

Estate Planning Documents Clients Can Understand

By Michael G. Cumming

Recently, our firm completed an extensive two-year review and revision of our will and trust agreement forms. We set out to translate each estate planning document into a clear and understandable "plain language" format comprehensible to the layman.

While it is too early to have received more than a sampling of comments, clients have reacted favorably. After they review proposed estate plans, clients are calling and asking more specific, meaningful questions on will and trust provisions.

This means at least two things. First, clients are reading their estate planning documents (always very desirable). Second, they appear to understand what the documents say. For those of you just starting to revise your estate planning documents, as well as for those who have indefinitely postponed the task, here are some of the guidelines our revision committee followed.

Omit Redundancies

One of the easiest ways to make wills and trust agreements shorter and more concise is to stop repeating yourself. Lawyers love redundancies.* The practice has two origins: (1) The need for lawyers practicing after the Norman Conquest to express terms in both Old English and Old French (e.g., "free and clear"); and (2) a natural desire to avoid a malpractice claim based on "missing something." The first reason is no longer a concern; the second can be dealt with through careful drafting.

Thus, for example, "rest, residue and remainder" should be "residue."

* Editor's note: Do they ever. See the previous sentence, for instance.

The Revised Probate Code uses "residue" alone. "Give, devise and bequeath" should be "devise." The Code definition of "devise" includes legacy "and means a testamentary disposition of real or personal property or both." "Assign, transfer and convey" can be "distribute."

There is no sense in repeating words that mean the same thing, and it is hard to go wrong using terms that are defined by statute. As a general rule, use terms defined by or used in the Revised Probate Code for dispositive provisions, and use terms in the Internal Revenue Code and the Michigan Inheritance Tax Act for tax provisions, whenever possible.

So, alleviate malpractice concerns by substituting statutorily-defined terms. If that is not possible, try to find one short word that will do the job.

Another example: Little is gained by spelling out numbers and then inserting parenthetically the numeric equivalent. Clients are not under the impression that you have to do this just because they write the numeric and written amounts on their checks. So replace "At any time after such child has attained the age of twenty-five (25) years . . ." with "At any time after the child reaches age 25 . . ."

Shorten Sentences

Clients are more likely to understand short sentences. Studies show that readers can't understand long sentences because by the time they've reached the end, they've forgotten the beginning. Unfortunately, the beginning frequently includes important items such as the subject and verb; modifying clauses are frequently strung on in near-perpetuity. A favorite infraction is the marital deduction for-

mula clause. Believe it or not, it can be shortened. There are hundreds of these clauses in form books. Many are legally sound but cumbersome. Here is an example of a typical marital deduction formula clause:

... the Executor will elect to treat as qualified terminable interest property that fractional portion of this trust which, when taken together with all other interests and property that qualifies for the marital deduction and which passes or shall have passed to Settlor's wife under the terms of Settlor's Last Will and Testament or otherwise, shall have the effect of reducing the federal estate tax on Settlor's estate to zero, taking into account all deductions and credits claimed for federal estate tax purposes including the unified credit and the state death tax credit (but as to the latter only to the extent that the amount of tax-payable to any state is not thereby increased).

Instead, consider using:

... the Executor will elect to treat as qualified terminable

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by George H. Hathaway, Chairperson of the State Bar Plain English Committee. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a Plain English article? Contact Mr. Hathaway at The Detroit Edison Co., Room 688 WCB, 2000 Second Ave., Detroit, MI 48226.

interest property that fractional portion of the trust property which will eliminate Settlor's federal estate tax. The Executor will take into consideration all deductions and credits allowed on the return, including the unified credit and the state death tax credit to the extent the election does not cause payment of additional state death taxes.

A favorite technique for breaking down long, complex sentences is to extract "and" and insert periods. It works. The grantor will understand it. Your younger associates will understand it. You may understand it.

Along these lines, trust agreements are notorious for their archaic and lengthy acknowledgements. In keeping with our preference for statutorily-approved language, we recommend using the short, concise acknowledgements approved by the Michigan Legislature at MCL §§ 565.261-565.270. Just using these acknowledgements can shorten your trust agreements by one page. (See box below.)

