



# Decoding Trusts and Operating Agreements:

Unlocking Opportunities in Personal  
Financial Planning

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- It does not constitute legal, tax, investment, or accounting advice.
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- Application of these concepts requires professional judgment and consideration of individual facts and circumstances.

# Learning Objectives

- Evaluate key provisions in trusts and operating agreements that influence personal financial planning strategies.
- Analyze the impact of legal structures on client objectives, including tax efficiency, wealth transfer, and asset protection.
- Apply insights from document analysis to develop actionable recommendations tailored to client-specific circumstances.
- Determine planning opportunities and the value of integrated personal financial planning in complex engagements using a case study approach.

# Topics To Be Addressed

- The Role of Personal Financial Planning in Client Engagements
- Professional Boundaries: Avoiding the Unauthorized Practice of Law
- Trust Structures: Planning Implications and Opportunities
- Operating Agreements: Governance and Control
- Case Studies in Practice
  - *“Zen Manufacturer”*
  - *“Coke Heiress”*
  - *“Oike from Muscogee”*

# Personal Financial Planning



# Let's cross the street together . . .

Personal financial planning is not investment management – it is the integration of legal structures, decision-making authority, and client intent that frames every financial outcome.



# Professional Boundaries: Avoiding the Unauthorized Practice of Law

- Financial planners do not draft, interpret, or provide legal advice
- Legal documents are reviewed to understand planning implications, not legal sufficiency
- CFP professionals operate within a collaborative advisory framework
- The planner's role is to identify issues, ask better questions, and coordinate with counsel
- Staying in one's lane protects the client, the planner, and the planning process

# Trusts & Operating Agreements



# Educational Moment

- Medieval England (post–Norman Conquest):
  - Trusts emerge to separate legal ownership from beneficial enjoyment
- Early Corporations:
  - Guilds, towns, and universities develop by-laws to govern collective ownership and control
- Shared Evolution:
  - Fiduciary duty; Delegated authority; Continuity beyond individuals
- Modern Result:
  - Operating agreements reflect this shared legal DNA



# Trusts | Structural Fundamentals

- Separates legal ownership from beneficial enjoyment
- Involves three distinct roles:
  - Grantor (creates and funds)
  - Trustee (controls and administers)
  - Beneficiaries (receive benefits)
- Governed by a written instrument that defines:
  - Authority
  - Discretion
  - Duration
  - Distribution standards

# Trusts | Planning Implications

- Tax treatment depends on trust design and administration
- Distribution provisions affect cash flow and lifestyle planning
- Trustee discretion shapes timing, access, and control
- Asset protection varies by structure and jurisdiction
- Investment flexibility may be constrained or enhanced by the document

# Operating Agreements | Structural Fundamentals

- Defines the rules of the entity, not just ownership percentages
- Establishes:
  - Economic interests (profits, losses, distributions)
  - Control and authority (management, voting, decision rights)
- Governs relationships among:
  - Members
  - Managers
  - The entity itself
- Operates independently of day-to-day business performance

# Operating Agreements | Planning Implications

- Liquidity may be restricted or illusory
- Transferability of interests is often limited
- Valuation provisions affect estate and succession planning
- Control vs. economics can diverge sharply
- Coordination with trusts and estates is often essential

# Case Studies



# Zen Manufacturer

- Initially engaged for retirement plan discovery
- Review revealed broader planning gaps
- Engagement expanded from a narrow scope to an integrated planning process
- Single entity used for multiple objectives (operations, retirement funding, risk containment, succession)

# Planning Observations

- Single entity used for multiple objectives (operations, retirement funding, risk containment, succession)
- Corporate governance documents were outdated (assumptions no longer aligned with current tax and planning realities)
- Personal and business risks were not clearly segmented
- Large life insurance obligation lacked structural coordination with ownership, cash flow, and estate objectives
- Planning outcomes depended on coordination across disciplines, not isolated fixes

# Planning Responses

- Governance documents updated to reflect current planning assumptions
- Personally owned real estate moved into a separate LLC to isolate risk and clarify ownership
- Distinct entities established for:
  - Taxable investment activity
  - Director and advisory compensation
  - Family office coordination
- Gifting structures introduced to support multigenerational planning
- Life insurance ownership and economics re-aligned with estate objectives

# Coke Heiress

- Engagement began through a law firm referral
- An estate remained unsettled for 17 years due to unresolved obligations owed to it
- Family wealth existed almost entirely inside trust structures, with little personal liquidity
- Planning structures included:
  - 1936 irrevocable trust
  - 1999 testamentary trust
  - Limited partnership / general partnership structure
- Structure owned multiple income-producing real estate assets

# Planning Observations

- Primary trust was highly restrictive, permitting distributions of income only
- Trust assets were concentrated in non-dividend-paying securities
- Corporate trustee operated within narrow administrative constraints and offered no viable alternatives
- Real estate holdings lacked segmentation, limiting flexibility across properties
- Cash flow was insufficient to meet the needs of the beneficiary and dependent family members
- Spendthrift dynamics heightened the importance of structure and discipline

# Planning Responses

- Liquidity solution introduced to resolve long-standing estate obligations and allow estate closure
- Trust structure modernized to better align income, access, and beneficiary needs
- Ongoing distribution framework established to support predictable cash flow
- Real estate holdings segmented to improve flexibility, risk management, and cash-flow clarity
- Family office structure implemented to coordinate management and improve economic efficiency
- Estate plan updated to support continuity across generations

# Oike from Muscogee

- Engagement began through a CPA firm referral
- Family owned an operating business central to their livelihood
- Parents were advised that:
  - No viable tax or legal solutions existed
  - Estate taxes would be due at death
  - Insufficient liquidity existed to satisfy the tax obligation
- Without intervention, Generation 2 would not inherit the business

# Planning Observations

- All assets and income were held by Generation 1, concentrating control, tax exposure, and risk
- Estate tax exposure exceeded available liquidity, creating a forced-sale risk
- Business succession and estate settlement were competing objectives
- Size of the taxable estate eliminated certain common planning options
- Administrative complexity was high, with tax compliance across numerous entities
- Financing options were limited, primarily to large institutional providers

# Planning Responses

- Estate tax exposure eliminated
- Ownership interests shifted during lifetime, while control remained with Generation 1
- Centralized entity structure implemented, consolidating ownership and governance
- Valuation dynamics improved, supporting efficient intergenerational transfers
- Income streams introduced for Generation 2 during parents' lifetimes
- Coordinated advisory framework established

# Additional Resources

- Kirsch, W. E., Sr., Leimberg, S. R., & LeClair, J. J. (2016). *The Family Office Handbook: A guide for affluent families and the advisors who serve them*. Bloomberg BNA.
- Sitkoff, R. H., & Dukeminier, J. (2021). *Wills, Trusts, and Estates* (11th ed.). Aspen Publishing.
- Tillery, S. M., & Tillery, T. N. (2017). *Essentials of Personal Financial Planning* (1st ed.). John Wiley & Sons.

Questions . . .



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