

Unedited transcript of

Initial Steps, Fundamentals, and Estate Planning Documents

from **Estate Planning: MCLE BasicsPlus!®**

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Speaker(s)

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>>: Our first presenter this morning is Heidi Seely, who is counsel at Day Pitney, and I have a lot of repeat faculty with me for this program, but Heidi has graciously agreed to join us for the first time, so I'm very pleased to have her joining, and Heidi and I actually work a lot together and have a lot of common clients together. So pleased to have her on this program. And she will be walking us through the initial steps of the planning process. So someone calls you on the phone, what are you supposed to do now, right? You've just hung your estate planning shingle, the phone rings, now what? So Heidi I think is going to share her screen and begin her presentation. Take it away, Heidi.

>>: All right. Thank you so much, Katie. Happy to be here. Happy to do actually my very first MCLE presentation. I've been doing Boston bar association stuff for a long time, but happy to have this forum to teach and help people understand kind of how this process works. So like Katie said, I'm going to kind of walk you through the first steps of what to do when a client walks in the door. Talk about the process, talk about kind of how I run a general estate planning meeting, and then kind of get into the nitty-gritty of what the core estate planning documents are that we typically recommend for every client. So like Katie said, I'm going to share my screen. I think that when I do that, you're going to see that I disappear, but I promise I'll still be here and hopefully, you'll still be able to hear me. If you do have questions, I will have a chance to -- I'm planning to answer questions kind of at the end of the first hour, and then, obviously, at the end of the second hour. But feel free to pop in. I think Katie will be able to

have me stop while I'm presenting and I'll turn my video back on for that. So that's how I'm going to run things. And just before I start just to kind of give a little bit of background on me, I've been practicing for 12 years. I've worked in the private trustee kind of things. I've worked in a smaller law firm, and now at Day Pitney so I've seen the estate planning, from the beginning of an estate planning all the way to state administrations. So I have lots of experience in this so if you have questions, please do feel free to ask and I'll be happy to answer them. So I'm going to go ahead and start my share screen now, and we will go from there. So we are taking clients through the estate planning process. Before we kind of get started, I think the first thing to think about like if Katie said if you are hanging your shingle or just getting into the estate planning world, I think it's important to kind of think through what you think the process is going to look like. That will make sure that you've kind of thought through all the different steps, and then when you have your first estate planning client meeting, you will be prepared. So think through your process. How long do you think this process will typically take? From my experience, the process typically takes about two to three months, from the time that you initially have a client reach out to you, to the time that you're signing documents, sending them copies and kind of closing the matter. You know, I typically see one to two meetings, an initial meeting, an interim meeting, if necessary, and then a signing meeting, although the signing meetings have kind of been changed a little bit due to COVID and we'll talk about that and what that looks like. Drafting, at least from my perspective, can take, you know, four to six weeks, especially if you're working at a bigger firm where you have, you know, associates doing drafting for you that then needs to be reviewed. You know, if necessary, a draft can be done in a day and reviewed in a day, but honestly, I think given the amount of complexity that's involved in drafting estate planning documents, it should take longer than that. You shouldn't make that your habit. You know, how many are typical? Probably two or three. How do you bill for your estate plans? This will be a question for you to answer in your own practice and depending on whether or not you're a sole practitioner or working at a firm, the firm might have its own billing practices. Again, taking my own personal experience, I typically bill hourly. I don't bill on a flat rate, although I know that a lot of people do. I find it easier, just given the fact that every client is so different. It's hard for me to give a flat rate for an estate plan. Even if someone