Use Active Tense

The passive tense bores both testator and grantor. The past tense makes probate and trust administration appear to be a laborious and morose task. This is not the image we want to project. Instead of "such-and-such shall be done," tell the client what the trustee will do: "The trustee will do such-and-such." If you say it

this way, trustees (particularly non-corporate trustees) will have a clearer idea of what they have to do.

Active verbs also have the added effect of keeping the text moving along, something like an Ernest Hemingway novel. Instead of:

[t]he Trust Estates and the income therefrom shall be chargeable with the reasonable expenses and proper liabilities incurred in the administration of the Trusts hereunder and with reasonable fees for services, but not in excess of fees then being charged other trusts of comparable size

say:

[t]he Trustee may pay reasonable administration expenses including reasonable trustee fees.

Remember, if you are still using verbs that end in "th" (e.g., "witnesseth"), your clients will be sure you studied law in a different century.

Spurn Unnecessary Legalese

Compile a mental list of words that you will automatically discard regardless of context. These words are "legal placebos": They make you feel good but have no legal effect. Our list included the following:

hereinafter, hereafter, witnesseth, whereas, hereby, hereto, herein, accordance, shall, said, such, therein, foregoing, thereupon, thereby and thereafter.

You can almost always eliminate these words at no legal cost to the document. Add other words to your "hit list"; your personal preferences will imprint your tenor on the will or trust agreement, producing a document with some character.

Mechanical Suggestions

Simply rearranging your will or trust agreement so that it reads chronologically will greatly enhance your client's understanding. A revocable living trust agreement should be set up so that the first provisions cover the grantor's lifetime, with subsequent provisions addressing: (1) What happens on the Grantor's death; (2) what happens during the surviving spouse's lifetime; (3) what happens at the surviving spouse's death; (4) how the trustee takes care of the surviving children; and (5) how the Trustee handles the issue of the children. Your client will be impressed by a plan which provides for his or her family in a logical sequence.

The client is interested in the dispositive provisions, so put these at the front of the document and make them double-spaced. Put technical and administrative provisions toward the end of the document, since they are unlikely to be very interesting. If the provisions are particularly uninteresting to the layman, you may want to print them in single-spaced type.

For the same reasons that newspapers provide headlines, consider ►

565.267. Statutory short forms

Sec. 7. (1) The forms of acknowledgment set forth in this section may be used and are sufficient for their purposes under any law of this state. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

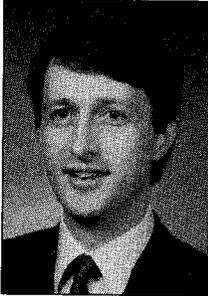
(2) For an individual acting in his own right:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

using boldface titles for each section. Just as we skip uninteresting articles in the newspaper, your client is unlikely to want to carefully scrutinize your paragraph on the Rule Against Perpetuities.



Michael G. Cumming is an associate attorney with the Detroit firm of Clark, Klein & Beaumont, where he specializes in the areas of estate planning, probate and tax. He received his B.B.A.

from the University of Michigan, and is a 1984 graduate of Notre Dame Law School.

Consider other ways to make the document more "readable" for the client. Are you still stapling your lengthy trust agreements so that they snap shut whenever the client loosens his or her grip? There's no better way to prevent people from reading an estate planning document than by providing them with a bound mass of paper that closes at every opportunity.

Conclusion

Your clients may be overjoyed and astonished at reading and understanding a legal document. You may discover that your clients return with pertinent questions and comments, leading to a "fine tuning" of their will or trust agreement. You will produce a better legal product for the client, and you will have a happier and more appreciative client.

Keep two cautions in mind, however. First, review of your estate planning document forms is a process, not a once-in-a-lifetime event. Since the law constantly changes, you should review your forms regularly, to make sure you're covering all the bases.

Second, do not let your desire for a shortened and understandable document produce a will or trust agreement that leaves gaps in disposing of property, or runs afoul of technical legal and tax rules. There's a difference between an editor and a lawyer. Never forget: Brevity is the soul of wit, but incompleteness is no laughing matter. ■

LAFF — Legal Anecdotes For Fun



Thank you for your cooperation with our 'cameras in the courtroom' experiment Mr. Weebles, but I think it is probably more appropriate for you to sit in the jury box with the rest of the jurors.

You are invited to contribute witty, humorous, funny, jocular, jocose and/or droll anecdotes for possible publication, to Linda Holder, 800 First National Bldg., Detroit, MI 48226.