>>: Good morning. I'm Shani Rea Collymore, and I'm going to be speaking with you today about drafting simple wills and trusts. So I'm assuming a couple of things before I get started on discussing how to draft a basic will, and that's that you have already met with your clients and determined, you know, what assets they have and who they want to leave their property to. So you've had a discussion with them about their goals. And then you should have had the client complete a questionnaire in advance of your meeting or at the meeting that they've provided you with a questionnaire that outlines their legal names as it should appear in the will, their addresses, if they have children, if they're married, single. You know, all of that should be - you should know when you - before you draft the will. If they have children, what their children's names are, and all of your clients' asset information. And this is really important so that you can best make recommendations as to what type of documents that your client really needs. Without all of this information, you really are not able to give them proper advice. And then just some basic terminology that we'll be utilizing throughout the presentation that you may or may not know. But the person who is making the will is the testator or testatrix if you're female. The personal representative is more commonly thought of as the executor. But as you all hopefully know, the MUPC changed the terminology from executor to personal representative, so that's what we use throughout the document to identify that role. The beneficiary is the person in your will who is going to be inheriting property after your passing. And then we'll be referring to the MUPC, which is Chapter 190B of "Mass General Laws." And hopefully you guys are familiar with that because that is what governs the drafting of the, you know, will, how it should be executed, how many witnesses there are. And then it also has detailed information about filing probate, creditor claims, all sorts of information that you really should be familiar with. So if you're not - haven't familiarize yourself with MUPC, you should do so now. So when you first - after you've met with your client, you know that they just need a basic will and, you know, nothing too complicated, the first part of the will is the publishing clause. That's the opening line of the document where it's going to state the testator's name, where they live, the county they live in and the state. And then this is also really important where the person is going to revoke any prior wills or codicils that were drafted by them previously. So that way, you know that the will that you're doing with your client is their last will and testament. And if there are any other wills floating out there, they're not revoked. So that's the - this is the basic format beginning line of any sort of will that you're going to be drafting. Another thing to consider is if the will is being made in contemplation of marriage. If you're meeting with a client that's not currently married, but they're engaged, it's a good idea to reference that in the will, that the will is being made in contemplation of marriage to X person. So that way it's clear that it wasn't forget - the spouse wasn't forgotten and that type of thing. Prior to the MUPC, a will was considered to be revoked if the person got married after they executed their will. This rule - this is no longer the rule, but it's still a good practice to indicate whether the will is being made in contemplation of marriage. So now, basically what happens is if you get married after you've done your will, the surviving spouse will get an intestate share unless the will was made in contemplation of marriage or the will expresses the intention for it to be effective notwithstanding the future marriage or the testator provided for the surviving spouse outside of the will. After that, your first article of the will is going to - should list family information. So if your client is married or unmarried, you should state that here. If they have children, you should list their names and the date of birth of the children. And then I have some sort of standard sample language that you could utilize are just sort of as a - give you an idea. But all references to my children in my will are to these children. References to my descendants are to my children and their descendants, including

descendants of any deceased children. So that's sort of just defining the term descendants and children that - as you're going to use it throughout your last will and testament, that when you use those terms you mean these children and their - and any grandchildren from these children are what you're referring to. Now, if you were going to be disinheriting a child, you would also - this would be a good spot to indicate that. So for example, if you were going to disinherit John, you could say that all references in my will to my children are to Jane Smith and that you're specifically disinheriting John Smith. And therefore, for the purpose of the will, John Smith and his descendants will be considered to have predeceased. So that would be a good spot to indicate that to explain that, yeah, you do have a son, John, but you're not including him in the will. So it's clear. Then the next thing that you should consider is the disposition of tangible personal property. So if your client chooses, they can prepare a personal property memorandum. And this is where - Article Two should be where the language in the will should appear, where it refers back to your personal property memo. The personal property memo is an outside document that the client would prepare on their own. You can give them, like, a template that would basically refer to their will and the article in the will that discusses the personal property memorandum. And then the client basically just needs to describe the item of personal property that they're referring to. So you know, maybe it's their wedding ring. They