comes in and says I wanted the most plain vanilla thing ever, nine times out of ten there's going to be some random, odd thing that pops up that needs to be dealt with that may longer time, or it may take less time, who knows? I think hourly billing makes more sense for me. That said, we do do flat rate for some clients. Kind of very specific clients, like if we know that they work at a very specific firm that we've done work with in the past that has kind of its own specific drafting needs, we'll bill a flat rate for that, but that's kind of an art, not a science. As far as timing on billing goes, we'll talk about that more a little bit later, but I typically only send two bills rather than trying to send monthly billing. Again, another kind of question for you to think about before ' you even have a client come in is what kind of information are you going to require before your initial meeting? We're going to talk about estate planning questionnaires, when to send them, what kind of information you're going to want to ask. I think at a bare minimum, obviously, you need to know who your client is and be able to run conflicts, but again, it will be more of an art than a science in how you prefer to work to decide how much information you need before that initial meeting gets started. And finally, I think it's important for you, as counsel, to think about what makes a successful initial meeting. You know, you need to feel comfortable that after that initial meeting, you have enough information to move forward, but you also want to think about what the client is looking for out of that initial meeting. I certainly have some clients who are kind of shopping around, looking for estate planners, and that would be a different meeting than a client who already knows that they want to work with you and is ready to get into the meat of the process at the beginning. Excuse me. I say that most of my initial client meetings are the latter: People already know they want to work with me and they're ready to -- I'm not going to spend a ton of time on this, but basically clients are coming from people that you know, whether former clients, just people in your personal network. Other professionals, you know, attorneys, financial planners, CPAs are great referral sources. I would say most of my clients come from those other professionals. And then family members of your current clients. Again, if a parent comes in for an estate plan, they may ask me to do an estate plan for their adult children. Like I said, one of my initial professional experiences was working for a private trustee company that kind of prided itself on its multigenerational approach to estate planning, doing the planning for the grandparents and then the

parents and then the grandchildren. Doing that kind of work really allows you to get to know a family and allows you to get to know the assets and the quirks of all the people kind of 'involved. It really does lead to the next question, though, of who is your client? It gets a little tricky when you have a situation like that, where a parent calls you up and says hey, you did my estate plan, I would love to have you do my kids' estate plan and by the way, I'll pay for it. Eesh, who is the client in that situation? You have this kind of loyalty to that parent because they are your former client or current client, but you also have a duty to the child in that situation. Obviously, from a professional responsibility standpoint, the child is the client and you need to make sure that you are putting their interests first in that representation. When you do things like that, you need to make sure -- when you have representations like that, you need to make sure that you have waivers from both of the, you know, parent and the child in that situation, waiving that potential conflict of interest because the child's interest may potentially be in conflict with the parents, and they need to both understand that. It's really easy in that situation and I'll talk about this in the engagement letter section, it's easy to kind of get the child to waive that conflict in your engagement letter with the child. It's really important, though, to make sure that you go back to the parent and get the waiver from them as well, even though you already have an ongoing relationship with them. The other time it gets a little bit tricky of who your client is, is when you have joint representations. And you'll hear me talk throughout the rest of the presentation. I would say -- I don't know, 90% of my clients it feels like are married couples, and maybe that's just the practice that I have, but I very, very often represent married couples that come in and want to do an estate plan and we make it a joint representation. We are representing both, you know, Mr. And Mrs. Smith in that situation. It's important to make sure, however, that you inform them of the potential for a conflict to arise between the two of them. And again, I'll get into the more details of that a little bit later on in the engagement letter section. Just, you know, when we're kind of thinking about that initial contact, it's very important to be clear about who your client is. So we are ready for our first meeting. We have gotten a phone call. Hey, this person would like to come in and meet with you and so I think the first big question of what you're going to try to figure out for your process is: How much information do I want to get before the first meeting? You know, very clearly, we have to

get a name and an address to run conflicts, to make sure that there's no conflicts within your firm for representing this person. There's a little bit of a gray area as to whether or not people want to send estate planning questionnaires to their clients, and I have to admit, I kind of do this on an ad hoc basis, depending on what I know about the client. Are they going to be overwhelmed by me sending them a questionnaire? Or are they going to want to kind of get into the nitty-gritty? I'm going to show you our questionnaire and I'm going to kind of walk you through all the pieces of information that are on it so you can think about creating your own questionnaire. I would say probably every firm has their own, but they're hard. They're hard to find that fine line of asking for too much and overwhelming people or not asking for enough. So we're going to go over what to ask, when to send it and kind of why this is so critical. I'll kind of answer that last question right now, and then we'll get into the actual details of it. The estate planning questionnaire is critical for so many different reasons. Obviously, in order to be an effective estate planner, you need to know your client and this is a great way to get to know your client. It's hard to do this just in a conversation, but having the structure of the questionnaire will allow you to focus in on the information that you really need. We need to know our clients family information; we need to know our clients' asset information; and we need to know kind of the other things that are out there that may affect our clients' estate planning needs, and that's what the questionnaire is designed to do. I will also say that again, coming from a background where, you know, we helped clients from the beginning of their lives until the end of their lives, having a fully detail estate planning questionnaire is invaluable from an estate administration perspective. It gives you a lot of information that you're going to need to start tracking down assets to prepare estate tax returns, having that biographical information, having names and addresses of other family members. It's a really important tool, and it's one of the first things that I do for an estate administration is go back and look at the estate planning questionnaire. So that's kind of just a general practice tip. So let's get into the actual estate planning questionnaire. I've copied and pasted our Day Pitney estate planning questionnaire. Just to give you an idea I'm sure you probably can't see all of the details here, but I'll walk you through it, a little bit of what the questions are that we ask. So you can see from the first page there on the left, this is a questionnaire for a married couple. We

