Document Assembly Revisited

By Joseph G. Hodges, Jr., Esq.

Previously there have been several reviews of the most popular document assembly software programs and generic drafting systems that are available for use by estate planners. Some of those reviews include Defly Drafting Estate Planning Documents by Joseph G. Hodges, Jr. and Jason E. Havens, 18 Probate & Property 35 (July/August 2004) and Jason E. Havens, Technology Probate, An Updated Tour of Drafting Systems for Estate Planning Lawyers, 21 Probate & Property (Nov/Dec 2007), both of which are currently available online only to ABA RPTE Section members. See also Trent L. Bush, Document Assembly Software 101, Trusts & Estates (June 2012) and Seth Rowland, Top Five Myths About Document Assembly Software, http://bashasys.com/document-assembly/articles.

In addition, Donald. H. Kelley has recently done reviews of many of these programs in his Trusts & Estates Technology Newsletter, including WTP Wealth Transfer Planning by Interactive Legal Systems (February 2011), DWTA Drafting Wills and Trust Agreements by Thomson West (March 2011), WealthDocx 7 by WealthCounsel (April 2011) and Cowels TrustTerminator by Thomson Reuters (July 2011) – see Trusts & Estates Technology Center Articles Index at http://trustsandestates.com/tech_center/index.html.

In addition, according to the ABA Legal Technology Resource Center, the results of the 2009 ABA Legal Technology Survey Report indicated a 34 percent use of document assembly software, up from 30 percent in the 2008 Survey. This upward trend has continued since then.

Mr. Hodges is an attorney in Denver, Colorado, and formerly served as Co-Chair of the American Bar Association’s Real Property, Probate and Trust Law Section Technology Committee. He currently serves as a member of the ABA’s Communications Committee and the Technology in the Practice Committee of The American College of Trust and Estate Counsel.

I will now attempt to briefly review each of what appear to me to be the more significant document assembly software programs that are currently available. I will then also review a few do-it-yourself inexpensive generic alternatives, as it is an inescapable fact of life these days that attorneys who do any reasonable amount of estate planning must automate, in some cost-effective way, either by themselves or through others, the preparation of at least their most commonly used documents for consistency sake, if for no other reason. These programs will be discussed here in no particular order. For reference purposes, a good portion of this material comes from the technology presentation I gave at the 2012 New York Law School STEP program that was held in July of 2012.

Lawgic, at http://www.lawgic.com, offers state specific will and trust drafting systems for New York, Maryland, California (wills, marital settlement, pre/post marital agreements), Florida, South Carolina, Georgia and Tennessee, as well as ancillary documents and client letters. Systems for other States are currently in development with the help of local lawyers using their new State Neutral Wills & Trusts software. They also have both an open and a Lawgic users discussion boards. The bulk of their forms, which are assembled using a proprietary document assembly engine, were prepared by attorneys in the Florida offices of the Holland and Knight law firm with additional assistance with the New York version from attorney Carlyn McCaffrey and her son, John. Their prices range from a high of $1,800 for most states to a low of $1,380 for the state neutral version, with installment payment plans available.

Thomson West’s Drafting Wills and Trust Agreements on GhostFill, at http://west.thomson.com/dwta, is the next generation of the original DWTA document assembly system that was developed
by document assembly engine and technology pioneer, Robert K. Wilkins Esq. It is now authored by American College of Trust and Estate Counsel attorney Michael L. M. Jordan Esq. It uses the GhostFill document assembly engine and a Q & A approach to develop documents or user created model interviews. It offers increased content and enhanced functionality. Highlights include a new qualified personal residence trust; redevelopment of the charitable remainder trust documents; the addition of user-defined documents functionality; allowing users to import their own documents into the system; addition of Guidelines for Executors, Trustees and Agents Acting Under a Power of Attorney; enhancements to the document manager functionality that allow users to track documents created in the system; and system utilities enhancements, including system backup functionality as well as client archiving. Recent updating additions include provisions that address the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), and the changing meaning of the “applicable exclusion amount,” the “portability” provisions, and marital deduction provisions that address the potential return to a $1 million applicable exclusion amount in 2013. Illustrative flow charts for the various plans are also available. Changes to the interface offer better descriptions of the share/trust selections that have always been a part of the system, as well as increased formatting flexibility in document output. Their prices range from a high of $800 to a low of $700, with installment payment plans available.

WealthCounsel’s WealthDocx 2011 at http://www.wealthcounsel.com/WealthDocx.aspx generates sophisticated will and revocable trust documents using a player version of the popular HotDocs document assembly engine. The interview for joint revocable trust plans now includes ancillary documents for both spouses. WealthCounsel has expanded its Irrevocable Trust options to include irrevocable life insurance trusts designed to hold a second-to-die life insurance policy and implemented business succession documents, including a buy-sell agreement and a deferred compensation agreement. New, also, are built-in plan designs throughout the system, allowing for more efficient data entry and document generation. WealthCounsel also has several other DAE practice systems available, including irrevocable trusts, split interest trusts, special needs trusts, charitable planning, a physician’s asset protection planning module, retirement planning, family limited partnerships, family LLCs, and business succession planning, plus state specific templates for statutory forms of powers of attorney and medical/living will documents. Recent additions include provisions for non-traditional unmarried couples and same-gender married couples, portability elections, and expanded provisions in their LLC module. In addition, they offer an Asset Transfer system to manage any asset transfer task and a SettlementCounsel system that streamlines processes, introduces operational efficiencies, and provides legal support staff with a guided approach to each step of the post-mortem process. There also is a Members Only area that provides online trusts and estates resources, and access to a members only listserv separately from their public listserv for nonmembers. You will have to contact them to get current pricing information, but it involves both a rather expensive front end membership fee and an ongoing monthly maintenance charge, plus the overall price varies depending on if you purchase the Core edition vs. the Advanced edition vs. the Complete edition, all of which include and integrate with their Asset Transfer System. Recently they have added a new DAE system called GunDocx that allows you to create documents for the management of guns in the event of the owner’s death, as this is becoming a very specialized area of estate planning.

