

# *Foulston Siefkin Estate Planning:* WHAT TO EXPECT IN THE ESTATE PLANNING PROCESS

At Foulston Siefkin, we are committed to making the estate planning experience of our clients informative, comprehensive and cost-effective. However, we also well understand that a high percentage of individuals are uncomfortable when discussing issues that accompany a subsequent mental disability or their passing. Thus, we are equally committed to making the estate planning process as pleasant as possible for our clients. We strive to put clients at ease and explain estate planning concepts in terms they can understand. We also know estate planning involves much more than the management, protection and disposition of assets and personal care in the event of a disability. An estate plan should address the client's personal values as well, not the least of which is normally the maintenance of family harmony. Consequently, we keep the personal values of our clients at the forefront throughout the estate planning process.

Discussed below is the importance of clients gaining an understanding at the outset of the estate planning process that estate planning issues are normally not as simple as clients who have not been through the process tend to think. In most situations, a "simple" estate plan will not adequately provide for a disability, contingencies which frequently occur or achieve valuable asset protection, governmental resource accessibility and tax goals that are desired by a high percentage of clients. Further, it is important for clients to understand that such issues can only be comprehensively and cost-effectively addressed if their chosen estate planning attorney is not only highly knowledgeable and experienced regarding such issues, but one who will take the necessary time to adequately discuss them with clients and who also possesses a highly sophisticated document assembly system which permits the attorney to cost-effectively incorporate chosen planning provisions in the client's estate planning documents. The discussion which then follows outlines the procedures and timetables Foulston Siefkin clients can expect in designing and implementing an estate plan with an estate planning attorney in our Probate and Estate Planning Practice Group, including the basis upon which fees are charged.

## THE ESTATE PLANNING PROCESS NORMALLY INVOLVES COMPLEXITY

There is no question that estate planning services are among the most beneficial and cost-effective of legal services. However, they also involve some of the most technically complex and demanding legal and tax areas and thus require very knowledgeable and experienced attorneys if estate plans are to be properly designed and implemented. In addition, estate plans must address a myriad of issues and "what if" situations if the plan is truly to be comprehensive in nature and not subject to being thwarted as a result of the occurrence of unaddressed contingencies or goals which are not addressed in estate planning documents. There is a strong and undeniable disconnect between this unquestionable reality and the widely-held view of much of the general public.

A prevalent public mindset is that estate planning services are highly fungible. That is to say, there is a misperception that matters that need addressing in estate planning documents are relatively simple both in concept and implementation such that most estate planning attorneys are widely believed to provide the same level of services with price being the only relevant issue. A large percentage of individuals desiring estate planning advice will thus tend to presume that the only significant estate planning issues are determining the beneficiaries of one's property at death, who is to manage the estate, ensuring that property is not subject to probate, and avoiding as much death taxes as possible. This simplistic tendency has been enhanced by recently enacted federal and state laws that have substantially reduced the number of estates subject to death taxes and which authorize probate avoiding beneficiary designations on almost any type of property. This gives much of the general public the false impression that as the vast majority of estates are not of sufficient value so as to require estate planning strategies to reduce death tax liability, the only other important estate planning goals which many consider important, avoiding probate and getting their property to the intended beneficiaries of their estate, can be accomplished simply by naming beneficiaries on all of their property.

Consequently, unless the vast range of many other very important estate planning goals is comprehensively addressed, communicated to clients in an intelligible manner, and efficiently incorporated in estate planning documents that clients can more readily understand, the marketplace will dictate that the majority of the public will be unappreciative of the benefits of comprehensive estate planning. This will in turn result in the public generally opting for more basic services that are less costly to implement in the short term, albeit often far more damaging in the long-term with regard not only to their consequent economic costs and skewing of asset disposition to their intended beneficiaries, but also their utter failure in many cases to maintain family harmony and achieve a myriad of estate planning goals most informed clients would have desired to implement.

We at Foulston Siefkin are more than prepared to meet this challenge. In addition to being able to explain technical and often complicated estate planning options to clients in terms they can understand, we have the capability of cost-effectively incorporating these options in the estate planning documents of our clients in the manner discussed below.

## A COMPREHENSIVE AND EFFICIENT ESTATE PLANNING FORM SYSTEM IS ESSENTIAL

The goal of Foulston Siefkin is to provide sophisticated, comprehensive estate planning services as efficiently as possible. However, we understand that the ability of an estate planning attorney to do so is dependent not only upon the attorney having the highest level of estate planning knowledge, ability and experience, but also of necessity upon the comprehensiveness and efficiency of the estate planning attorney's document assembly form system. Understandably, most clients are simply unwilling to pay for the cost of legal fees that would be attendant to estate planning attorneys undertaking the time-consuming task of drafting "tailor made" provisions for each client. Conversely, a comprehensive form system can anticipate almost innumerable circumstances and variables, thus relegating a substantial amount of time devoted to individual drafting to the occasional client who has a truly unique circumstance. This enables the bulk of an estate planning attorney's time and effort to be more efficiently and effectively spent in advising and educating clients for their consideration the numerous estate planning options applicable in their particular situation. Frequent drafting of provisions for clients is also quite error-prone and often causes delays which adversely impacts upon the attorney's timeliness in the estate planning process.