have client one and client two, husband wife, wife, wife, whatever what you want to do there and we're getting biographical information: Name, date of birth, address, citizenship, employer, are you a veteran or not, home address. You know, very basic biographical information. We do ask on the questionnaire -- and I'm going to get into this a little bit more, the kind of tricky assets, but do you have any foreign assets? Any weird assets? That's at the end, sorry I got distracted. We asked if you are married or not. Sometimes, we just have partners who are not married and that will obviously change your planning tools that you have. And we also ask if there was a premarital agreement or if you've been married in the past and if there's a divorce agreement that will potentially have impacts on your estate planning. We ask for children's name, children's names and addresses and phone numbers and dates of birth so we know if there are minors or not, and also that can be important later for retirement planning purposes. Same thing for grandchildren. The special considerations page on the next one is kind of where we get into all of the strange things -- they're not strange, they're just people's lives, but kind of the things that we would need to think about. Do you have any significant health issues? Do you have any family members that have special needs? Are you anticipating significant potential inheritances? Are the trusts of which you are a beneficiary or a trustee? I'll pause here. This is a question that kind of will surprise you with people's answers. A lot of times, I will have people say oh, yeah, I'm the beneficiary of a trust, but I don't know anything about it. This is a great time to remember or remind your clients that if they are the beneficiary of a trust, that they are entitled to information regarding that trust. And it's important to really understand, when you're doing estate planning, how that trust is going to either land or not land in that client's estate and whether they have any powers over that trust. So that's a big one that's super important. If you can get your hands on a copy of that trust, that's what you're going to need to answer those questions. We do like to ask about specific preferences regarding organ donations, burial or cremation. That will be part of the living will and healthcare forms that you are going to prepare for them. We ask about lifetime gifts, have they made any significant lifetime gifts and if so, were gift tax returns filed? If the answer to that question is yes, we need copies of the gift tax return because that is a huge component of making sure you understand how much estate tax exemption is left and whether or not the gifts were

properly reported or not. Again, if there were prior marriages, it's important to understand what the terms of the divorce agreement were. So we need to know, you know, date of divorce, a copy of the divorce agreement, those are super important things to have. And then, you know, if you happen -- if there are other support obligations out there, if you are supporting, you know, a niece or a nephew or something or a parent, what kind of support obligations do you have? So this is the first two pages of the estate planning questionnaire. Kind of a screenshot of all of this but the second big piece here is the assets summary. As you can see, we're asking -- and this is a really important piece of this -- when you're doing a plan for a married couple, it's super important to understand not only what assets they have in general you know, between the two of them, but how they're owned. Does one spouse own one thing, one spouse own the other, and then what's joint? Because that kind of delineation of individually owned and jointly owned will really matter later on in your estate planning. So your questionnaire should really specifically separate those kind of columns, and you can see how we did that on our questionnaire. Obviously, liabilities are important. It's important to understand. I do have to say, though, that at least from a planning perspective, as you'll recall, you are required to file a tax return based upon your gross estate, so I almost typically kind of ignore the liability. I don't ignore them, but they're not my focus when I'm thinking about what type of plan is needed. I'm looking at what that gross estate is going to look like, and then we can plan from there. I feel like liabilities are a pretty flexible thing that change pretty quickly over time. We also look at retirement information, retirement plans and life insurance and again, you can see how detailed we get here. This I feel like is a little bit overwhelming for clients. So I think my suggestion would be that we're really just looking for how much life insurance is there, who the beneficiary is, and whether it's term or whole life insurance. We just need to know those things because we're probably going to end up suggesting changes to the beneficiaries. Again, the same thing for retirement plans: Who owns it, how much is in it and who are the current beneficiaries? Because we're probably going to end up changing the beneficiaries as part of the estate planning process. We're going to get into that a little bit later, but that's kind of the focus there. And then finally, the last thing is the weird assets. Do you own things jointly with other people besides yourself. For example, do you and your siblings own a lake house