would say their wedding ring and the person who is to get that item of personal property. And then they would date it and sign it. And this can just be really convenient for people who like to change their mind a lot as to who is inheriting which items of specific tangible personal property. A lot of times that can be, like, a really common thing to go back and forth on and it can just be inconvenient to have to go into the office and meet with your attorney every time you kind of change your mind as to who's getting, you know, this piece of art or furniture or china, silverware, those kinds of items. So it's just really a convenient thing. And whenever they change their mind, they just rip up the memo and do a new one. And so the one with the latest date would be the effective one. I recommend that if your client does do a personal property memorandum that you ask they provide you with a copy of it for your records so that you can have that in your file. So to the extent that, you know, not everybody is going to utilize the personal property memorandum, but to the extent that they don't or anything that is not included in the memorandum is left, that just all flows typically into the residuary clause of the will and will just pass to the beneficiaries that are going to be named there. Some things that you might want to address in this article would be whether you're a personal representative, what type of expenses they can pay in relation to the personal property. So like, expenses of storing the property in a storage facility after they pass away because sometimes it can take beneficiaries a while to actually come and get the property if they live far away. Or if the personal representative can pay shipping costs to ship large or small items to the beneficiaries. The value sometimes of wills will also include a valuation of the personal property. So like, whether the item counts against their ultimate share under the will. Sometimes it just doesn't. Or other times it might say, like, if that specific item is over $1,000 or more, then it counts against the share. But if it's less, than it doesn't. So those kinds of things that seem fair should all be sort of be outlined in this article. And then also, after the discussion on personal property, this is also where you would list out any specific or general bequests. They should appear after this article and before your residuary clause. So you've listed out any specific and general bequests and now - and you've had your personal property memorandum. Now, everything else that's a part of the probate estate that's left is going to flow through the residuary clause. And this can include real property, personal property. Basically, you know, everything that the client has that hasn't been previously distributed is distributed here. Here's some sample language so

you can define the residuary estate. Here I've said, all the remainder of my estate, including property referred to above that is not effectively disposed of, will be referred to in my will as my residuary estate. So we all kind of know what we're talking about. And then the disposition of the residuary estate, something super simple could be, I give my residuary estate to my descendants per stirpes. We already defined who the descendants were in Article One in the family clause where we stated John and Jane Smith. So we know who we're talking about. And then per stirpes is terminology that you should hopefully be aware of. It's in the MUPC and basically just means that if John or Jane were predeceased that their issue would inherit their share in their place as opposed to, like, per capita. This is a very simple clause. It could be more complicated, like if you were given distributions in different percentages. You could also just say, I give my residuary estate to as follows and list out the names of the specific people that were inheriting. And then, like, the percentage so, like, 10%, 20%, 30%. Or you could do it in tenths, whatever. So it can be as complicated as you want. Here we're just keeping it simple, and then we're also just going to have it go outright to any descendants as opposed to keeping it in a testamentary trust. But you can also have a testamentary trust that would appear after this. So you would say, you know, instead of it having - it saying that it's going to descendants, you could say that it's going to Jane Smith, but it's going to be held in further trust. And then you could, you know, insert trust provisions for that share for Jane into the will and have a testamentary trust which would act just like a living trust. It's just a trust that's created by the will as opposed to an outside document. So you can have that here. Or maybe you do have an outside trust, your residuary clause could just be - like instead, it could just be pouring everything to your outside revocable trust or something. That's also fine. A lot of times if clients do have a standalone revocable trust, they will have what we call a pour-over will. Instead - and instead of it naming the beneficiaries under the will, it's just going to say that everything in the trust pours to - everything in the will - excuse me - will just pour it to my trust. And it will name the trust and the trustee here instead of people. So that's also an option. It just depends on what the ultimate estate plan and your goals that you discussed with your client are. Then the next article after you've kind of outlined like who's inheriting what - and under what terms would be the remote contingent distribution - sometimes people call it the ultimate distribution - and this article discusses who gets the property under the will if all of the named beneficiaries in the document have predeceased the testator. So, like, John and Jane have both passed away. They didn't have any kids. Now who is going to inherit? Most common standard provision is for it to say that it would go to the testator's - basically their heirs at law. So it would pass under