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A Christian Counselor's Guide to Creating Computer-Generated Charitable and Other Estate Planning Documents

by Jason E. Havens^{*}

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INTRODUCTION

Most literature and presentations focus on the technical requirements of charitable and estate planning. In contrast, this presentation will focus on the practical aspects of charitable and estate planning. This presentation will outline resources that supply charitable planning forms and provisions, drafting systems that allow the creation of charitable and estate planning documents, and some general comments on integrating Biblical principles in counseling estate planning clients and preparing their documents.

To introduce myself briefly, I routinely try to highlight helpful estate planning software and other practice tools that I have used and/or reviewed. I have served as an active member of the American Bar Association's Estate Planner's and Administrator's Discussion list (code: ABA-PTL: <http://mail.abanet.org/archives/aba-ptl.html>), and have served as an ABA-PTL reporter on technology and other matters at the University of Miami School of Law's Heckerling Institute on Estate Planning for the past two years (http://www.abanet.org/rppt/meetings_cle/heckerling/). I have authored or primarily co-authored two articles on drafting systems that were published in 2004 and are attached as a part of this presentation. One of my primary frustrations in my practice is the lack of focus on charitable planning in various form manuals, resources, and some drafting systems.

Following are several form manuals, resources, and drafting systems that I have found helpful in structuring charitable gifts (outright, in trust, and to private foundations). My live presentation (on October 28, 2004) will cover these items in detail and include more commentary on their usefulness, as well as other relevant information that will hopefully help you in your practice. My presentation will close with some general comments on how I view the integration of Biblical principles in my practice as I utilize these resources and drafting tools to answer my calling.

(For a more general discussion on charitable planning concepts and techniques, attached (Attachment A) is an article that I co-authored with Tom Wells and used last year at the inaugural Institute on Christian Gift Planning.)

CHARITABLE PLANNING FORM MANUALS & REFERENCE RESOURCES

1. Conrad Teitell's form manuals (<http://www.taxwisegiving.com/practice/public.html>): This is one of my most valuable charitable planning resources. I still use the copies obtained in the Miami LL.M. program and at a couple of Mr. Teitell's excellent programs. However, you may purchase these and more drafting resources via the Taxwise Giving website. Substantial portions are included in Mr. Teitell's American Law Institute-American Bar Association (ALI-ABA) and other presentations.

2. Howard Zaritsky, TAX PLANNING FOR FAMILY WEALTH TRANSFERS (~~UPDATED~~ <http://ria.thomson.com/estore/detail.asp?ID=WTPLF&SITE=taxresearch>): I think that many practitioners treasure this treatise. It contains numerous forms which accompany Mr. Zaritsky's legal commentary. A chapter is devoted to "Transfers Split with Charities." I highly recommend this treatise if you do not already own it.

I reviewed Mr. Zaritsky's treatise in the attached article on drafting systems that was published in the ABA's Probate & Property publication (Attachment C).

3. Professor James Colliton, CHARITABLE GIFTS (~~UPDATED~~ <http://ria.thomson.com/estore/detail.asp?ID=WCHGE&SITE=taxresearch>): This is another former Warren, Gorham & Lamont (WGL) treatise that is now sold by Research Institute of America (RIA). It contains more detailed analysis on charitable giving than Mr. Zaritsky's treatise, but not as many helpful practice tools. For example, only the Internal Revenue Service (IRS) model/sample forms are included in one of the appendices, instead of improved forms such as those included in either of the resources above. (Perhaps this will not be an issue after the IRS revises its forms, but we will have to wait and see.)


4. Edward F. Koren, ESTATE AND PERSONAL FINANCIAL PLANNING (<http://west.thomson.com/product/13513459/product.asp>): This excellent treatise, sold by Thomson/West, resembles Howard Zaritsky's treatise. It includes chapters on "Lifetime Planning for Charitable Gifts" and "Testamentary Charitable Planning" (in Part II, "Planning for the Family Unit"). Both chapters include analysis and forms, and were written by Henry Raattama, Jr.

5. David A. Handler & Deborah V. Dunn, DRAFTING THE ESTATE PLAN: LAW AND FORMS (<http://tax.cchgroup.com/Aspen/default>): David Handler's and Deborah Dunn's recent form manual, which is now sold by Commerce Clearing House (CCH) instead of Aspen, contains some charitable provisions and forms (~~UPDATED~~ <http://www.kirkland.com/client/pubs/books/EstatePlan.pdf>).