or do you have some small interest in a partnership or an LLC or something like that? I think more and more I'm asking very specifically about whether or not the clients own cryptocurrencies. That is a really important piece that will change your drafting, or at least will trigger additional questions on how those assets are held, managed, and intended to be managed in the future. So that's an important question that I kind of always ask outright. We always ask for copies of current estate planning documents. Things like your durable powers of attorney, healthcare proxy, those are probably going to be redrafted, unless they were just drafted yesterday. Any time I see healthcare proxies or durable powers of attorney that are more than three years old, in my mind they're going to be trashed and we need to redo them because they need to be fresh and not stale. A will is important to understand if there were any powers of appointment that were being exercised and kind of seeing what the plan looked like and if they did have a revocable trust and I'm going to get into this a little bit more, a lot more in the second section of this presentation, but it's really important to get your hands on a copy of that current revocable trust because even if you're going to be completely restating it and starting from scratch, you want to make sure that you're referencing that original trust in the chance that assets were already titled into the name of that trust. You don't want to completely blow that old trust up and then have that asset that's already titled in there floating out in the ether. It's important that you get a copy of that revocable trust to make sure you're properly referencing it. Last few questions, and then we'll move on from the questionnaire. You can see how detailed all of this is. We ask about other advisors. It's great to have a team that you can be part of, like Katie said, she and I have worked together so it's always lovely to see we know who the financial advisor is, they can be super helpful in helping you get information about the clients. I always love to know who the CPA is, if they have an accountant so we can get our hands on copies of tax returns. And that's -- it's just nice to have also from a reference, networking perspective. And then miscellaneous information. Who knows if we missed something, but sometimes, clients like to add a little bit more. So, like I said, you can see how detailed this question is you can see why some clients might be thrown off by it. One kind of trick that I use is that I will send them the questionnaire in advance of the initial meeting, and I'll say, the more of this you can fill out before our meeting, the more efficient we can be in our

meeting. Kind of trying to remind them that I charge on an hourly basis and if we have to spend the time going over the nitty-gritty detail of everything on this questionnaire, it's going to cost them more. So if they feel like they can do the work in advance and I can have it in advance, that will make things run a little bit more smoothly. If I'm dealing with an elderly client where something like this might completely blow their minds, it's okay. Just make sure that we have basic biographical information about them so we can run conflicts, and then we can talk about the rest of it in the meeting. And that's okay, too, and you can use this questionnaire kind of as a guide through the beginning of your meeting, and you're going to kind of see how I do that in the next slide.

>>: We have one question come in. So the question is: Should a testamentary trust have a separate trust instrument or is it usually contained within the will? I know Heidi is going to talk about the documents themselves, but I will answer this one ' quickly. A testamentary trust is always contained within the will, which is why it is called a testamentary trust. So testamentary trusts are never stand-alone; they are always contained within the will. And I know Heidi is going to do a deep dive into all the four pieces of the estate plan.

>>: Okay. Perfect. You answered it just the way I would, Katie. Thank you. And I certainly will get into kind of the difference between a separate stand-alone trust and why we use them for our estate planning in Massachusetts. So I'm going to go back in to sharing my screen here. Bear with me, now that I'm back. Okay. So we made it to our initial meeting. We are ready. We are sitting down with the clients or we are sitting on Zoom. What is this meeting going to look like? I break my meetings down and I always tell my clients in advance. This is how I plan to run the meeting. This is your meeting so if you have questions, let me know. This is my basic outline for a meeting. I spend about a third of the meeting getting to know them and I'll go through what I'm looking for and what I'm asking in that, and it's also just -- it's a them getting to know you and you getting to know them to make sure this is a good fit for a client/attorney relationship. We get into the assets. As you can see from the estate planning questionnaire, I get pretty deep into the assets, and we get pretty specific about who owns what, and how that's going to relate to their planning. Go over the outline of