the intestacy laws of the Commonwealth of Massachusetts. So that just if you're not aware, intestacy basically starts off with spouse, parents, kids, grandkids, then down to brothers and sisters, nieces, nephews, first cousin, second cousin, all the way down the line until you get to your closest living relative. So that's generally what the document would say. Sometimes clients - you should discuss it with your client because some clients don't want that. Like if they don't have a close relationship with their family members or brothers and sisters and they don't want a sibling to inherit, sometimes they want it to go to specific people and their descendants as opposed to saying heirs at law. Or sometimes they want it to go to a charity. And this is where you would insert that as opposed to saying that it's passing through intestacy. Also other provisions to consider, if any of your children under the prior article have passed away, and say you have grandchildren inheriting on behalf of a parent and the grandchildren is a - grandchild is a minor, you might want to consider adding language to your will that would address that. A common thing to do is just have a standard article that holds the grandchild's inheritance in trust until they're 25. That's a common age to use. And the idea of

25 is just that the kid is usually out of college. They have a job. They've been working. They're just, like, a little bit more responsible than when they were 18. So generally the - whoever was the personal representative is going to serve as the trustee of the under-25 trust for the grandchild. And the trustee can just use the assets generally for anything they see fit for the grandchild at their discretion. And so super basic. It just ensures that minor children or even children that are 18 are protected and then just kind of, like, don't waste the money. So that's something I recommend you add. Then you're going to want to discuss with your client about who's going to serve as their personal representative. This is that executor role. This is the person that's going to hire the attorney to help probate the estate with the probate court. They're going to marshal all of the assets, file the will with the probate court and pay any estate taxes, debts and all of that - expenses of last illness - anything like that that are going to be due. They're the person that's going to be in charge of that. Once all of those things are done, then the personal representative is responsible for distributing your assets out to the people you've named in the will and under the terms you've outlined. So it's a big job for - so you can also name one person to serve alone, or you can name two people that serve jointly with the survivor. You can name as many people as you want in like a 1, 2, 3 order. More options the better in case somebody can't serve. But you're going to want to pick somebody that is organized, responsible because it is - it can be a lot of, like, paperwork and running around, cleaning out the house and selling. So it can just be a lot going on. So you're going to need somebody that's really good with paperwork and responsible and good with money. Typically, though, in a sort of standard family - husband and wife, or what have you, with kids - you're going to name your spouse. And then - as your personal representative and then if your spouse can't serve, you're going to probably name one or more of your children as alternatives. But this is still something that's really important to discuss with your client and who they prefer to serve in this role. Then you're going to have your general sort of administrative provisions of the will. This is where you're going to sort of outline the rules that apply to the probate estate. For example, a bond. You want to address whether the personal representative can serve with or without sureties on their bond. Sureties is like a type of insurance that the personal representative may be required to purchase. If you don't - you haven't waived sureties in the will, they can - and it's just kind of like an additional expense. And basically the idea is that you would have to purchase sureties on their bond for the value of the probate estate. So if you had a probate estate that's worth $2 million, you have to get sureties for a $2 million estate. And of course, the more expense - the higher the estate worth, the more expensive the sureties are. And that all just comes off of the top as an expense of administration. So it basically will come out of whatever the beneficiaries are ultimately going to get. So if you're picking your family members and kids and stuff that are - and they're trustworthy, it's usually preferred to waive sureties because there's just, like, a little bit of a burden and expense that's usually not necessary. But of course, there's always going to be some circumstances where you might need to utilize this. Then you might want to address informal or unsupervised proceedings. Typically, you're going to want your personal representative to serve with as little court supervision as possible just to keep estate administration costs down. So you're going to want to make sure they are allowed to file informally or formally, depending on what the best course of action is under the circumstances. And you really don't want to have the court overseeing their duties, because that's just going to be also time consuming and expensive. So basically, like, the more court interaction that your clients have to have with the court, it's generally just more expensive for the estate, and we always try to keep the costs down. Then you're going to want to discuss whether the personal representative can be compensated for their service under the will. Typically, if it's like a child

