutory health care power is not intended to be exclusive nor to cover delegation of a parent’s power to control the health care of a minor child, and no provision of this Article shall be construed to invalidate or bar use by the principal of any other or different form of power of attorney for health care. Nonstatutory health care powers must be executed by the principal, designate the agent and the agent’s powers, and comply with Section 4-5 of this Article, but they need not be witnessed or conform in any other respect to the statutory health care power. When a power of attorney in substantially the form prescribed in this Section is used, including the “Notice to the Individual Signing the Illinois Statutory Short Form Power of Attorney for Health Care” (or “Notice” paragraphs) at the beginning of the form on a separate sheet in 14-point type, it shall have the meaning and effect prescribed in this Act. A power of attorney for health care shall be deemed to be in substantially the same format as the statutory form if the explanatory language throughout the form (the language following the designation “Note:”) is distinguished in some way from the legal paragraphs in the form, such as the use of boldface or other difference in typeface and font or point size, even if the “Notice” paragraphs at the beginning are not on a separate sheet of paper or are not in 14-point type, or if the principal’s initials do not appear in the acknowledgement at the end of the “Notice” paragraphs. The statutory health care power may be included in or combined with any other form of power of attorney governing property or other matters.

(b) The Illinois Statutory Short Form Power of Attorney for Health Care shall be substantially as follows:

NOTICE TO THE INDIVIDUAL SIGNING THE POWER OF ATTORNEY FOR HEALTH CARE

No one can predict when a serious illness or accident might occur. When it does, you may need someone else to speak or make health care decisions for you. If you plan now, you can increase the chances that the medical treatment you get will be the treatment you want.

In Illinois, you can choose someone to be your “health care agent”. Your agent is the person you trust to make health care decisions for you if you are unable or do not want to make them yourself. These decisions should be based on your personal values and wishes.

It is important to put your choice of agent in writing. The written form is often called an “advance directive”. You may use this form or another form, as long as it meets the legal requirements of Illinois. There are many written and on-line resources to guide you and your

Form - Illinois Power of Attorney for Health Care
loved ones in having a conversation about these issues. You may find it helpful to look at these resources while thinking about and discussing your advance directive.

A. WHAT ARE THE THINGS I WANT MY HEALTH CARE AGENT TO KNOW?

The selection of your agent should be considered carefully, as your agent will have the ultimate decision making authority once this document goes into effect, in most instances after you are no longer able to make your own decisions. While the goal is for your agent to make decisions in keeping with your preferences and in the majority of circumstances that is what happens, please know that the law does allow your agent to make decisions to direct or refuse health care interventions or withdraw treatment. Your agent will need to think about conversations you have had, your personality, and how you handled important health care issues in the past. Therefore, it is important to talk with your agent and your family about such things as:

(i) What is most important to you in your life?

(ii) How important is it to you to avoid pain and suffering?

(iii) If you had to choose, is it more important to you to live as long as possible, or to avoid prolonged suffering or disability?

(iv) Would you rather be at home or in a hospital for the last days or weeks of your life?

(v) Do you have religious, spiritual, or cultural beliefs that you want your agent and others to consider?

(vi) Do you wish to make a significant contribution to medical science after your death through organ or whole body donation?

(vii) Do you have an existing advanced directive, such as a living will, that contains your specific wishes about health care that is only delaying your death? If you have another advance directive, make sure to discuss with your agent the directive and the treatment decisions contained within that outline your preferences. Make sure that your agent agrees to honor the wishes expressed in your advance directive.

B. WHAT KIND OF DECISIONS CAN MY AGENT MAKE?

If there is ever a period of time when your physician determines that you cannot make your own health care decisions, or if you do not want to make your own decisions, some of the decisions your agent could make are to:

(i) talk with physicians and other health care providers about your condition.

(ii) see medical records and approve who else can see them.

(iii) give permission for medical tests, medicines, surgery, or other treatments.
(iv) choose where you receive care and which physicians and others provide it.

(v) decide to accept, withdraw, or decline treatments designed to keep you alive if you are near death or not likely to recover. You may choose to include guidelines and/or restrictions to your agent’s authority.

(vi) agree or decline to donate your organs or your whole body if you have not already made this decision yourself. This could include donation for transplant, research, and/or education. You should let your agent know whether you are registered as a donor in the First Person Consent registry maintained by the Illinois Secretary of State or whether you have agreed to donate your whole body for medical research and/or education.