the estate planning basics, kind of what an estate plan typically looks like and what goals the clients have. That's an opportunity for them to really talk about what they're trying to do, and then we get into the details of the documents themselves. I will run them through each document, how it works, who the people are involved in those documents, and so on. And we will go over those things in the next section of the meeting. So this is our initial meeting. So we are going to talk about getting to know our clients. I talk a lot about -- I spend a lot of time getting to know my clients. Maybe that's just me kind of personally, what I feel like is important, but I really like to start out by asking them about their family tree. I will say, you know, where did you grow up? Are your parents still alive? Do you have siblings? Do you have children? Things like that. And I will literally draw out a family tree as they're talking because it helps me try to understand kind of the global sense of who might be potential beneficiaries under their estate plan. That's also a really great way to draw out details about any special family circumstances. These are the things that are going to potentially not trip you up, but potentially need a little bit more detailed conversation in the documents. So is this a second marriage? That can have a lot of effects on the type of plan that you do, especially if there is a blended -- a blended family in the second marriage, if you have kids coming from each of the prior marriages. There can be a lot of need for or want for making sure that each client's children are taken care of under, you know, the particular spouse's estate plan. It can also obviously have a lot to do if there's a premarital agreement or a divorce agreement, those things can come into play, and that's why that question is so important. Children with special needs is a big one, and, you know, typically that would be one of the first things that a client talks about, but obviously, that is kind of its own ball of wax in the estate planning world, and if you are going to start doing drafting for folks with special needs, really making sure that you have your kind of feet under you, understanding kind of all the rules that come along with that. I personally feel like that's a very specialized area of practice and I certainly know lots of people that do it as part of their general estate planning practice. I personally and this is just a very personal thing, I don't feel comfortable doing a lot of special needs planning, but I am very glad to be working at a firm that has folks in it that I can reach out to and kind of collaborate with so we can certainly do planning for people with special needs; it's just something that I feel the

need to kind of reach out to my network to make sure I'm getting everything right on. I already talked about the existence of a premarital agreement. And then the expected inheritance question is a big one. I talked about it a little bit before, but it's really important to make sure that you're asking that question. Some people don't feel super comfortable talking about it and a lot of people don't know what their inheritance is going to be, but I think -- hopefully, if it's going to be significant, they will at least have an idea of what is coming down the pipe and when. They might not, but it's worth asking the questions. So like I said, I do spend quite a bit of time on this. I think it helps people feel a little bit more comfortable talking, once they get flowing on their own thing, on their own information, and obviously, it helps you as a planner. Then we dive into the assets. And just to kind of set the table for the assets discussion, what I like to say is, you know, I'm not trying to be a nosy nelly. I'm trying to understand what kind of tax planning we need to do for you. Hopefully, we all know -- and I'm going to get into, in a little bit more detail, the Massachusetts estate tax and the federal estate tax are miles apart at this point. Massachusetts estate tax kicks in at \$1 million, the exemption is \$1 million per person. The federal estate tax exemption is \$11.7 million per person. So very clearly, that's a huge delta, and we kind of need to know where the client fits in on that spectrum. Are they under the \$1 million threshold? Are they just over it? Are they somewhere in the middle or do we need to start thinking about federal tax planning in their documents? So that's kind of how I frame the question. It's also super important to know, you know do we have special assets that we need to consider? I've kind of already gone over this in the estate planning questionnaire section so I'll briefly go over them. Is there giant property owned with somebody other than the spouse? Are there partnership interests that we need to consider? If there are partnership interests, we definitely need to see a copy of the partnership agreement itself to make sure that we understand are there limitations on how those interests can be transferred at death? Same thing goes for any LLC interests or anything of the like. Foreign assets. Again, are their own ball of wax. Super important to know that they're out there and making sure you understand any limitations on how they can be transferred or the intent on how they can be transferred. They might be different than the intent on the rest of it. Next one, we already talked about it, expected inheritance. Last one is stock options. These are the funky assets that might cause you a