or spouse or something, they're not going to pay themselves. But technically they can. But the idea of the child not paying themselves is basically - it's kind of like coming out of their ultimate share anyway. So kids usually don't pay themselves, but some do. If you are a nonprofessional fiduciary like a child typically is, the general accepted hourly rate is like $50 an hour for their service, and they just have to keep a log of their time and what they did to justify the payment to themselves. Other things that you might want to address in this article is self dealing. Whether your personal representative can self deal - meaning like do things for their own benefit - like if you have real estate or something, can they purchase it? Those kinds of things. Generally children are allowed to self deal, but you'll have to have a provision regarding that. Other common things are employment of professionals. So you want to make sure that your personal representative can hire - has power to hire an attorney to represent them, accountant, financial advisers - all those type of people that are going to be important, and that they're going to need to help them. So power to do that. There's the principle - Massachusetts Principle In Income Act, just usually provisions about that in the will. And wills generally either follow it or don't, so at your preference. I discussed this a little bit already. But you're going to want to address underage beneficiaries or disabled beneficiaries. And in my document, I just have sort of like a standard under 25 trust, and that also has language in there if the beneficiary is on public benefits so that the trust sort of acts as like a mini - like - special needs trust. And that can be enacted at the trustee's discretion. And this is just a way to try and protect beneficiaries. If for some reason, maybe the kids at the time that you - the client read the will, the kids are all totally fine. But, you know, life happens. And maybe somehow one of the kids become disabled down the line and the parent hasn't had an opportunity to update their will, or maybe they're not able to update their will, this article can sort of act to help in that circumstance. And the trustee would have discretion to hold the disabled beneficiary's inheritance in a special needs trust and manage it for their benefit so they're not kicked off of any public benefits they may or may not be on at the time. And then if your will has created any testamentary trusts, they're also going to have to have a provision about the rule against perpetuities, which hopefully you guys are also all familiar with. Generally, it's - you know, it's a common law idea. But generally, it's 21 years from a life in being or 90-year term is general - is basically what the Massachusetts rule is on that. So you should have a familiarity with that and have an article in your will that discusses that, if you're creating any sort of trusts. And then Article VII is going to be where you address the powers that your fiduciaries in the will are going to have. So any powers that you outline here should be in addition to any statutory powers that they already automatically have. But it's good sometimes to just sort of outline them, even if they're statutory, to kind of outline some basic powers that - to make it clear that they do have the power to do certain things. So - and when you're outlining your powers, you should make sure that it's clear in the document that it includes the personal representative, any special personal representative or any trustee. Now the special personal representative is like a temporary personal representative. So they used to be called temporary executor. And now under the MUPC, we call that the special personal representative. And that person can serve when might - there might be, like, an emergency or some circumstance where you need to marshal assets right away or you need to do something right away. Maybe you have a sale pending and you haven't - the permanent PR hasn't been appointed. This is a common circumstance where you might need a special PR, and you just want to make sure that your special PR has the same - or trustee would have the same powers as your regular PR. One power that you always, always want to make sure is contained in the will is the power of sale to sell real estate. There is no statutory power of sale. So if you don't list it in your will, then your personal representative

doesn't have the power to sell real estate. And what happens is that they just have to request the power from the court and file a petition to sell real estate so that way they have that power. So it's just like an additional thing that has to be done, and so it can just be totally alleviated by containing it in your document. So that's definitely - if all else fails, make sure you have that in there. And then some other standard provisions that are typically in the will are regarding investment powers. You're going to want to make sure that if you have investments or cash or if they have the power to continue investing, to sell real estate, to mortgage real estate if necessary, to lease real estate, that can sometimes be necessary. You just never know what circumstances kind of can come up. Sometimes estates drag out and things - you know, crazy circumstances happen. So you want your personal representative to be able to lease the property if needed for various reasons. And so that's important, again, the power to hire professionals. And you should also have some sort of language in there regarding digital assets and what happens to them. Defining them in your will is important now as we, like, move to be more and more digital and everything sort of being cyber. You want to have something about that. And then the power to pay distributions in cash or in-kind. So if there's investments, they can either cash everything out and give the person a lump sum, or they can transfer the stock in-kind or whatever the asset is to the beneficiaries. And usually when I do, if I'm serving, I leave that - I will ask the beneficiaries if they have a preference on receiving the inheritance in cash or in-kind before a decision is made. Then the next thing is the Article