(vii) decide what to do with your remains after you have died, if you have not already made plans.

(viii) talk with your other loved ones to help come to a decision (but your designated agent will have the final say over your other loved ones).

Your agent is not automatically responsible for your health care expenses.

C. WHOM SHOULD I CHOOSE TO BE MY HEALTH CARE AGENT?

You can pick a family member, but you do not have to. Your agent will have the responsibility to make medical treatment decisions, even if other people close to you might urge a different decision. The selection of your agent should be done carefully, as he or she will have ultimate decision-making authority for your treatment decisions once you are no longer able to voice your preferences. Choose a family member, friend, or other person who:

(i) is at least 18 years old;

(ii) knows you well;

(iii) you trust to do what is best for you and is willing to carry out your wishes, even if he or she may not agree with your wishes;

(iv) would be comfortable talking with and questioning your physicians and other health care providers;

(v) would not be too upset to carry out your wishes if you became very sick; and

(vi) can be there for you when you need it and is willing to accept this important role.
D. WHAT IF MY AGENT IS NOT AVAILABLE OR IS UNWILLING TO MAKE DECISIONS FOR ME?

If the person who is your first choice is unable to carry out this role, then the second agent you chose will make the decisions; if your second agent is not available, then the third agent you chose will make the decisions. The second and third agents are called your successor agents and they function as back-up agents to your first choice agent and may act only one at a time and in the order you list them.

E. WHAT WILL HAPPEN IF I DO NOT CHOOSE A HEALTH CARE AGENT?

If you become unable to make your own health care decisions and have not named an agent in writing, your physician and other health care providers will ask a family member, friend, or guardian to make decisions for you. In Illinois, a law directs which of these individuals will be consulted. In that law, each of these individuals is called a “surrogate”.

There are reasons why you may want to name an agent rather than rely on a surrogate:

(i) The person or people listed by this law may not be who you would want to make decisions for you.

(ii) Some family members or friends might not be able or willing to make decisions as you would want them to.

(iii) Family members and friends may disagree with one another about the best decisions.

(iv) Under some circumstances, a surrogate may not be able to make the same kinds of decisions that an agent can make.

F. WHAT IF THERE IS NO ONE AVAILABLE WHOM I TRUST TO BE MY AGENT?

In this situation, it is especially important to talk to your physician and other health care providers and create written guidance about what you want or do not want, in case you are ever critically ill and cannot express your own wishes. You can complete a living will. You can also write your wishes down and/or discuss them with your physician or other health care provider and ask him or her to write it down in your chart. You might also want to use written or on-line resources to guide you through this process.

G. WHAT DO I DO WITH THIS FORM ONCE I COMPLETE IT?

Follow these instructions after you have completed the form:

(i) Sign the form in front of a witness. See the form for a list of who can and cannot witness it.

(ii) Ask the witness to sign it, too.

(iii) There is no need to have the form notarized.
(iv) Give a copy to your agent and to each of your successor agents.
(v) Give another copy to your physician.
(vi) Take a copy with you when you go to the hospital.
(vii) Show it to your family and friends and others who care for you.

H. WHAT IF I CHANGE MY MIND?

You may change your mind at any time. If you do, tell someone who is at least 18 years old that you have changed your mind, and/or destroy your document and any copies. If you wish, fill out a new form and make sure everyone you gave the old form to has a copy of the new one, including, but not limited to, your agents and your physicians.

I. WHAT IF I DO NOT WANT TO USE THIS FORM?

In the event you do not want to use the Illinois statutory form provided here, any document you complete must be executed by you, designate an agent who is over 18 years of age and not prohibited from serving as your agent, and state the agent’s powers, but it need not be witnessed or conform in any other respect to the statutory health care power.

If you have questions about the use of any form, you may want to consult your physician, other health care provider, and/or an attorney.
MY POWER OF ATTORNEY FOR HEALTH CARE

THIS POWER OF ATTORNEY REVOKES ALL PREVIOUS POWERS OF ATTORNEY FOR HEALTH CARE. (You must sign this form and a witness must also sign it before it is valid)

My name (Print your full name): ________________________________________________

My address: __________________________________________________________________

1. I WANT THE FOLLOWING PERSON TO BE MY HEALTH CARE AGENT (an agent is your personal representative under state and federal law and regulations including, without limitation, the Health Insurance Portability and Accountability Act of 1996):

(Agent name) __________________________________________________________________

(Agent address) __________________________________________________________________

(Agent phone number): __________________________________________________________________

2. MY AGENT CAN MAKE HEALTH CARE DECISIONS FOR ME, INCLUDING:

(i) Deciding to accept, withdraw or decline treatment for any physical or mental condition of mine, including life-and-death decisions.