little bit of pause to plan for those specific assets. Then we kind of get into an outline of the estate planning basics. I go over the -- I go over the federal and Massachusetts estate tax laws and how they will affect the estate of the client. So you can see now we've made it through learning who the client is, what their assets are. You have a picture of what you think is probably going to be the plan going forward for those clients. [Coughs] Excuse me. Now, that you have all that information, you can kind of structure the rest of your presentation or your meeting a little bit more detailed or a little bit more focused on that client individually. So I go over the federal and the Massachusetts estate tax laws kind of like I just did a minute ago. I explain the difference between the Massachusetts tax and the federal tax. I explain how that tax relates to married couples, if this is a married couple. And then I explain how ownership of assets will kind of affect all of that. So this is kind of a time when you would really get into the difference -- sorry -- let me back up there. So as you saw on that estate planning questionnaire we really broke out, if we have a married couple, we broke out for each asset, is it owned by spouse A. or spouse B. or is it owned jointly? And I will kind of discuss how ownership of the assets can kind of defeat an estate plan or it can make the estate plan itself work. And so I'm going to get into that a little bit more detailed in the second part of the session but let me just kind of give a really basic example. If you have a client where every single thing that they own is owned jointly with their spouse, they own their house together, they have a joint checking account, joint savings account, and that's it. For like let's just say they own literally everything together. Upon the death of the first spouse, everything will pass by operation of law to the surviving joint owner, and all of the estate planning that you just did will have little to no effect. On the other hand, if you can suggest that they allocate their assets to be a little bit more equally owned by them individually, their estate plans will have more to work on, and I'll explain kind of how that works in the next section.

>>: Heidi –

>>: It's important to understand. Yes, go ahead.

>>: So tomorrow, I'm going to lull everyone to sleep with a few hours of going very deep into estate -- all transfer taxes, but we're going to cover

this in great detail. So this is a very good primer. Getting everyone ready for a rivetting morning of transfer taxes tomorrow morning.

>>: Perfect. Perfect. Well, I will let Katie just dive deep on that then. But just understand -- so thank you, Katie. Just understand that that is an important thing for the clients to understand. And I'll say that's actually an important thing that I feel like a lot of estate planners miss the boat on, that they'll gather all this information from the clients are, they'll talk them through how the plan is supposed to work, but then they miss the last step of making sure that the client actually understands how they need to change ownership with their assets in order for the estate plan to work and this is a great example of providing value for your clients, kind of beyond the documents themselves. If you can provide them with, you know, a cheat sheet or suggestions of how you should actually retitle assets, change beneficiary designations and whatnot to make sure that the plan itself is going to be funded and going to work, that's a huge benefit to the client, that some estate planners don't provide. So you can kind of be a better estate planner by doing that for them.

>>: We just got another question come in, which is a really good question.

>>: Great.

>>: So does an estate plan in the U.S. cover foreign assets? Or should the client do an estate plan in the country where those assets are held?

>>: Great question. So your will -- it will cover worldwide assets. It will cover worldwide assets. However, I have found in practice that the administration of a United States will in a foreign country can be administratively very burdensome. So I have found that if we know that there are assets that are going to be held in a foreign country and are continuing to be held in a foreign country, that it's a good idea to have a ' foreign will just governing those foreign assets and you have to be really careful when you do that that you change your U.S. will to say this will governs all of my property, with the exception of my French property, which shall be governed under my French will and then the French will will govern that. Katie, I don't know how you feel about that from your former

practice, but that's the advice I give to clients: Yes, it will be covered, but it's better to have a foreign will in hand.

>>: Always. Always. And I think this is a good reminder of why it's so important to ask that question on the questionnaire, right? Because you gain so much knowledge from that questionnaire and you can't plan for all of those things if you don't ask questions and if you don't have the information, right? So this is key and yes, as Heidi said, while that will here should cover that, every country has its own laws and some are far more friendly to deal with, when someone passes away than others. They have their own transfer tax; they have their own probate; all of those kinds of things, so it could be that no matter what you say in your U.S. will, it's not going to cover there. And then the transfer tax in other countries is a whole different animal, right? So yes -- and I'll touch on this a little bit tomorrow, too, but yes, we have treaties with some countries to sort of avoid double taxation, but not with all. So I always encourage clients, now that I'm working in an advisory capacity and certainly, when I was practicing, if they have foreign assets, they should seek counsel in that country. It may be that they don't have to split something up, but at least they've met with counsel there so they know what to expect.