Wealth Transfer Planning (WTP) published by InterActive Legal Systems, at http://www.ilsdocs.com, continues to add imaginative and cutting edge drafting tools developed by Jonathan Blattmachr Esq. and Mike Graham Esq. This system uses a modified player version of the HotDocs document assembly engine. New features include the technique called the “SuperCharged Credit Shelter Trust™,” parallel grantor retained annuity trusts; an irrevocable life insurance trust form, including “Cascading Crummey Powers;” material on “Making Spousal Estate Tax Exemptions Transferable;” special language for carry-over basis drafting; and an extension to the “Joint Revocable Trust” allowing planning for unmarried domestic partners through a “Domestic Partner Trust.” WTP now supports same sex and
opposite sex unmarried couples, with special provisions for California community property that has “registered domestic partner” status and has an updated lifetime qualified terminable interest property template. Recent enhancements include an installment sale trust, a generation jumping option, a stand-alone supplemental needs trust, a domestic asset protection trust, expanded trust protector provisions, and provisions addressing the 2010 Tax Act. The publisher also offers Elder Law & Special Needs Planning™ authored by attorneys Thomas J. Begley, Jr., Andrew H. Hook, Bernard A. Krooks and Stephen J. Silverberg (for elder law, special needs and Medicaid planning), and Essential Estate Planning™, a slimmed down version of WTP (for basic estate planning for non-taxable estates) that is also authored by Blattmachr and Graham. There also is a Members Only area that provides online trusts and estates resources, periodic estate planning alerts and access to a member only listserve. Their price ranges for a single user non-network of WTP range from a high of $5,445 for WTP Pro, down to a low of $4,195 for WTP Standard, and a high of $3,295 for EEP Pro, down to a low of $2,495 for EEP Standard.

For the do-it-yourself approach (which is not for the faint of heart or those on a limited budget), there are several inexpensive generic document assembly solutions to consider, some of which will allow you to automate your own forms.

The Cowles Estates Practice System from Thomson/West provides estates practice tools including: (1) Trust Plus software for drafting wills, trusts, and other estate planning documents; (2) TrustTerminator software that generates letters and documents, from an asset database to assist in terminating a revocable trust upon the death of the grantor; (3) Members Only online trusts and estates resources, and access to a member only listserve; and (4) Practice Building Supplies. Additional information and sample demonstrations are available at www.west.thomson.com/cowles. The pricing is state specific and depends on the number of users – see the Thomson/West Cowles Website for pricing tool. Note, this is the same publisher that brings you the full featured DAE system called DWTA that is reviewed above.

Other Options

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When it comes to document assembly engines, if starting with HotDocs or GhostFill is not your cup of tea, you might want to give one of these two a try. While I have not had any particular practical experience with either of these two programs, they come highly recommended by The Technology Lawyers e-mail newsletter service. One is Pathagoras by Innovative Software Products of Virginia, LLC ($379 single user) and it appears to have all the functionality the typical user would want at a relatively good price. For more information, see http://www.pathagoras.com. The other is TheFormTool PRO by Your Dollar Matters, Inc. ($89 single user) which currently only works with Word 2007 and above, and comes highly recommended by several presenters at past ABA TechShows. See http://theformtool.com.

Knowles Publishing, Inc. has an Estates and Trusts Forms Manual that can be purchased for $795. They claim it covers all aspects of an estate planning practice from basic wills to the most complex trusts and other planning strategies. The assembly engine is proprietary. For someone starting out this might be a good entry level system to try. See http://www.knowlespublishing.com.
Form Banks

Some of the legal publishers have now developed form banks that can be accessed by their subscribers, and some of them even offer on-line assembly tools for these. These include Westlaw’s (®) Form Builder Lipman’s Estate Planning (http://www.store.westlaw.com/ default.aspx), CCH’s Financial and Estate Planning Documents (2nd Edition) and Drafting the Estate Plan: Law and Forms, by Handler and Dunn, Kirkland & Ellis LLP (http://www.cchgroup.com), ALI-ABA’s Online Forms Library, Estate Planning Edition (http://ali-aba.org), and National Law Foundation Online Forms at http://www.nlfforms.com.

At one time, many bank trust departments throughout the US freely provided lawyers with estate planning forms and form books, often for free. Over time, as the cost of maintaining these on a current basis became excessive, most banks have stopped publishing them. However, a few have survived. Two of the best are Northern Trust (http://www.northerntrust.com) and U.S. Trust Practical Drafting Trust and Will Provisions (http://www.ustrust.com).

One last source worth looking at are the document assembly DL Drafting Libraries that are sold by Blumberg/Excelsior and include individual state systems for Wills and Inter Vivos Trusts and LLCs. See http://www.blumberg.com.

“Do-it Yourself” Requires Careful Handling

Some document assembly systems I do not recommend for use by practitioners are the so-called Do-It-Yourself systems from software sources such as Legal Zoom, Susie Orman, and Intuit, as these systems have a lot of potential deficiencies and limitations. However, as professionals you are going to find over time that some of your clients will have drafted their own documents using one of these systems and then will come to you asking you to just “review” what they have done for accuracy and completeness. If they do, it behooves you to become familiar with the program they used so you can respond appropriately.