(ii) Agreeing to admit me to or discharge me from any hospital, home, or other institution, including a mental health facility.

(iii) Having complete access to my medical and mental health records, and sharing them with others as needed, including after I die.

(iv) Carrying out the plans I have already made, or, if I have not done so, making decisions about my body or remains, including organ, tissue or whole body donation, autopsy, cremation, and burial.

The above grant of power is intended to be as broad as possible so that my agent will have the authority to make any decision I could make to obtain or terminate any type of health care, including withdrawal of nutrition and hydration and other life-sustaining measures.

3. I AUTHORIZE MY AGENT TO (please check any one box):

   ___ Make decisions for me only when I cannot make them for myself. The physician(s) taking care of me will determine when I lack this ability.

   (If no box is checked, then the box above shall be implemented.) OR

   ___ Make decisions for me starting now and continuing after I am no longer able to make them for myself. While I am still able to make my own decisions, I can still do so if I want to.
The subject of life-sustaining treatment is of particular importance. Life-sustaining treatments may include tube feedings or fluids through a tube, breathing machines, and CPR. In general, in making decisions concerning life-sustaining treatment, your agent is instructed to consider the relief of suffering, the quality as well as the possible extension of your life, and your previously expressed wishes. Your agent will weigh the burdens versus benefits of proposed treatments in making decisions on your behalf.

Additional statements concerning the withholding or removal of life-sustaining treatment are described below. These can serve as a guide for your agent when making decisions for you. Ask your physician or health care provider if you have any questions about these statements.

4. SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR WISHES (optional):

   ___ The quality of my life is more important than the length of my life. If my attending physician believes, in accordance with reasonable medical standards, that I have lost and will not recover my ability to think, communicate with my family and friends, and/or experience my surroundings, I do not want treatments to prolong my life or delay my death, but I do want treatment or care to make me comfortable and to relieve me of pain.

   ___ Staying alive is more important to me, no matter how sick I am, how much I am suffering, the cost of the procedures, or how unlikely my chances for recovery are. I want my life to be prolonged to the greatest extent possible in accordance with reasonable medical standards.

5. SPECIFIC LIMITATIONS TO MY AGENT’S DECISION-MAKING AUTHORITY:

The above grant of power is intended to be as broad as possible so that your agent will have the authority to make any decision you could make to obtain or terminate any type of health care. If you wish to limit the scope of your agent’s powers or prescribe special rules or limit the power to authorize autopsy or dispose of remains, you may do so specifically in this form.

________________________________
________________________________
________________________________
________________________________

My signature _______________________________________________________________

Today’s date ________________________________________________________________
6. HAVE YOUR WITNESS AGREE TO WHAT IS WRITTEN BELOW, AND THEN COMPLETE THE SIGNATURE PORTION:

I am at least 18 years old. (check one of the options below):

___ I saw the principal sign this document, or

___ the principal told me that the signature or mark on the principal signature line is his or hers.

I am not the agent or successor agent(s) named in this document. I am not related to the principal, the agent, or the successor agent(s) by blood, marriage, or adoption. I am not the principal’s physician, mental health service provider, or a relative of one of those individuals. I am not an owner or operator (or the relative of an owner or operator) of the health care facility where the principal is a patient or resident.

Witness printed name: ________________________________________________________________

Witness address: ________________________________________________________________

Witness signature: ________________________________________________________________

Today’s date: ________________________________________________________________

7. SUCCESSOR HEALTH CARE AGENT(S) (optional):

If the agent I selected is unable or does not want to make health care decisions for me, then I request the person(s) I name below to be my successor health care agent(s). Only one person at a time can serve as my agent (add another page if you want to add more successor agent names):

_________________  ________________________________________________________________
(Successor agent #1 name, address and phone number)

_____________________________________________________________________________
(Successor agent #2 name, address and phone number)

This document was prepared by: _________________________________________________________
DECLARATION

This declaration is made this _____ day of ______________________ (month, year).

I, _____________________________ being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed.