>>: Perfect. We've explained the ownership of assets. Katie is going to go over the rest of the in more detail tomorrow. I do explain the probate process in Massachusetts. You know when I first started practicing, I was very dismissive of people's concerns, which probably isn't a good thing. I was dismissive of their concerns about the probate process, this idea that we have to avoid probate at all costs. I would kind of say you know what, honestly in Massachusetts, the probate process is relatively pain-free, it's just paperwork. So it's not something that you have to bend over backwards to avoid. I will say now that COVID has hit and we have a year and a half under our belts of dealing with the courts through this pandemic, it has become more and more painful. And I am trying to encourage ' people if possible to avoid probate, at least for the things that are relatively easy to do. What is the probate process? Let me just explain it really fast. So the probate process does two things: You are allowing your will, if you have one, which Bailey means the court will look at the will, determine whether or not it's valid and once that will is but quote/unquote allowed, the

terms of that will govern the disposition of the decedent's estate. The second thing that the probate process does is it appoints a personal representative. This is what used to be called an executor, but with the change in the Massachusetts probate laws a couple of years ago, we now call it a personal representative. So the personal representative is the person who administers the decedent's estates and I'll get into that a little bit when we're talking about the will. The thing that's the most important to remember about probate is that probate only governs the assets that are in the decedent's full name. So we're literally talking about things that you own individually, like I own my car, I own a checking account, and that's about it. All the rest of my assets are either jointly owned, or they have beneficiary designation. So probate does not affect things like life insurance, retirement assets. Those assets pass under contract to the beneficiaries named under the contract. The only time that those types of assets can become part of the probate process is if you don't have a beneficiary designation and the contract itself that says that in the event where there isn't a beneficiary designation, it will pass to the estate of the decedent. In that instance, those assets will become quote/unquote probate assets. And the last thing that I mentioned earlier, but I'll be super clear. Probate does not govern jointly owned assets. So my husband and I own our house as joint tenants with right of survivorship. That asset will pass immediately upon my death to him as the surviving owner. So you can imagine that we start getting into a situation where, you know, a lot of married couples, that you don't have a lot of probate assets to really worry about. You can avoid probate by titling assets into those things that I just mentioned, jointly owned property, retirement assets and whatnot, but you can also avoid probate by funding your revocable trust. I'm going to talk about how these documents work in the next section but funding your trust is basically just retitling an asset. So if I owned, you know, a brokerage account. Instead of it being named in the name of Heidi Seely, I would retitle that into the name of the Heidi Seely Trust. I would still have control over those assets; it's in a revocable trust; but it's just in that kind of envelope of the trust, so that when I pass away, it's not in my individual name. It's in the name of the trust and there's this seamless transition. One of the big reasons why people use trusts and I'll talk about it more in the next section. So I explain that probate process in Massachusetts. I explain to them again, you know, because of COVID, it's becoming a more difficult

process but in the long run, probate is just paperwork. It may take a lot of time but in the long run what will happen is that that will will gather up ' all those assets and dispose of it pursuant to the terms of the will. And then I talk about the kind of purposes of these estate planning documents. I'm going to get into what the core documents are in a moment, but the purpose behind these documents is to govern the disposition of your assets and to have somebody be able to help you if you are incapacitated either from a medical standpoint or from a financial standpoint. I think a lot of what these core documents do is make sure that things are going the way that you want them to go. If you don't have an estate plan, the state of Massachusetts, the Commonwealth of Massachusetts, will tell you what happens with your assets. And a lot of times, that's not what people want. I think the other thinking reason why we have estate planning documents, especially for folks that have younger children is making sure that those children are taken care of if the parents pass away. So that's kind of -- I go over that kind of in a general way. And then, you know, I also take -- let's see -- so before I get to the next slide, I just wanted to see if I had it on the next slide. I also take this opportunity to really talk about the clients goals. A lot of times, clients have a very basic idea of again wanting to make sure that things are taken care of when they die and that their children are taken care of if they're minors. I will oftentimes prompt them a little bit to say there's other things you can do in your estate planning documents. For example, making sure that you're naming the people that you want to be involved in all of these decisions, rather than the Commonwealth deciding for you. But then also things like reminding them that perhaps they wanted to make outright requests to people, make charitable bequests to charities that they supported in their lives that the estate planning documents are a place for them to do that. You saw on the next slide now that I passed on to the next one there what are the core estate planning documents? And I'm spending our next section getting into the nitty-gritty details of these but a core estate plan for quite literally almost every single client that I have walk in the door is going to include a last will and testament, a revocable trust, a durable power of attorney, a healthcare proxy and a living will. Those five documents are the core of every single estate plan, \$1 million or \$100 million. The more money you have, maybe we're going to add some more bells and whistles, maybe we're going to add some additional documents on the outside, on top of these core estate planning