Unfortunately, truly comprehensive "user friendly" document assembly form systems which can attain most estate planning goals and address most conceivable estate planning situations are not commercially available. Such mass marketed forms are usually not geared to comply with local law and are typically meant for the lowest common denominator, i.e., the very simplest of situations with respect to which sales volume is large enough to be profitable both for the author and publisher.

As a result, most sophisticated estate planning practitioners develop their own estate planning forms. A practitioner's ability to do so is dependent not only on the attorney's willingness to undertake this task, but also upon the size of the practitioner's estate planning department. Only firms having a large number of estate planning clients and thus large estate planning departments can afford to expend the material and human resources necessary to develop sophisticated, efficient and comprehensive estate planning forms incorporating the widest possible array of estate planning techniques and situations. This usually means this effort can only be successfully undertaken by a firm having at least two attorneys who practice almost exclusively in the estate planning, trust and probate areas.

To ensure that Foulston Siefkin more than met these formidable estate planning challenges of the changing marketplace, the Probate and Estate Planning Practice Group embarked on a program to place its forms, which already were of very high quality, in the very top tier of estate planning forms used by any law firm in the United States. While meeting the very highest level of sophistication and comprehensiveness, the additional goal was for such forms to be as "user friendly" as possible not only for clients, but also for the fiduciaries (e.g., executors, trustees, agents under powers of attorney) who would administer them.

Thus, it was determined that the firm's estate planning forms would be revised to fully satisfy all of the following criteria: (a) incorporation of innovative provisions which reduce to an absolute minimum the risk of family disharmony following a client's disability or death, a concept addressed by very few law firms in the country; (b) the use of the most client understandable terminology throughout; (c) the most logical and client understandable organization and format possible; (d) inclusion of provisions which efficiently and comprehensively address the entire range of estate planning goals and situations; (e) unexcelled comprehensiveness in fiduciary (e.g., Trustee, Executor or Agent) authority provisions which ensure estate planning goals can be achieved with a minimum occurrence of delays, legal fees and attendant costs; (f) the use of the most precise, unambiguous terminology and defined terms; (g) incorporation of provisions which address most conceivable contingencies and provide the maximum flexibility consistent with client goals in asset management, asset disposition and trustee provisions; (h) inclusion of substantially all basic and innovative

"leading edge" techniques which can reliably minimize income and estate taxation, protect assets from third party claims and ensure the integrity of the estate plan; and (i) the capability of fast, accurate and cost-efficient assembly.

Foulston Siefkin's Probate and Estate Planning Practice Group was fully aware that such undertaking would be a daunting, time-consuming task requiring hundreds of attorney hours and numerous staff hours to complete. All indications were that only a small percentage of estate planning forms and document assembly systems in the United States, let alone in the mid-central states region, substantially addressed even a majority of such criteria, let alone satisfied all of them. Because of the highly advanced nature of the project, all of this would have to be done without benefit of any existing paradigm or model.

Nonetheless, the Probate and Estate Planning Practice Group undertook and completed the task. Our Practice Group believes that the estate planning document assembly system that resulted from this effort represents a "sea change" from all previously existing estate planning documents and formats available anywhere in the nation with respect to which our experienced attorneys have knowledge. We are unaware of any other estate planning document assembly system which achieves such a high level of cost-effective understandability, family harmony preservation, maintenance of estate plan integrity, protection of assets from third party creditor and spousal claims, minimization of on-going costs and legal fees incurred in fiduciary administration, maximization of governmental resource availability (such as Medicaid benefits), minimization of federal estate and income taxation, flexibility in addressing changed situations, and which anticipates future contingencies so as to reduce the frequency of, and need for, future amendments to a client's estate plan.

### SCHEDULING AN INITIAL CONFERENCE

Potential clients desiring to set up an initial conference may call either of the contact attorneys in our Probate and Estates Practice Group, Stewart T. Weaver (316.291.9736) or Timothy P. O'Sullivan (316.291.9564). Should either attorney be unavailable, the caller may either leave a message for the attorney to return the call or request to speak to such attorney's secretary, who is additionally authorized to set up initial estate planning conferences. The prospective client may request that a copy of the firm's Kansas Estate Planning booklet, authored by an estate planning attorney in the firm's Probate and Estate Planning Practice Group, be mailed to the client at no charge for review prior to the initial conference. This booklet provides an excellent overview of most of the estate planning issues that would be discussed at that conference.

