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“Technology-Probate: An Updated Tour of Drafting Systems for Estate Planning Lawyers” by Jason E. Havens, published in *Probate & Property*, Volume 21, No. 6, November - December 2007.

Technology

Probate

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Technology—Probate provides information on current technology and microcomputer software of interest in the trust and estate planning areas. The editors of *Probate & Property* welcome information and suggestions from readers.

An Updated Tour of Drafting Systems for Estate Planning Lawyers

Drafting systems continue to draw substantial interest from those who have used them and those who want to enhance the drafting process. The inherent dangers of “recycling” estate planning documents and/or of using “find and replace” to update a document should motivate everyone to consider a true system for drafting these technical legal documents. This column covers some of the most popular “expert” drafting systems and updates this editor’s previous reviews of them.

Each expert drafting system provides a relatively complete system. One might offer more options than another, but all of these systems produce most “core” estate planning documents. All of them also use “templates” (reusable answer files) to address many drafting scenarios. The drafter can customize any of these systems but should use caution when doing so because of the possibility of altering the legal effect of any provision and/or the functionality of the drafting system itself. A consultant is recommended for any extensive customization project and is typically more cost-efficient than self-customization.

As the final introductory comment, please note that all pricing information and other purchase details should be confirmed directly with the appropriate vendor. In addition, as this editor always recommends, you should download and try any of these (as well as other) programs before purchasing.

Lawgic

Lawgic (www.lawgic.com) was created with the assistance of a 1988 M.J. Murdock Charitable Trust grant to the late Fred D. Fagg, former dean of the Lewis & Clark Law School, to pursue high-level software research. Mr. Fagg

and his team of programmers spent several years and over \$10 million to design a software program that combines an authoring tool and a run-time engine that eventually became known as Lawgic. Lawgic’s drafting system products, which are some of the only state-specific systems on the market, currently include updated versions for California, Florida, Georgia, Maryland, and New York.

The international law firm of Holland & Knight LLP serves as the lead editor of the Lawgic Wills & Trusts products. Leading estate planning lawyers, including John Arthur Jones, Edward F. Koren, Richard L. Stockton, and Bruce Stone, have updated Lawgic’s state-specific systems for California, Florida, and Georgia. Carlyn S. McCaffrey, an estate planning lawyer at the international law firm of Weil, Gotshal & Manges LLP and a past president of the American College of Trust and Estate Counsel (ACTEC), oversees Lawgic’s New York Wills & Trusts program.

Lawgic offers wills, including “ultra-simple,” simple, disclaimer, pourover, and “stand-alone” versions (as well as codicils); disability planning documents, including durable powers of attorney, health care surrogates, and living wills; and a number of trusts, such as revocable inter vivos trusts (including amendments and restatements), irrevocable life insurance trusts (ILITs), generation-skipping transfer (GST) trusts, trusts for minors, qualified personal residence trusts (QPRTs), grantor-retained annuity trusts (GRATs), and “intentionally defective” irrevocable trusts (IDITs or IDGTs), as well as ancillary documents and client letters. Unfortunately, Lawgic does not offer a fully functional charitable gift planning document assembly module, although this is planned as a future addition. Besides producing these state-specific documents, Lawgic is one of the only drafting systems that offers state-specific legal commentary on various issues that arise in connection with these estate planning techniques.

Lawgic representatives have indicated the release of new Wills & Trusts products for estate planning lawyers in

Illinois, Massachusetts, New Jersey (Andrew J. DeMaio's firm as editors), Tennessee (A. Stephen McDaniel's firm as editors), Virginia, and Washington in the near future. Lawgic representatives are discussing the addition of other notable practitioners as the company releases Wills & Trusts products for other states. A new editor's threshold requirement to date is membership as an ACTEC fellow.

For beginning users, Lawgic provides a "Getting Started Guide" within each program and via the "Training" page of its web site (<http://lawgic.com/training/training.html>). A "how-to" question-and-answer dialog is available at the beginning of each program on question number one ("Select an Activity") and can be printed in its entirety (all questions and answers appear in one word-processing document) using the Java-based Lawgic engine. Lawgic's website also offers some excellent "Product Training Videos" on the "Training" page (above). These resources on the Lawgic web site are useful in evaluating the system as well, because you can see "under the hood" of the system as it is actually used.