I reviewed Mr. Handler's form manual in the attached article on drafting systems that was published in the ABA's Probate & Property publication (Attachment C).

6. Jerry McCoy & Kathryn Mirée, FAMILY FOUNDATION HANDBOOK (<http://tax.cchgroup.com/Aspen/default>): This is the best resource on private foundations in my view. Several members of the ABA -PTL have discussed this resource in various postings. It is now also sold by CCH instead of Aspen.

7. Planned Giving Design Center (PGDC) (~~UPDATED~~ <http://www.pgdc.com/usa/>): I have mentioned this site several times as my favorite charitable planning site. Besides the extensive tax and estate planning analysis under each of the “Review” sections, the PGDC includes the forms provided by my friend and distinguished practitioner Emil Kallina. Mr. Kallina’s forms are based on the IRS forms, but are improved like Conrad Teitell’s forms.

I reviewed the PGDC in the attached article on technology for estate planning professionals that was published in the Journal of Practical Estate Planning (Attachment B).  I also reviewed the PDGC in my recent presentation at the 24th annual Southern California Tax & Estate Planning Forum, which is available via my personal website (<http://www.jasonhavens.net/EPtools.htm#tech> -- under “2. Publications on Estate Planning Technology”).

8. Stephan R. Leimberg *et al.*, THE TOOLS & TECHNIQUES OF CHARITABLE PLANNING (http://www.nationalunderwriter.com/nucatalog/product.asp?>lk_id=223801&dept_id=1005&sku=468): This excellent resource includes the IRS forms as well. It is published by The National Underwriter Company. I recommend this resource for its expert charitable gift planning analysis, but it does include the IRS forms and an extensive list of websites that offer charitable resources, including LMNOP, the makers of Charitable Docs in a Box drafting software (which I have not used or reviewed).

9. Debra Ashton, THE COMPLETE GUIDE TO PLANNED GIVING (3d ed. 2004) (<http://www.debraashton.com>): I have not reviewed this resource personally, but following is an excerpt from the PGDC review published on May 26, 2004 (available at <http://www.pgdc.com>):

For the last five years or so, Gift-PL (the email listserv operated by the National Committee on Planned Giving) has periodically included a discussion thread asking if anyone knew when the latest edition of Debra Ashton’s book, The Complete Guide to Planned Giving, would be released. The anticipation and speculation was intense. Well, it’s here....

10. Betsy Buchalter Adler, THE RULES OF THE ROAD: A GUIDE TO THE LAW OF CHARITIES IN THE UNITED STATES (<http://www.cof.org/Publications/Detail.cfm?ProductID=2961>): This resource has sample articles of incorporation with footnotes that provide additional information and an annotated foreign public charity equivalence affidavit which I have not seen in other resources.

CHARITABLE PLANNING DRAFTING SYSTEMS

1. WealthDocs by WealthCounsel (<http://www.wealthcounsel.com>): The sixth version of WealthDocs includes a comprehensive automated charitable planning system. WealthDocs' "Charitable Practice System" offers charitable remainder trusts (CRTs), charitable lead trusts (CLTs), and even private foundations. WealthDocs costs more than other drafting systems, but you receive additional features such as its "Charitable Practice System."

I reviewed WealthDocs in the attached article on technology for estate planning professionals that was published in the Journal of Practical Estate Planning (Attachment B). **NEW** I also reviewed WealthDocs in my recent presentation at the 24th annual Southern California Tax & Estate Planning Forum, which is available via my personal website (<http://www.jasonhavens.net/EPtools.htm#tech> -- under "2. Publications on Estate Planning Technology").

2. Wealth Transfer Planning by Jonathan Blattmachr & Michael Graham (<http://www.ilsdocs.com> or <http://www.wealthtransferplanning.com>): Wealth Transfer Planning (WTP), which was revived by Mr. Blattmachr, also includes a comprehensive automated charitable planning system. WTP offers CRTs, CLTs, and private foundations in inter vivos (lifetime) and testamentary (at death) varieties. WTP also offers its unique "Practitioner Concept Memos," including one on CRTs and one on CLTs. WTP costs more than some other drafting systems, but you receive extensive features and probably the best "decision-making" dialogs for drafting estate planning attorneys.