VIII, which is going to be payments of debts, expenses and taxes. So generally, before you - once you file the will at the court and get appointed as the personal representative and before you've paid out any beneficiary distributions, you're going to have to pay any legally enforceable debts of the estate, expenses of administration. And if there's any estate taxes due on the estate, you'll have to pay those all before you make any distributions under the will to your beneficiaries. So hopefully you guys all know that creditors of an estate have one year from date of death to file a claim against the estate to try and enforce their creditor claim against the estate. So they - so you do have to leave the estate open for one year from the date the testator died so that all the creditors have the opportunity to file their claim and try to get it enforced and paid as a legally enforceable debt. So assuming all that has happened and you have your list of creditors, you make sure that you pay them as well as administrative expenses, like hiring the attorney and paying your legal fee, all that would be administrative expense and the estate taxes that may be owed. If the person lives in Massachusetts, estate tax is going to be owed if the estate is over $1,000,000. So just sort of being aware of those things is important. And then you're going to want to have some language in this section about apportionment of estate taxes. Like if there is estate taxes, where is the money coming from? Typically, it says that it comes out of the residuary estate. So typically it is going to come out of the residuary estate without apportionment, meaning that, like, the beneficiaries are going to pay a certain - are going to pay out of their share for the estate taxes. So if they got 20% of the estate, that they're going to pay 20% of the tax. Usually entitled to pay the residuary without apportionment, so basically it just kind of comes off the top and then split to the beneficiaries. So you should also address how estate taxes are paid from assets outside of the estate, like retirement accounts. So - because the will only governs probate assets. So assets that are in the decedent's name individually and that don't have beneficiaries and don't have beneficiary designation forms aren't jointly owned - those kinds of things. Those are probate assets. So those are the only assets that the will can cover. So if you have life insurance policies with beneficiaries or retirement accounts with a beneficiary, those are going to pass directly to the people named on the beneficiary designation form and not through the provisions of the will. However, those assets are still going to be includable in their estate

for estate tax purposes. So as far as the personal representative having to pay the tax, you're going to want to address what happened. Usually you're going to say that those outside assets will be apportioned, meaning they have to - the beneficiaries of those outside assets have to pay their share of any estate taxes so that the beneficiaries under the will aren't disproportionately having to pay all the taxes. Then Article IX is going to go over some definitions and general provisions of - that you've used throughout the will just so that there's clarity on everything and there aren't any provisions that - like, definitions or terms that you've used that maybe they don't - isn't understood. Some common things that you would - are going to want to define are adopted and afterborn persons, descendants, per stirpes, per capita. Those are terms that are utilized in the MUPC, but you should define it in your document as well. What determines good faith? Who's a legal representative? Shall and may - other things are like the use of the singular when you should have use the plural and vice versa. Gender definitions like if you use he and you meant she and, like, all of those kinds of basic things. Headings and your governing law. You governing law hopefully should be Massachusetts because I'm assuming you all practice in Massachusetts. But to the extent that you don't, then you put whatever - the state that you're practicing in as your governing law. And then after this, you should also have provisions regarding a contest clause. So a contest clause is a provision that generally says to the extent that one of your beneficiaries contests the will that you've signed to say that it's invalid for whatever reason, if they basically don't win the contest, then they're disinherited under the will. That's the basic idea of the contest clause, and that is just to kind of reduce frivolous claims against the estate. This might come up if you've left an unequal disposition of assets amongst your children. Or if you've left a child out of the will for some reason, then they might get upset and want to contest maybe claiming fraud or undue influence, whatever. You're going to want to have a clause about that in your will. And then survivorship provisions. What happens if somebody predeceases you or - did it go - you know, does it go to their children? Does it go to the other - your other children? What happens? So you just want to address that. Other common things, we have virtue of representation and waiver of the guardian ad litem. This might apply to minors or incapacitated individuals. Generally, the idea behind the virtual representation is that if you have two beneficiaries that are basically on equal footing and one is incapacitated for some reason, whether it's because they're a minor or of a mental incapacity, if the other beneficiary that's on the equal footing has consented and it's basically OK for them that - the idea is that it's OK for the other person, too. And all of these sort of provisions are to try to limit any sort of extra court involvement and expense. If you have to hire a guardian ad litem for a beneficiary, it's generally going to cost you, like, $2,000 to pay that guardian ad litem's legal fee, an expense that just comes out of the