Date: _____

Dear _____

I am sending this letter to inform you that in the past I worked with Daniel Timins, Esq. ("Dan"), to design my Estate Plan. This included drafting legal documents, such as a **Power of Attorney**, **Health Care Proxy** and a **Last Will and Testament**, so I could better ensure my financial and health care needs are addressed if something happens to me.

If something adverse does happen to me regarding my health I ask you to contact Dan: He can provide guidance as how to best handle my legal affairs. If you are a named Agent in any of my documents he can assist you in performing tasks that I need you to do to help me. In addition, Dan usually has copies of my legal documents at his office or in storage.

Please make sure to keep Dan's information in a safe and memorable location, such as a place where you keep your own legal files, or store his contact information electronically with a reference as to him being my Estate Planning Attorney:

Daniel A. Timins, Esq., CFP®
450 7th Avenue, Suite 1500
New York, New York 10123
(212) 683-3560
dan@timinslaw.com

Thank you,

_____

(Place this Letter on my Firm Letterhead)

PRIVILEGED and CONFIDENTIAL
ATTORNEY/CLIENT WORK PRODUCT

(Date)

(Client Name)
(Client Address)
(Client Address)

Re: Your Last Will and Testament(s)

Dear (Client Name),

Please allow me to introduce myself. My name is Daniel Timins. I am a Trusts and Estates attorney practicing law in New York.

I was recently asked to work with _____ to help with his / her estate planning matters. I want to remind you that **I am currently in possession of _____ ORIGINAL Last Will and Testament**. This is obviously an important legal document, and I want to assure you that it is currently in safe keeping.

Please be mindful that at this time _____ is my client, and as such I cannot share his / her confidential legal information. If you have any thoughts or questions about his / her legal affairs I highly encourage you to reach out to him / her.

If anything happens to _____ I ask you to contact me immediately so I may be of assistant. In addition, if you would merely like to chat about your own personal legal matters, please feel free to contact me.

Yours Truly,

Daniel Timins, Esq.

FUNDING TRUSTS

Whether you are funding a Inter Vivos Trust (I.e. a "Revocable Trust" / "Living Trust" / "Stand-Alone Trust") or a Testamentary Trust (I.e. one created by a Will) there is one crucial point that is all-too-often overlooked: **Funding the Trust**.

Funding a Trust is absolutely essential in order to make it effective: A Trust administering no property is useless.

A. HOW TO I FUND TRUSTS INTER VIVOS TRUSTS

The question of funding is most relevant for Revocable Trusts: The idea of Inter Vivos trusts is that a person places property in them to allow for continuing administration of assets during mental incapacity and avoidance of Probate upon the death of the initial beneficiary. If no property has been placed in the Trust during the Settlors life (or soon thereafter) both objectives have failed.

An Inter Vivos Trust is funded over the span of time, whether by changing the title of the asset now (such as changing the name of a bank account to the Trust) to the eventual payment of a life insurance death benefit (which does not happen until the client dies many years after execution).

A good practice is to title the following assets immediately after executing the Trust:

- Deed(s) to real property
- Beneficiary Forms for Life Insurance Policies and Annuities
- Beneficiary Forms for Retirement Plans (when applicable)

1. Changing Deeds immediately after execution of the Trust document is both helpful and pertinent to practice due to the fact that the client has no experience with this practice. While most clients will have filled in a beneficiary form for their life insurance or retirement plan, few have executed a Deed on their own. A relationship with a Title Company is helpful, as they can prepare all Deed change paperwork and submit the completed paperwork for a fee.

2. Life Insurance policies are typically suitable investments to have deposited in Inter Vivos Trusts if the client has an estate that will not be taxable for estate tax purposes. The lump-sum distribution of the death benefit can be better managed and preserved via the terms of the Trust rather than distributing the entire amount to a spendthrift beneficiary. Most Life Insurance beneficiary forms are suitably-formatted to include proper Trust designations as beneficiaries. It is reasonable to ask an Insurance Agent to assist in the process, particularly when the agent issued the policy.

3. Retirement plans may be proper assets to transfer to a trust if there is a See-Through" provision (as described elsewhere in these materials). Unfortunately, many beneficiary designation forms for retirement plans are not adequately designed to

allow for the naming of a Trust as beneficiary. This may require the help of a financial planning or the employer-related plan sponsor's advice.

Remember that spouses are typically the primary beneficiary of retirement plans due to favorable Required Minimum Distribution tables under Internal Revenue Code Section 72. However, a practitioner will want to have a contingent beneficiary named in case the spouse pre-deceases the decedent.

EXAMPLE of NEW BENEFICIARY:

"The Charles Smith Revocable Trust dated April 1, 2012, Charles Smith as Trustee"

These are the most reasonable types of funding requirements that attorneys should consider undertaking, as they are merely changes of existing accounts.

Perhaps of greater concern is changing existing accounts, such as bank accounts or brokerage accounts, to the name of the Trust. This is because the change entails an entirely new titling of an account (not just changing the beneficiary of an existing account). This is an activity that is not recommended for an attorney, as the process is somewhat beyond their control and dependent upon approval from the financial institution's back office. It is often suggested that attorneys ask the client to go to the financial institution (with the attorney's instructions) and update any accounts to the name of the Trust at a time when the attorney will be available over the phone to answer any questions.

B. HOW TO I FUND TRUSTS TESTAMENTARY TRUSTS

Testamentary Trusts are (of course) created by one's Last Will and Testament; there is no Trust until the Testator has passed away. The primary assets we are concerned with are:

- Any assets passing through Probate
- Operation of Law assets that pass through Probate that would not otherwise pass through Probate absent the Trust

The first category is self-explanatory: Probate assets, such as those titled in a person's name without a beneficiary, can be used to fund a Testamentary Trust if directed to do so in the Will.

The latter category is a bit more complex. Practitioners are taught to avoid having assets pass via Probate due to increased costs and expenses associated with Probating those assets. However, when the primary concern is control over the assets (such as when a minor child is the beneficiary and is thereby precluded from owning property until the age of majority, thereby necessitating the appointment of a Guardian Ad Litem) a Testamentary Trust becomes a feasible option.

In these cases it may be appropriate to have the initial or contingent beneficiary of a life insurance policy or retirement plan be the Testamentary Trust.

While it could be argued that naming "My Estate" as the beneficiary on the beneficiary designation form may suffice to achieve the goal of funding the Testamentary Trust (provided the Will's content directs the funds to be placed In Trust), it is far more preferable to be concise.

EXAMPLE of NEW BENEFICIARY:

"The Trustee of the Trust for My Children Created by My Will dated April 1, 2012"

C. ENSURING THE TRUST IS FUNDED

The final step of the funding process comes at some point several months later when the client can confirm all new beneficiary forms have been received and updated by the financial institutions, and all account changes have been effectuated and are correctly reflected on current account statements. This crucial step is frequently skipped by the practitioner, often to the grave detriment of the client. In practice, follow-up may require multiple consultations and correspondences.

Remember that a partially-funded Inter Vivos Trust has failed one of its two objectives (avoiding Probate), and face a similar problem as would an inadequately funded Testamentary Trust which may lead to an Article 17 Guardianship Hearing under the Surrogate's Court Procedures Act. While whether these omissions rise to the level of malpractice is of concern, of greater concern is that the client's desired end-result was not achieved. A practitioner will come across too many Trusts that were not adequately funded during his career; it is best if none of them were due to his inaction.