I reviewed Wealth Transfer Planning in the attached article on technology for estate planning professionals that was published in the Journal of Practical Estate Planning (Attachment B). **NEW** I also reviewed Wealth Transfer Planning in my recent presentation at the 24th annual Southern California Tax & Estate Planning Forum, which is available via my personal website (<http://www.jasonhavens.net/EPtools.htm#tech> -- under "2. Publications on Estate Planning Technology").

3. Lawgic by Holland & Knight (<http://www.lawgic.com>): Lawgic was revived by CEO Bruce Grewell and offers excellent estate planning documents authored by distinguished members of Holland & Knight. Lawgic allows you to prepare specific charitable gifts or general residuary provisions to benefit charities. Unfortunately, Lawgic only includes the IRS forms for CRTs, which run separately from the core part of the drafting system. However, Lawgic is currently working on integrating improved charitable trusts into its core drafting system, which should be released in 2005.

I reviewed Lawgic in the attached article on technology for estate planning professionals that was published in the Journal of Practical Estate Planning (Attachment B). **NEW** I also reviewed Lawgic in my recent presentation at the 24th annual Southern California Tax & Estate Planning Forum, which is available via my personal website (<http://www.jasonhavens.net/EPtools.htm#tech> -- under "2. Publications on Estate Planning Technology").

INTEGRATING BIBLICAL PRINCIPLES IN COUNSELING AND DRAFTING FOR ESTATE PLANNING CLIENTS

A calling in estate planning law is one of the most rewarding in the legal profession, including its challenges of addressing tax law, various calculations, and precise legal drafting (preferably by leveraging the use of superior technology) to achieve clients' unique objectives. In 1988, Professor John Langbein delivered an excellent speech entitled "The Twentieth Century Revolution in Family Wealth Transmission and the Future of the Probate Bar" to the American College of Trust and Estate Counsel (ACTEC) that captured much the essence of a career in estate planning law. Last year at the Heckerling Institute on Estate Planning's luncheon for Christian practitioners (held regularly at the Miami gathering), distinguished practitioner Ronald D. Aucutt delivered some eloquent thoughts on serving folks and answering God's call to estate planning law.

Perhaps the best illustration of integrating Biblical principles in counseling and drafting for estate planning clients is Daniel. Daniel was not an estate planning (or, in more traditional circles, a "trusts and estates") lawyer. However, Daniel lived for the Lord and pursued excellence to God's glory. Daniel did not need to wear a fish on a necklace or a "What Would Jesus Do?" bracelet -- not that there is anything wrong with those symbols in themselves. Nevertheless, if we would live our lives -- in our families, in our churches, and in our professions and workplaces -- as Daniel did, in utter yet quiet devotion to God, we probably would not need any explicit display.

In counseling clients, we must obviously approach with caution our discussions of Christianity and how it should impact our clients' estate planning. A comprehensive discussion of how we counsel clients, including the ethical rules that apply, is well beyond the scope of this presentation. For an excellent discussion of these issues, please read Thomas L. Shaffer and Robert F. Cochran, Jr., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* (1994).

The most important way that we can serve our clients, however, is by giving them highly competent legal counsel and ensuring that their goals are achieved. Sometimes, a client's goals might differ from our perspective or even conflict with our recommendations. In my view, we as lawyers have the right to refuse to represent clients because of our worldview and system of religious beliefs, just as our clients have the right to refuse to engage our services based on the same reason.

In my experience, refusing to represent a client based on my worldview is (and should be) extremely rare. In fact, discussing the topics enveloped by estate planning affords numerous opportunities to delve into a client's most intimate thoughts. These discussions can lead to ministry opportunities. For example, even if one disagrees with a client regarding how to provide for the client's family members, that does not necessarily mean that he or she cannot provide highly competent legal counsel to the client as well as Biblical counsel (even if the client does not follow legal and/or moral advice).

In drafting estate planning documents for clients, three practical topics come to mind. First, Christian preambles are useful in providing clients with a means to share their testimony and worldview with others. Lew Dymond, one of the creators of WealthDocs, was the first of whom I know to offer Christian preambles on the Internet that could be adapted to wills or trusts of Christian clients; these preambles, entitled “A Christian Preamble to Your Will,” are still available via Lew’s firm’s website: <http://www.pdrlaw.net/planarticles.html>.

Second, clients should understand their charitable planning options. In my view, many Christians do not include charitable planning in their estate planning because they do not know the flexibility and opportunities afforded by the countless charitable planning techniques available today. One of my purposes in writing the attached article that I co-authored with Tom Wells was to remind everyone about basic charitable planning techniques. I hope that we all take every opportunity to share charitable planning techniques with our clients, our churches and other charitable organizations, and the public.