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such death delaying procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

Signed _____________________________

City, County and State Residence _____________________________

The declarant is personally known to me and I believe him or her to be of sound mind. I saw the declarant sign the declaration in my presence (or the declarant acknowledged in my presence that he or she had signed the declaration) and I signed the declaration as a witness in the presence of the declarant. I did not sign the declarant’s signature above for or at the direction of the declarant. At the date of this instrument, I am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or, to the best of my knowledge and belief, under any will of declarant or other instrument taking effect at declarant’s death, or directly financially responsible for declarant’s medical care.

Witness _____________________________ Witness _____________________________

For copies, contact the Illinois Department on Aging
One Natural Resources Way, #100, Springfield, IL  62702-1271
Senior HelpLine at
1-800 252-8966, 1-888-206 1327 (TTY)
www.state.il.us/aging

The Illinois Department on Aging does not discriminate in admission to programs or treatment of employment in programs or activities in compliance with appropriate State and Federal Statutes. If you feel you have been discriminated against, you have a right to file a complaint with the Illinois Department on Aging. For information, call the Senior HelpLine at 1-800-252-8966, 1-888-206-1327 (TTY).

Printed by Authority State of Illinois, Department on Aging 11-402 0764 (Rev. 6/11, 16M)

What is a Living Will? A Living Will is a document in which a person can declare his or her desire to have death-delaying procedures withheld or withdrawn in the event he or she has
been diagnosed with a terminal condition by a physician. (Specific definitions are provided for these legal terms in the Illinois Living Will Act).

What are the advantages of a Living Will? A Living Will assures that your rights will be respected if you are not able to actively participate in death-delaying decisions relating to your own health care due to a physical or mental condition. Additionally, a Living Will saves your family from the burden of having to make health care decisions about consenting to or refusing death-delaying procedures without knowing your wishes.

Who may execute a Living Will? Any person age 18 or older who is a resident of Illinois may execute a Living Will at any time. The Living Will document (see reverse side) must be signed by you and two (2) independent witnesses.

Must an attorney prepare the Living Will document for you? Although Illinois law does not require that an attorney prepare a Living Will document, you may want to consult with an attorney for additional guidance in protecting your interests using advance directives.

When should you execute a Living Will? The best time for you to execute a Living Will is right now, long before you anticipate anything happening to you. This will ensure that the attending physician and your family know your wishes if you are ever in a situation where death-delaying procedures become necessary.

When does a Living Will take effect? Under Illinois law, a properly signed and witnessed Living Will takes effect once a person has been diagnosed with a terminal condition and his or her attending physician verifies such Information in writing as a part of the medical record.

If the attending physician is unwilling to comply with the instructions stated in a Living Will document, then the physician must notify his or her patient of that fact. If the patient is unable to initiate a transfer of his or her care to another physician, then the physician is required by law to notify: (1) any person authorized by the patient to make such arrangements, (2) the patient’s guardian, or (3) any member of the patient’s family.

HOWEVER, a Living Will shall not be given effect so long as an agent is available who is authorized to deal with death-delaying decisions on your behalf under a Durable Power of Attorney for Health Care.

How can a Living Will be revoked? You may revoke your Living Will by (1) burning, tearing, or otherwise destroying or defacing the document, (2) signing a written revocation, or (3) making an oral revocation in the presence of a witness 18 years of age or older who then puts the revocation in writing for you.

Will your Living Will be recognized in another state? The answer depends on the laws of each state. Although most states will recognize a Living Will, some require a document to be both witnessed and notarized to be valid. After you execute a Living Will, you may want to sign

Form - Illinois Living Will
this document in the presence of your witnesses and a notary public to avoid any possible problems.

HOWEVER, a living Will document which has been executed in compliance with the law of another state will be recognized in Illinois.

Other things to consider:

(1) You should talk to your physician about your Living Will to be sure that he or she will comply with your instructions about withholding or withdrawing death-delaying procedures.

(2) You should give the original Living Will document upon its completion (signed, witnessed, and notarized) to your physician, and provide copies to your health care facility, hospital, lawyer, agent under a Durable Power of Attorney for Health Care, family, or other individuals whom you can rely on to act according to your interests and values.

(3) You may want to make a note about your Living Will on the reverse side of your driver’s license or add a notification card to your wallet.
CAPACITY LETTER

Re:

Dear Physician:

ATTORNEY NAME is attempting to determine if CLIENT has testamentary capacity to do estate planning (Will, Trust, and Power of Attorneys). It is imperative that you review and respond separately to la b, c, 2, 3, and 4 in the space provided.