estate. There's another expense and delay that you want to try to avoid. And one of the last things you want to make sure that you've discussed with your client is if they do have minor children, you can put a clause in the will nominating who the guardian of the minor children is going to be. Presumably if you're married, it's going to be the other parent. But assuming that both parents have predeceased, who do you guys want to nominate to be the guardian of your children? You are going to put a provision in there - in the will about that. And that can be a 1, 2, 3 order. So those are your basic provisions for the will that you kind of just want to keep in mind and that are going to be important to have in there. But who can make a will? Basically, any person that's 18 years and older and of sound mind can create a will. And the signing requirements are that it's signed by the testator and witnessed and signed by two other individuals. There's no requirement that it be notarized. But if you want to have a self-proving affidavit, which most people do have on their will, it must be notarized. And then you can refer to the Probate Code Section 2-

504 that has recommended language to be used for the self-proved will. So generally, if the statute provides you recommended language to use, that's generally what you should use. So refer to that, and you can use those standard sort of forms there to self-prove your will. Now capacity to make a will. So the statute says you have to have sound mind. But what is that? Basically, the three very basic tenets of sound mind are that the person must comprehend the nature and extent of his or her assets. The person can identify the natural objects of his bounty. So basically, like, who would they normally leave their assets to? If they have kids, that's your kids. Did the person understand the purpose or effect of the will or trust that he or she was signing? Do they know they're making a will and did they understand what it said? So you as the attorney are going to be the person that's going to have to make the decision as to whether your client does have sound mind to sign a will. And most of the time, this is going to be super clear. That most clients - it's totally obvious that they have capacity. They're total - and they're fine. It's the - that, like, you know, 5% of the time where it's not clear. And this generally comes up with, like, elderly clients. Maybe they have dementia - getting a little bit forgetful. And so it can be tricky to kind of figure out if they really know what's going on. Generally, they just have to have sound mind at the time they're signing the will. So this can be, like, a moment of lucidity. So they don't necessarily have to have a sound mind all the time - just when they signed the will that they had sound mind. So sometimes what I do with clients that might have dementia and they're trying to sign a will is that you wait when they're having a good day. And you know that they are of clear mind that day. And that's when you kind of meet with them and determine what they have - they're able to sign that day. So that's the will. Next we're going to briefly discuss revocable trusts. Here I'm just going to discuss your very basic revocable trust with one grantor and for the grantor's benefit. Now the Uniform Trust Code Chapter 203E is going to govern trusts. And the creation of the trusts and administration of trust, trustee powers, all of that is in 203E, so all of you should be familiar with that. And refer to that all the time when you have questions about covering law. So the MUPC is for wills. MUTC is for trusts. So your basic revocable trust is going to be for the benefit of the grantor. Sometimes the grantor is referred to as the donor, trust maker, trustor, whatever. Those are all different - those are all just different words for the same thing - the person who's creating the trust. And that person's also going to be the initial trustee and the beneficiary. OK? And your trust in general is going to provide that the trust assets are for the sole benefit of the grantor while they're alive. While they're incapacitated, they continue to be for their sole benefit and then upon their death to the named beneficiaries. And the trust is going to outline who those beneficiaries are. Now the benefit of creating this type of basic revocable trust is that it's going to avoid probate for your grantor so that you don't have to go through that whole process with the will of filing it with the court and getting your personal representative appointed. You can just bypass all of that because you've funded your trust already. It's holding the grantor's assets. So it's a super attorney - superpower of attorney in the sense that if the trust is funded while they're alive with all of the grantor's assets, your trust is going to name a successor trustee. So if your grantor ever becomes incapacitated and can no longer continue to serve as the trustee, your successor trustee is going to step in to take over management of the trust assets. And then they can continue to provide for the trust assets for the grantor's benefit during this time that the grantor doesn't have capacity. If they regain capacity, they can step back in, in that role as trustee. But while they're incapacitated, the successor trustee is stepping in. And they're just managing everything, and they're managing it in a more seamless way than if you have to use the power of attorney. Because if you have a durable power of attorney that you're relying on, a lot of times you have to submit that power of attorney to the bank and different financial institutions,