The initial conference can extend from one to two and one-half hours, depending upon the complexity of the situation. At the initial conference, the prospective client should bring all existing estate planning documents. Depending upon the circumstance, the prospective client either will be furnished a information and asset inventory form to be filled out and brought to the initial conference or such information and inventory will be filled out by the estate planning attorney with the assistance of the client at the initial conference.

The initial conference is normally free of charge, unless the client receives legal advice and counseling regarding certain estate planning techniques which can be implemented without the execution of estate planning documents. This occurs in only a small minority of situations, such as where clients are seeking asset protection advice or Medicaid planning strategies to qualify themselves or a loved one for Medicaid benefits. In such event, only that portion of the initial conference dedicated to such issues will be billed to the client at the firm's normal hourly rates of the estate planning attorney involved. Should the client have any question when scheduling the initial conference whether any portion of the advice rendered at the initial conference will be billed, this can be made clear by talking to the estate planning attorney who is conducting the initial conference prior to the conference.

At the initial conference, our estate planning attorney will review the prospective client's financial and family information and situation, as well as current estate planning documents (if any), and discuss the manner in which the client's personal values may impact upon the elements of the estate plan. Many estate planning goals are based on personal value judgments. Thus, a client should not expect our estate planning attorney to tell the client what the client "needs" or "what is best" for them. Doing so would place the values of the estate planning attorney ahead of that of the client. Only a well-informed client can make the proper determination of the estate plan which best conforms to the client's estate planning desires. Thus, our estate planning attorney will inform the client of estate planning options in "benefits and detriments" terminology sufficient for the client to make a determination as to what options will best achieve the client's estate planning goals and objectives.

Once the appropriate estate plan is determined by the client in consultation with our estate planning attorney, unless the estate plan is more complex than normal such that total time to complete the estate plan cannot be reasonably ascertained, our estate planning attorney normally will be able to quote a fixed fee for completing the entire estate plan. This would include the firm's "out of pocket"

costs, such as filing fees for any deeds required to implement the estate plan. A "fixed fee" arrangement would normally be accompanied by a request that the client pay one-fourth (1/4) of the fixed fee at the outset and the balance upon signing the estate planning documents. If the estate plan is of such complexity that a fixed fee arrangement is not practical, our estate planning attorney will complete the estate plan at quoted hourly rates of the attorney and any paralegals, normally with an estimate as to the total charge.

We are quite careful to avoid any prospective client from feeling any pressure at the initial conference to make a decision to engage our firm to provide estate planning services. The prospective client is welcome to inform the estate planning attorney of such decision at a later time. Should the prospective client for whatever reason decide not to make such engagement, unless the advice rendered at the initial conference fell within the billing exception noted above, in that event there would be no charges billed for the initial conference.

### WHAT TO EXPECT WHEN THE CLIENT DECIDES TO ENGAGE OUR FIRM

Should the client indicate a desire to proceed with the estate plan under the agreed fee arrangement, an engagement letter will be sent to the client outlining the services to be provided and the manner in which the fee will be charged, either at the agreed fixed fee or hourly rate basis, the latter normally including an estimate for such services. Only in this manner can both the client and our firm be assured that we have reached an understanding of both the services to be provided and the fee to be charged for such services. The letter will request that the client sign the letter confirming that such outlined services and delineated fee comports with the client's understanding and that the client has engaged our firm to provide such services. Should the client have any questions concerning the content of the letter, the client is encouraged to contact the firm's estate planning attorney who sent it to clarify any of its provisions.

### WHEN TO EXPECT DRAFTS OF THE DOCUMENTS

Once we have received the signed engagement letter from a client, we will commence drafting the desired documents. Absent extenuating circumstances, our internal procedure is to send the draft documents and accompanying illustrative documents to the client within three weeks of the date we receive the signed engagement letter. Along with the drafts of the documents, we will send a diagram of the estate plan and a summary of the provisions of the documents.

### WHAT TO EXPECT AT THE "FOLLOW UP" CONFERENCE

Once the client has reviewed the estate planning documents and has had sufficient time to review them, the client should call our office and schedule either a "follow up" conference to review the documents and discuss remaining issues or a "signing conference" in the event the client is understanding of the provisions of the documents and there are no outstanding issues to be resolved. Such conference can normally be scheduled within two weeks of the time the client calls us requesting a scheduling date and time. Very frequently, due to the sophistication and comprehensiveness of our estate planning documents, a "follow up" conference will be preferable prior to the signing conference in order to discuss "open issues" prior to completing the documents for signing. For clients who desire to use a revocable trust as their primary estate planning document, the "follow up" conference also may be utilized to review an asset strategy for transferring assets such as real property to the revocable trust at the signing conference.