The proposed testator, CLIENT, must have the capacity to:

1. Understand what a will is and that she is making a will/trust:
   a. Understand the nature and general extent of property;
      Please Respond:
   b. Understand the natural objects of her bounty i.e. whether she has relatives;
      Please Respond:
   c. Be able to dispose of the property according to a plan formed in her mind.
      Please Respond:

2. Please state diagnosis:
   Please Respond:

3. Please state prognosis:
   Please Respond:

4. Physician’s Signature: ________________________________
   Date: ________________

   Physician’s Printed Name: ____________________________

   Physician’s Phone Number: __________________________
Because you are CLIENT physician I am looking to you for guidance and insight as to whether she has the capacity to make a Will/Trust/Power of Attorneys. Please insert from 1a, b, c, 2, 3, and 4 in the space provided above directly to my attention.

Please call me at PHONE if you have any questions. Your prompt reply to this letter will be appreciated. Upon completion of the above, please fax to me at FAX or email to EMAIL. Additionally please mail this document with your original signature to my office at ADDRESS. Thank you for your assistance.

Sincerely,

ATTORNEY
Benetta P. Jenson is a Managing Director and Chicago-based Wealth Advisor for J.P. Morgan Private Bank. Benetta assists clients with the development of comprehensive, generational wealth transfer planning strategies. She was previously a partner in the Private Client Department of the law firm of McDermott Will & Emery in Chicago. Benetta frequently speaks and writes nationally on trust and estate planning topics. She is a member of the Estate and Gift Tax, International Tax Planning (former Vice-Chair), Continuing Legal Education, and Community Outreach Committees of the Real Property, Trust & Estate Law Section of the American Bar Association. She is also a member of the Illinois State Bar Association, the Federal Taxation and Trust Law (former Chair) Committees of the Chicago Bar Association, and the Chicago Estate Planning Council. In addition, Benetta is a founding officer and former Chair of the Chicago branch of the international organization, Society of Trust and Estate Practitioners (known as STEP), and formerly served as an officer of the Executive Board of STEP USA. She also is a member of committees working on proposed Illinois trust legislation. She also serves as faculty for various courses at the Illinois Institute for Continuing Legal Education (IICLE) and is an Adjunct Professor at Northwestern University’s law school L.L.M. tax program, co-teaching “International Estate Planning.” Benetta currently is a Governing Member of the Chicago Symphony Orchestra and serves on its Planned Giving Advisory Council. She also serves on the Young Professional Advisory Council of the Chicago Community Trust and is also active with family private foundations. Benetta earned her J.D. from Loyola University Chicago School of Law and her Bachelor of Business Administration degree from the University of Wisconsin at Madison.

Paul S. Lee is a National Managing Director of Bernstein Global Wealth Management, a position he assumed in 2006; he is also a member of the firm’s Wealth Management Group, which he rejoined in 2008. Previously, he had been a managing director in the London and New York offices. Prior to joining the firm in 2000 as a Wealth Management Group director, he was a partner in the Atlanta based law firm of Smith, Gambrell & Russell, LLP. Mr. Lee received a BA, cum laude, in English and a BA in chemistry from Cornell University, and a JD, with honors, from Emory University School of Law, where he was notes and comments editor of the Emory Law Journal; he also received an LLM in taxation from Emory University. Mr. Lee was the recipient of the Georgia Federal Tax Conference Award for Outstanding Tax Student and the Ernst & Young Award for Tax and Accounting. A frequent lecturer and panelist on investment planning and tax and estate planning, Mr. Lee has spoken at the Heckerling Institute on Estate Planning, ACTEC National Meeting, Southern Federal Tax Institute, USC Institute on Federal Taxation, Southern California Tax & Estate Planning Forum, Notre Dame Tax and Estate Planning Institute, and AICPA National Tax Conference. His articles have been published by The ACTEC Law Journal, BNA Tax Management Estates, Gifts & Trusts Journal, BNA Tax Management Memorandum, The Practical Tax Lawyer, Major Tax Planning, Trusts & Estates and the Emory Law Journal.

