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Why Are My Estate Planning Documents So Long?

By Kelsey Swieringa

Before I went to law school, my mom got a trust from a local attorney in Michigan. The attorney, who was not an estate planner, used a short form that my mom thought would meet her needs—after all, her intentions were simple, so shouldn't her trust be simple?

The summer after my first year in law school I started working for Johnson, Gasink & Baxter, LLP. After working in estate planning, I quickly realized that my mother's documents were inadequate to properly and efficiently execute her wishes. Her trust was short, but that did not make the trust simple.

A longer document allows the grantor (in the case of a trust) or testator (in the case of a will) to plan for contingencies. This is where you will find a lot of the "boilerplate" language that considers consequences of possible events. Unfortunately, the term "boilerplate" has a negative connotation—who wants boilerplate over custom language? These provisions, however, are extremely important when drafting any contract or document. A few years ago Jeremy wrote a newsletter about why boilerplate language is necessary in any good estate planning document ([http://jgblp.com/global_pictures/January_2012_Newsletter\(Final\).pdf](http://jgblp.com/global_pictures/January_2012_Newsletter(Final).pdf)), so I will not discuss the subject in detail here. Essentially, it is much easier to plan for an unlikely contingency than it is to petition the court to reform your documents when the unexpected happens. Longer trusts may have more boilerplate language to protect the document from inefficient legal processes in the future.

Sometimes trusts need to be longer to properly explain the grantor's intentions. Brevity can be helpful, but precision is paramount. Concise terms and phrases can be ambiguous, and sometimes a longer explanation is necessary so successor trustees and beneficiaries know the grantor's true intentions. If a provision in a trust or will is too vague, the trustee or executor may be confused and have to petition the court to determine the true meaning of the document (which may differ from the grantor's

actual wishes!). Providing better explanations will make the trustee or executor's job easier and the administration smoother.

A longer estate plan may also provide for more beneficial "extras" in the document. For example, the trust or will may include a personal property memorandum, reducing the need for the grantors to pay an attorney to update their documents when they change tangible property bequests. Longer documents may include attestation clauses in the will, so that the executor will not have to track down the witnesses who signed the document in order to admit the will to probate. Further, some tax planning strategies in wills or trusts can take a lot of paper—not because the estate planning attorney is long-winded, but because the IRS demands exact wording. The IRS may not accept a clever attorney's pithy provision that deviates from accepted norms.

Finally, any good estate plan will come with ancillary documents—a power of attorney and advanced medical directive (including a HIPAA release, health care power of attorney, and living will). These documents are critical when planning for incapacity and can help your loved ones avoid an expensive and invasive guardianship proceeding. Further, powers of attorney reap no benefits for brevity; you cannot give your agent *carte blanche* authority to do 'whatever it takes to manage your financial affairs'. Instead, you must enumerate each individual power you give your agent to act on your behalf. Failing to provide a necessary power could result in family members having to petition the court to become guardian over an incapacitated loved one.

The simplicity of an estate plan should not be measured by volume. An estate plan is simple and easy to administer when it is clear, organized, and does not leave any unanswered questions. If you have any questions or concerns about your current estate plan, please contact our office so we can guide you in updating your documents into a plan that will be simple for your loved ones to follow.

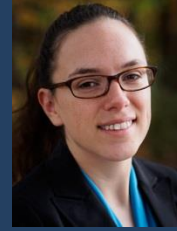


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About the Author:

Kelsey began working at Johnson, Gasink, & Baxter, LLP during her first summer at law school and is pleased to have officially joined the team as an attorney since her graduation. Kelsey graduated *magna cum laude* from The Marshall-Wythe School of Law at the College of William & Mary.