A word of caution is in order here. Charitable planning is a fascinating subcategory of tax and estate planning law. Charitable planning is also a highly technical area that requires intensive study and experience. As with every area of law, one should know his or her limits and use wisdom in deciding the level of services that he or she can offer to clients (in keeping with the illustration based on Daniel above). In my experience, referring a matter with which I am not comfortable or that is “outside of my area” is always wise -- and typically returns to me in referrals from corporate, real estate, or trial lawyers.

Third and finally, there are unfortunately few resources available to assist estate planning lawyers in drafting clients’ documents. WealthDocs and Wealth Transfer Planning clearly represent the best drafting systems for estate planning lawyers who represent clients with charitable objectives. I have suggested to ALI-ABA that they consider publishing a drafting resource on charitable giving and planning similar to the superb books authored by Sebastian V. Grassi, Jr.: A PRACTICAL GUIDE TO DRAFTING MARITAL DEDUCTION TRUSTS (WITH SAMPLE FORMS AND CHECKLISTS) (2004) (<https://www.ali-aba.org/aliaba/BK36.asp>) and A PRACTICAL GUIDE TO DRAFTING IRREVOCABLE LIFE INSURANCE TRUSTS (WITH SAMPLE FORMS AND CHECKLISTS) (2003) (<http://www.ali-aba.org/aliaba/Bk28.asp>). Besides the resources above, following is a bibliography of some of the most helpful articles that should prove helpful in designing and drafting estate plans with charitable components:

- Michael Bourland’s resources on charitable planning: <http://www.bwwlaw.com/seminars.htm> (incredible collection of articles and presentations on charitable planning, including several in Microsoft Word and PowerPoint formats and others in Adobe Acrobat (PDF) format)

- Donald R. Tescher & Barry A. Nelson, *The Frozen T-CLAT*, 143 Tr. & Est 33-37 (July 2004) (discussing plan that utilizes testamentary charitable lead annuity trust (T-CLAT), family limited partnership (FLP), dynasty trust, family private foundation, and post-death installment sale producing promissory note to fund T-CLAT; presumably available via <http://www.estatetaxlawyers.com/Articles.html>)
- Conrad Teitell et al., *Funding Split-Interest Charitable Trusts with Difficult Assets*, Trusts & Estates Videoconference (June 16, 2004) (overview of charitable gift planning techniques and administration issues to consider in planning and drafting)
- H. Allan Shore & Seth R. Kaplan, *Holistic Planning*, 142 Tr. & Est 64-73 (October 2003) (discussing financing of ultimate charitable entity, such as private foundation, supporting organization, donor advised fund (DAF), or specific public charity, with charitable lead trust (CLT) or charitable remainder trust (CRT))
- Michelle Coleman-Johnson, *Creating a Family Foundation*, 17 Prob. & Prop. 10-15 (September/October 2003)
- *Low Interest Rate Disasters and Delights*, GiftLaw by Crescendo (August 2003) (discussing charitable planning strategies to use and avoid in low-interest rate environment)

CONCLUSION

I hope that the mentioned resources will assist you in serving clients and achieving their charitable objectives. Besides several helpful form manuals and more technical resources, a good drafting system is vital to creating effective charitable and estate planning documents. In addition to my general thoughts on integrating Biblical principles in practice, I hope that the new Gift, Estate & Trust Section of the Christian Legal Society will continue to share practical ways that we can answer our calling to charitable and estate planning law.

ATTACHMENT A

Jason E. Havens, *Faithful Legal Services for the Benefit of Religious Organizations*,
1st Institute for Christian Gift Planning (Christian Legal Society Annual
Conference) (October 30, 2003) (based on Jason E. Havens & Thomas O. Wells,
Faithful Legal Services for the Benefit of Religious Organizations, 17 Probate &
Property 22 (September/October 2003))

ATTACHMENT B

Jason E. Havens & Dennis J. Toman, *Technological Tools for the Estate Planning Professional*, 6 Journal of Practical Estate Planning 15-28 (February/March 2004)

ATTACHMENT C

Joseph G. Hodges, Jr. & Jason E. Havens, *Deftly Drafting Estate Planning Documents*, 18 Probate & Property 35 (July/August 2004)