Lawgic is priced at \$1,500 for a single-user license (\$100 per additional workstation). Additional purchasing options are listed on the "Pricing" page of its web site (http://lawgic.com/renew_price.html). Lawgic requires annual updates to continue the subscription and to use the Lawgic drafting system.

WealthDocs

WealthCounsel (www.wealthcounsel.com), which is celebrating its 10-year anniversary, released another update to version 6.2 of its popular drafting system, WealthDocs. WealthDocs includes various "practice systems" that integrate with the HotDocs document assembly platform. WealthDocs was developed by practitioners in Arkansas, California, Colorado, the District of Columbia, Missouri, Oregon, Texas, and Washington.

WealthDocs includes more "practice systems" than most other drafting systems: the "Living Trust System," which includes ancillary documents such as

pourover wills, powers of attorney, and property agreements; the "Will Practice System"; the "Irrevocable Trust System," which includes ILITs, IDITs (or IDGTs), gifting trusts, and ancillary documents; the "Split-Interest System," which includes QPRTs, GRATs, grantor-retained unitrusts (GRUTs), and grantor-retained income trusts (GRITs); the "Charitable System," including charitable remainder trusts (CRTs), charitable lead trusts (CLTs), and even private foundations; a "Special Needs Trust" system; a "Retirement Planning" system; the "FLP [Family Limited Partnership]" system, with ancillary documents and implementation checklists; the "FLLC [Family Limited Liability Company]" system; the "Business Succession" system; and various templates and shared resources.

WealthCounsel has implemented several notable updates to its WealthDocs drafting system. First, it integrated the transition of conduit trusts to accumulation trusts in the WealthDocs "Retirement Trust" library. Second, for joint revocable trust plans, the same interview now includes ancillary documents for both spouses. Third, newly expanded "Irrevocable Trust" options include an ILIT designed to hold a second-to-die life insurance policy, either as a joint trust or an individual "spousal access" trust (as supported by PLR 9748029). Finally, the WealthCounsel system implemented "Business Succession" documents in the library bearing the same name (including a buy-sell agreement and a deferred compensation agreement).

Also new built-in templates (or "scenarios") throughout the WealthCounsel system allow for streamlined data entry and document generation. This is an important update that should allow a practitioner to increase efficiency and productivity.

A WealthCounsel membership includes more than the WealthDocs drafting system. It also includes an extensive discussion list with 1,800 participants (also free to nonmembers), continuing education, and an impressive knowledge base. In 2006, WealthCounsel began its on-line WealthDocs training program using

Microsoft Live Meeting.

For the past several years, WealthCounsel has sponsored a post-program "debriefing" session at the Heckerling Institute on Estate Planning to discuss topics, techniques, and changes in the law presented each year at the Institute. WealthCounsel endeavors to implement timely updates to its practice systems based on selected ideas and techniques gleaned from these sessions.

WealthDocs costs more than other drafting systems, but additional "value-added" features must be considered along with the pricing factor. The WealthDocs drafting system costs \$4,400, although other purchase options are available on its web site. Notably, the user truly owns the WealthDocs system after purchasing it. In other words, the WealthDocs system does not expire. But future updates to the program are only provided after payment of an annual subscription that includes access to legal/drafting support and more.

Wealth Transfer Planning

Wealth Transfer Planning (WTP) (www.ilsdocs.com), created by distinguished New York estate planning lawyer Jonathan G. Blattmachr (a partner at the international law firm of Milbank, Tweed, Hadley & McCloy LLP) more than a decade ago and now also under the leadership of Michael L. Graham, has become almost unrecognizable to those who have used the drafting system over the years. In late 2005, WTP unveiled a sophisticated, completely revised interface built on the stable HotDocs platform and Microsoft's .NET technology. Since then, WTP has added video tutorials with substantive coverage of various drafting and planning topics, even more document options, and integration with other estate planning software programs such as Brentmark's Estate Planning Tools and LexisNexis's TimeMatters practice management system (an add-on package available at an additional subscription).