Donna L. Otis, Esq., is the Principal of Otis Law Group, Ltd. Donna is recognized for her knowledge of elder law, estate planning, administration, and probate matters (including decedents estates and guardianships). She is a speaker on elder law issues, estate planning, and probate. Donna is a life-long resident of Chicago’s Southside. She is a graduate of Chicago
Vocational High School, she holds a Bachelors Degree in Computer Science/Business and is a 2004 graduate of John Marshall Law School, where she was Staff Editor of the John Marshall Law Review. Donna is the 2010 Recipient of Distinguished Service Award from Chicago Volunteer Legal Services for work as Guardian Ad Litem for guardianship of disabled adults and for minors and a Illinois Super Lawyers-rising Star for 2009-2014 (Trusts and Estates). In addition, she is a member of the Hearing Board for the Illinois Attorney Registration and Disciplinary Committee, a Cook County Circuit Court Arbitrator, and a Court Appointed Guardian Ad Litem for adult guardianship cases and Special Administrator for Decedent’s estates. In her free time, she enjoys traveling with her husband, spending time with her two daughters and granddaughter. She loves to read and as a former teenage mother she feels it is her obligation to mentor minority youth, especially girls, and does so as a Youth Sunday School Teacher.

Karin Prangley is responsible for trust operations and wealth planning services in the Chicago Private Banking office of Brown Brothers Harriman & Co. In this role, Karin assists high net worth clients with the development of comprehensive, generational wealth transfer planning strategies and coordinates their investment and estate planning objectives. She was previously a partner in the estate planning and administration group of Krasnow Saunders, LLP and an associate in the trusts & estates groups of Arnold & Porter LLP and Winston & Strawn LLP. She serves as a leader, speaker and author in various attorney and charitable organizations. She has also been quoted extensively in local and national newspapers and magazines and featured on WSBT and WBBM’s evening news for her views regarding digital assets. She received a B.A. in Business, summa cum laude, from Mount St. Mary's University and a J.D. from the University of Virginia School of Law, where she was elected to the Order of the Coif and was published in the Virginia Tax Review.

Lee-ford Tritt, J.D., LL.M., is a law professor at the University of Florida College of Law and Director of the Center for Estate Planning. Lee-ford is an Academic Fellow of the American College of Trust and Estate Counsel and is the Secretary of the American Association of Law Schools’ Trusts & Estates Division. In addition, Lee-ford serves as Vice Chair of the AHA RPTE Law Section’s Outreach Committee as well as a Vice Chair of a committee for the Non-Tax Estate Planning Considerations Group. He also is an adviser for the Committee on an Act on the Recovery of Stolen Cultural and Artistic Property for the National Conference of Commissioners on Uniform State Laws. Before joining UF College of Law in 2005, Lee-ford spent eight years in the New York City trusts and estates departments of Davis, Polk & Wardwell and Milbank, Tweed. Lee-ford’s strong commitment to students and the practice of law has helped earn him Professor of the Year for the academic years 2008/2009; 2009/2010; 2010/2011; 2011/2012 and 2012/2013. In addition, he received the University of Florida’s Presidential Award for Excellence in Education in 2011 and the University’s Impact Award in 2012. Lee-ford is a frequent lecturer across the country on various estate planning issues, including presentations for the ABA’s RPTE Law Section’s annual meetings and the Heckerling Institute on Estate Planning.

Ryan A. Walsh is a partner at Hamilton Thies & Lorch. Ryan advises individuals, families, business owners, and financial institutions on a range of estate planning, trust, and tax matters. He also has significant experience with trust and estate administration, preparation of
estate, gift, and fiduciary income tax returns, real estate transactions, contested estate and trust litigation, trust reformation proceedings, probate and guardianship matters, and representation of clients before the Internal Revenue Service. Ryan is a member of the Chicago Estate Planning Council, the American Bar Association (Section of Taxation, Section of Real Property, Trust and Estate Law, Estate and Gift Tax Committee Vice-Chair), the Illinois State Bar Association (Federal Taxation Section Council and Trusts and Estates Section), the Chicago Bar Association (Trust Law Executive Committee), and the American Cancer Society Planned Giving Sub-Committee. Ryan regularly speaks and writes on various estate planning, administration, and tax topics and has been named an Illinois Super Lawyers “Rising Star” in 2012, 2013, and 2014. Ryan is licensed to practice law in the State of Illinois and the State of Florida, and before the U.S. District Court for the Northern District of Illinois. Ryan received his B.S. from the University of Notre Dame in 1997 and his J.D., magna cum laude, from Loyola University Chicago School of Law in 2006, where he was a staff editor of the Loyola University Chicago Consumer Law Review.