

BASIC TRUST DRAFTING

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SECOND EDITION

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FOREWORD

Preparing and drafting a trust for a client is akin to juggling, except that the balls that you are juggling are anything but uniform in size and shape. Perhaps it is more akin to juggling an apple, a sword and a torch. Legal professionals working on trusts must juggle a wide variety of factors, some of which are known to the client and some of which the client will not fully understand.

A client may want a trust based on one single overriding factor. But the legal professional must have the vision and patience to explore all of the legal consequences of any trust strategy.

From a tax perspective, the practitioner must take into account the income tax, capital gains tax, estate tax, gift tax and property tax ramifications of any trust strategy. The practitioner must also take into account the impact of any strategy on the government benefits eligibility of the client and the trust beneficiaries. Potential creditor access to trust assets is another key concern. These must all be considered apart from ensuring that the client's assets are eventually distributed in accordance with the client's wishes.

The goal of this book is to make the student aware of the myriad of factors that must be considered in the course of drafting a trust. The book will also walk the student through the basics of the laws that govern these issues. It is understood, however, that additional research may be required before the student becomes competent to draft trusts for real world clients.

This book has been written to be as practical as possible. Except where required for an understanding of the issue, theory and the theoretical basis for rules has been left out. Wherever appropriate, the concepts discussed have been reinforced with detailed examples. Actual trust provisions that have been used by one of the authors has been provided as well. These have been provided to

illustrate the points presented, but also to build the student's skill in using laws and concepts to draft practical trust provisions.

It is the authors' intent that this book be viewed as a synchronous whole rather than merely the sum of its parts. For example, although chapter 7 deals with Medicaid trusts, it must be understood that while drafting Medicaid trusts, gift tax issues discussed in chapter 3, estate tax issues discussed in chapter 4, income tax issues discussed in chapter 5, and creditor protection issues discussed in chapter 6 may also be applicable. If this book were an instruction manual, the first instruction would state: "Read everything before doing anything."

It is our hope that students will find the area of trust preparation as interesting and challenging as we have in over a decade of elder law and estate planning practice.

We welcome any and all questions or feedback. We can be contacted through National Paralegal College's phone directory (800-371-6105) or by email (shaas@nationalparalegal.edu; jeremy@nationalparalegal.edu).

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We would like to dedicate this book to our loving wives, who encourage us in everything we do.

Stephen Haas
Jeremy Rovinsky