and then wait for them to send it to their legal department to review and approve it. And that process can take a couple of weeks before the power of attorney person will have power to actually act and do anything with the accounts. And sometimes if there's just an emergency situation, that delay of a couple of weeks can be a problem. So the trust can just be a more seamless and easy way to manage assets in the event of the grantor's incapacity. Another good benefit of the trust is that it provides an easy distribution of assets upon the death of the grantor. You can just outline exactly what happens when the grantor dies, and you can outline that the assets go outright to your beneficiaries or can remain in trust dependent on the grantor's estate planning preferences and how complicated they want the trust to be. If you're concerned about asset protection and creditor protection, divorce protection for beneficiaries, maybe you want it to stay in trust for your beneficiary so that the beneficiary has their inheritance protected in the event they get a divorce or maybe they're in a high-risk profession, so you can have, you know, a trust that provides a lot of asset protection benefits for your beneficiary. For the grantor, the revocable trust is not going to have asset protection benefits. The benefit is - of doing it is to avoid probate and have sort of easy administration of the assets to your desired beneficiaries when you pass away. Now the basic format of making a trust is as follows. It's, you know, the requirements - it's super simple. Basically, you just have your donor and trustee. Insert this language here at the top that they're transferring assets to it. You might want to also throw in that you're funding it with a dollar, and that's pretty common. And then you would insert the trust name, and then you're going to just put in whatever your dispositive administrative provisions are - the meat of your trust. And then it's signed by the donor and the trustee. It's notarized, and then that's it. That's - this is your basic trust format. So it's not, like, super complex. What makes it complex is all of the dispositive administrative provisions. But the basic requirements of actually treating it aren't that complicated. So notarization. It's not required that your trust be notarized. But it's recommended that you notarize it. Especially if it's going to hold real estate, you're going to need the trust to be notarized. So it's generally just a good common practice to always have your trust notarized. So the MUTC Section 401 covers how you create a trust. It can be created three different ways - basically, a transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death. The second method is declaration by the owner of property that the owner holds identifiable property as trustee. That would be your declaration of trust or the exercise of a power of appointment in favor of a trustee. That would be another way to create a trust under the MUTC. There's also oral trusts. They go over that, too. You can have a oral trust. I'm not going to get into that, but you can review those provisions. The requirements for creation of a trust. The trust shall be created if the settlor has capacity to create a trust. Just like in a will, you have to have capacity. The settlor indicates an intention to create the trust, and the trust has a definite beneficiary or is a charitable trust, a trust for the care of an animal. That's under Section 408. Or the trust is for a noncharitable purpose under Section 409. The trustee must have duties to perform, like outlining all the trustee powers and who the beneficiaries are and how they're supposed to distribute it to them. And the same person can't be the sole trustee and the sole beneficiary, so you can't have that. That is not valid. In the beginning of a revocable trust, I said that the grantor is going to be the trustee - the initial trustee and the initial sole beneficiary, but they're not the sole beneficiary because the trust is going to provide for beneficiaries after the trustee passes away. So because there is additional beneficiaries, it's not - this rule doesn't apply to that. So trust purpose. The only basic rule for trust purpose is that it be created only to the extent its purposes are lawful and not contrary to public policy, so that's pretty broad. So you can basically do it for any purpose you want as

long as it's legal and not against public policy. The next thing you're going to want to consider is advising your client on trustee selection. Your client is going to be the initial trustee. But if they can no longer serve as trustee because they're deceased or they're incapacitated, then who's going to step in as the trustee? A lot of times, it's a family member. But you should discuss with them whether they want an individual to serve, such as the child or spouse or other family member or close friend, or whether they want a professional trustee such as a CPA or yourself, the attorney, to serve as trustee of the trust. Or if they wanted it to be really strict, they could go a step further and select a bank or financial institution to serve as trustee. A lot of the major financial institutions do have trustee services, and they charge a percentage of assets under management as the fee for serving as trustee. So it depends on what your client's goals are. Generally, most of the time, people are picking a spouse and kids to serve as successor trustees. But when helping your client decide who that person should be, the trustee should be somebody who's honest, obviously, because they're going to be in control of a lot of your assets. And they should be financially responsible and should be able to get along with the beneficiaries of the trust, because you're going to have a close working relationship with them at times and should be good at record keeping. They're going to have to do an accounting of the trust records, and you want them to be - right? - somebody who's really well organized because there are a lot of papers. And if you're not organized, it can be a tough job. So those are things to kind of discuss when they're picking an order. I know sometimes it's hard for clients. And if they're picking children as trustees, they kind of want to do, like, oldest first down to youngest, but that's not always the best