### WHAT TO EXPECT AT THE SIGNING CONFERENCE

Once the documents are in acceptable form to the client, a signing conference will be scheduled. At the signing conference, the client will execute all documents. At the signing conference, if the fee arrangement was for a fixed fee, the client is expected to pay the balance owing. If the fixed fee includes a Revocable Trust and advice regarding the funding thereof, there will be no additional charge for assisting the client through the trust funding process. If a Revocable Trust is involved and a trust funding strategy has not been developed at a previous "follow up" conference, the trust funding strategy will be developed either at the signing conference or at a subsequent trust funding conference following the client's completion of a trust funding inventory of all of the client's assets.

### WHAT TO EXPECT FOLLOWING THE SIGNING CONFERENCE

Following the signing conference, our estate planning secretarial staff will assemble the original documents in a "safe keeping" envelope. Both will be mailed with a cover letter to the client, normally within three weeks of the signing.

If the client chooses a Revocable Trust rather than a Will as the desired primary estate planning instrument, which is the case with the vast majority of our clients, there normally will be assistance, advice and monitoring services rendered by our firm following the signing conference to ensure that the Revocable Trust is "fully funded" to ensure the avoidance of probate the furtherance of other desired estate planning goals dependent upon assets being held in the Revocable Trust. Finally, if the estate planning strategies involve more advanced techniques, such as Medicaid planning, business succession planning or further estate tax savings strategies, additional

planning consultation will often be undertaken regarding such strategies by agreement with the client either on an hourly rate or fixed fee basis, depending upon the circumstance.

## SUMMARY

We at Foulston Siefkin are dedicated to providing our clients with the highest quality estate planning services available in the state of Kansas and the Midwest region. Due to having one of the largest, most knowledgeable, and most experienced probate and estate planning departments in the state of Kansas, we can provide estate planning counseling of a quality we don't believe is exceeded by any other Kansas law firm. In addition, as a result of the sophistication of our proprietary document assembly system, we are able to provide and assemble comprehensive "user friendly" estate planning documents incorporating the goals of our clients at an efficiency level we do not believe is equaled by any other law firm in this region.

## FOULSTON SIEFKIN'S ESTATE PLANNING AND PROBATE GROUP

Foulston Siefkin LLP, the largest Kansas law firm having offices exclusively in the state of Kansas, has more than 90 attorneys and is headquartered in Wichita, Kansas. The firm has additional offices in Kansas City and Topeka. The firm's Estate Planning and Probate Practice Group currently consists of eleven attorneys who collectively practice in all significant estate planning, probate and trust areas. Viewers are invited to click [here](#) for information on the Group's practice areas and attorneys, law summaries of estate planning areas of special interest, regional and national estate planning articles authored by Group attorneys, related links and other estate planning information which may be of interest.

This estate planning law summary above was authored by the firm's Estate Planning and Probate Practice Group. Provided as a service to viewers, the strategies discussed therein are not designed to be an exhaustive discussion of the subject matter. Moreover, the discussion is often Kansas law specific, and are subject to varying and changing federal and state laws. This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

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## FOR FURTHER INFORMATION

Foulston Siefkin regularly counsels clients on issues relating to Estate Planning and Probate. If you are interested in additional information regarding these matters, please visit our website at [www.foulston.com](http://www.foulston.com) or if you would like to discuss specific ways in which Foulston Siefkin can help you, contact **Tim O'Sullivan** at 316.291.9564, or at [tosullivan@foulston.com](mailto:tosullivan@foulston.com) or **Stewart Weaver** at 316.291.9736, or at [sweaver@foulston.com](mailto:sweaver@foulston.com).

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*Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Topeka, Kansas City, and Wichita, Foulston Siefkin provides a full range of legal services to clients in the areas of Administrative & Regulatory, Agribusiness, Antitrust & Trade Regulation, Appellate Law, Banking & Financial Services, Commercial & Complex Litigation, Construction, Creditors' Rights & Bankruptcy, E-Commerce, Education & Public Entity, Elder Law, Emerging Small Business, Employee Benefits & ERISA, Employment & Labor, Energy, Environmental, Estate Planning & Probate, Family Business Enterprise, Franchise, General Business, Government Investigations & White Collar Defense, Health Care, Immigration, Insurance Defense Litigation, Insurance Regulatory, Intellectual Property, Life Sciences & Biotechnology, Mediation/Dispute Resolution, Mergers & Acquisitions, Native American Law, OSHA, Public Policy and Government Relations, Product Liability, Professional Malpractice, Real Estate, Securities, Tax Exempt Organizations, Taxation, Water Rights, and Workers Compensation. This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.*

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