Similar in breadth of scope to WealthDocs, WTP offers wills, including simple (one-page), simple, and comprehensive versions (with codicils as well); numerous trusts, such as a wholly charitable trust (for use with a public or private charitable organization), a split-purchase trust, revocable trusts, QPRTs, an inter vivos qualified terminable interest proper-

ty (QTIP) trust, joint revocable trusts (simple and comprehensive), ILITs, GRATs, CRTs, CLTs, and a minor's (Code § 2503(c)) trust; disability planning documents (similar to Lawgic (above)); property agreements, such as a spousal agreement, a separate property agreement, and a marital partition agreement; and business agreements, including an FLP agreement (with amendments) and an assignment of a limited partnership interest, as well as ancillary documents and client letters.

Unique to WTP, "Practitioner Concept Memos" explain estate planning techniques and guide the estate planning lawyer through the drafting process for a particular document. These memoranda identify issues that should be considered in counseling a client whether to use the particular technique. These documents can evidence the reasoning behind the client's (and the lawyer's) implementation of an estate planning technique.

In its HotDocs environment, WTP functions based on two expertly authored master components: (1) WTP templates, which are rich text format (RTF) files coded with all of the HotDocs language, variables, and rules that govern when language is included; and (2) WTP profiles, which are templates (or pre-answered sets of questions) applicable to a particular document. These profiles make the drafting process much more efficient.

For example, choose one of eight "Revocable Trust" profiles—from "Outright to Spouse; Disclaimer Tax Planning" to "Three Trust Plan (Family Trust, Reverse QTIP, Marital Trust)"—or see all options by selecting the ninth profile, "All Options (no default answers)." Interestingly, all eight "profiles" point to and use the same base template. For those familiar with HotDocs, these templates are also known as "pattern answer files." Based on the profile chosen, WTP automatically selects the correct pattern answer file to achieve a particular result and then, completely transparent to the user, manages a complex series of steps known in HotDocs terminology as "overlays." By managing template selection and overlays, training time is reduced from a day or more to one hour!

The master templates and the master profiles are customizable, but the user should be cautious about doing so.

Messrs. Blattmachr and Graham, along with numerous leading practitioners, have developed this system and its master components. Even if portions of the master components are customized, the WTP system graciously provides "safeguards" to allow for updates and, if necessary, undoing part or all of the customizations.

Several other items about WTP should be highlighted. First, its "JumpStart Coaching" program, which is a free additional coaching session in addition to the basic training session ("WTP 101: The Basics"), is a very popular addition for current and potential WTP users. This program walks the user through the actual preparation of his or her first set of client documents. Second, ILS is now offering continuing education programs. Third, Jonathan's "Supercharged Credit Shelter Trust" has been added to WTP, with Mitchell Gans's and his updated article on this technique available on the ILS web site. Finally, version 4.3 of WTP recently added "Essentials" versions of various documents for use primarily in connection with nontaxable estates, as well as the addition of a buy-sell agreement and an LLC form.

The full version of WTP costs \$3,995 for a single-user license (with an optional \$1,200 premium support package available as well). The new "Essentials" edition of WTP is evidently available at a lower rate; the brochure is available on the web site (www.ilsdocs.com/docs/wtp_essentials.pdf). A free "test drive" of either edition is available by contacting InterActive Legal Systems.

Conclusion

Other drafting systems are available to estate planning lawyers that should certainly be considered, but Lawgic, WealthDocs, and Wealth Transfer Planning represent three of the best in this editor's estimate. All three are user-friendly. The drafting style differs, which is why you should evaluate each system before purchasing to determine if the particular system's style integrates with your own. You also should use and/or develop templates to use with any system, as this is how efficiency (and profitability) is maximized

(unless you still bill hourly, which you might want to reconsider after adding a drafting system!). You might decide to develop your own system rather than using one of these or another expert drafting system. Be wary of the substantial time commitment, however, in creating your own "wheel," which includes the initial programming and ongoing maintenance (technological and legal/substantive). In this editor's view, using someone else's carefully created wheel is far superior, especially when preparing estate planning documents.

On a personal note, after serving as this column's editor for the past three-and-a-half years, I will be "passing the torch" to a new editor. It has been a privilege to serve you and to share technology and practice management ideas. The column's next editor will undoubtedly continue this effort. ■

Vendor Information

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