course. Then the next thing you're going to want to figure out in your trust is the incapacity of the grantor. So your grantor is the initial trustee. So how do you determine when that person can no longer continue to serve as the initial trustee and your successor trustee is going to step in? So your trust is going to provide that the successor trustee is going to step in when your grantor, you know, initial trustee is deceased, incapacitated or voluntarily steps down as trustee. And then you have to kind of define incapacity in your document - how that's determined. And then the trust is generally going to provide that the trust assets will continue to be used for the grantor's benefit while they're incapacitated. Sometimes the language in the trust includes additional beneficiaries like the grantor's spouse or children that could potentially be beneficiaries while the grantor is incapacitated. And in addition to defining incapacity, you could have a disability panel within your trust document. And that would be a group of people that you - like, your spouse and kids that would vote to determine whether the grantor is incapacitated. As opposed to having to get a court order or having to go to the doctor to have a letter that says the person is incapacitated, you can have your disability panel make that determination, and it's just - can be a lot easier on the family. Generally, in my experience, most of the time the person will just voluntarily step down if they're able, and you meet with them in time. Funding the trust. I would say this is, like, the most important thing to discuss with your clients because sometimes, you know, people create these trusts. And they can be the best drafted trust out there, but if you don't fund it properly, it's totally, you know, worthless. So generally, my trusts are funded after they're signed. You work with the clients to fund the real estate into the trust and work with the financial advisers to transfer assets into the trust. And assets that - like, life insurance or something, maybe, that has beneficiary designation forms, we work with them to make sure that they name the trust as the primary beneficiary, so that way those type of assets will get funded at death. But having a strategy of how the trust is going to be funded, whether it's now or at death through beneficiary forms, is really important so that way there's assets in the trust. If it's not funded, it's not going to - your plan is just going to totally fall apart. So following up

with clients to make sure these things are done or doing it for them as part of your service is the single most important thing, I think, of the plan. And then, again, the rule against perpetuities. You should have a provision in your trust that addresses that. In Massachusetts, you cannot have a trust that lasts forever, like the dynasty type trusts. You can in New Hampshire and other states. I don't - I'm not sure exactly all the states that have - don't follow the rule against perpetuities. But we do here. And it's basically 21 years after the death of the life in being at the creation of the trust. And this - if it's a revocable trust, it's going to be - it's going to say, you know, life in being at the time the grantor dies - so from when the trust is irrevocable or it's a 90-year term. So you're going to have to have some sort of provision in your - you should have a provision in your trust that addresses this. And sometimes you can get a little bit creative with the life in being to try to extend it as much as possible. But having this is important in understanding the rule against perpetuities. Then you're going to want to have trustee powers. They're all going to be similar provisions that you had that we discussed in the will. All those basic things, you're going to still want to have in your trust document. There are statutory powers. But you can still list out specific powers that you've granted to your trustee, like the power of sale we discussed before. And any other powers like investment powers, hiring professionals, payment of taxes, all that kind of stuff, you're going to want to outline specifically in your trust just to make it totally clear and easy for somebody reading it. Oh yeah, for sure. I have that power. Even if it might be a statutory power they have, it's just easier to have it explicitly written in your trust and not have to, like, refer to, what statutory powers are given, because nobody really remembers that. And just like with the will, you're going to want to have an ultimate disposition article that addresses who gets property if all of your beneficiaries named in the trust predecease you. Who gets it? And it's going to be similar. A standard thing is heirs at law following the, you know, Massachusetts intestacy statute. That's standard. If you're - if a married couple, it's going to say half to the - one spouse is heirs at law and half to the other spouse is heirs at law. So if your client doesn't want that, again, you should discuss that with them because maybe they want it to go to a specific charity. And then you're going to have your choice of governing law, which here is generally going to be Massachusetts unless you're practicing in some other state. You're going to have to have articles that address payment of debts, taxes and expenses. Just like with the living will and all the same things that I discussed before with the payment of debts with the will are going to also apply the trust. And you might want to have a spendthrift clause that addresses creditors to try and protect any beneficiaries that might have creditor issues. And that is basically it. I haven't got into addressing any tax planning because I'm just kind of going over the basic trust article - trust provisions. And tax planning, I think, would be a little bit more an advanced trust. But this trust could also hold like a marital trust family trust, but I haven't discussed that today. So anyway, hopefully you found this helpful. Thank you.