documents, but these -- this is the foundation of what's going to build an estate plan. You'll see on the next slide, before we go to questions and before we pause for our next section, I really depend heavily on using flow charts to explain how the core documents work and what they do. I miss being in person with clients where I could draw this flow chart as we go along, but you can kind of see how we work here. Basically, I'm talking about this idea that we have the client and the spouse there and we show how the joint property is going to pass directly to the spouse, the probate property passes to the will, and then we kind of flow through how the will flows into the trust, the trust gets split, I'm going to talk about all this in the next section, but you can kind of -- without having the flow chart, I feel like clients just completely lose the thread. So you know, obviously, this is how my brain works. A lot of circles and arrows and you'll have your own way of describing it. But, you know, I think it's important to give your clients a visual representation of what the plan is going to be, and how it works. So I am going to break here. Katie, any other questions that have popped up?

>>: Yep.

>>: Over the past few minutes.

>>: We'll do this, and then we have a break from 10:35 to 10:40, and then we'll come back and I just want to remind everyone. We did change the agenda a little bit to give a little more time to David and Brian. But when they're done at 12:30, we also will have questions, and Heidi is going to stay on for that and I will be on and, of course, David and Brian will be on. So if you have any questions that are not answered that we can't get to during this section, there will be time at the end of the program when we finish up at 12:30 to answer everything else. So this question that came in was: What are the main distinctions between making the trust an owner of an asset versus making a trust a designate beneficiary, I.E. a checking account or a brokerage account. I don't know if you want to take that now or when we pick back up at the beginning of the break. It's up to you.

>>: Sure. I mean, we can certainly go over that. I know a lot of banks and institutions kind of pushed the idea of these transfer on death accounts. I think it makes it easier from the bank's perspective. I'm a little loath to see

them, and I know Katie you're in the bank industry.

>>: I'm an attorney before anything else.

>>: The reason I'm loath to see them is they can potentially defeat your estate plan. Again, transfer on death is almost like a jointly owned asset kind of. You're like -- by contract you're saying who this asset will pass to. Again, on the part make sure our estate planning documents have something to work on so if you have transfer on death designations on everything, they might not end up in your estate plan. I think -- I think you also lose the -- they just -- they kind of get in the way of your estate plan. I would prefer to either see if you have a brokerage account, for example, at Boston Private, I would rather see that titled in the name of the trust so that upon death, the trust is already the owner, it's a completely seamless transition. The terms of the trust document just tell you what to do upon death. It just seems like an easier step to do and if you're going to do the paperwork to name a transfer on death you might as well just retitle the asset into the name of the trust. Katie, I don't know if from your perspective off-different perspective.

>>: I agree. So if you have a revocable trust, and I think 99% of people, no matter whether they have \$2, to \$200 million need a revocable trust for a host of reasons, but if you have a revocable trust, it should be funded during your lifetime. So the reason why you're doing this revocable trust is so you don't need those payable on death designations and all those other things. And it's not going to work as intended, unless it is properly funded during your lifetime. The only time I talk to clients about payable upon death designations is if for some reason they're not doing a revocable trust, maybe this is a little old lady that has one checking account, that has \$500 in it that she's leaving to her granddaughter, perfect. Then we're going to avoid probate for a little account. So there are instances where that might be appropriate, but if someone has a revocable trust, no. We're not going to do that. All right. I'm going to make sure everyone has a little break and I know Heidi could probably use a water break.

>>: I need a drink of water.

>>: We're starting our break a couple of minutes late. I'm going to have everyone come back at 10:42. And then I promise that if the questions don't get answered during this morning while we have Heidi we can pick up with questions at 12:30 because Heidi is going to stay on for those, as well. We will take a quick break and we'll see everyone in a few minutes.