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50 Point Existing Estate Plan Review Worksheet

This plan review worksheet should be used to review your existing plan before your Black Wall Street Family Wealth Planning Session, if you have an existing plan. If you would prefer to walk through this with a lawyer, contact us to schedule a comprehensive existing estate plan review.

For each line, as you review your plan, indicate Has, Needs or N/A if not applicable. Please send this review worksheet to your Lawyer prior to your Black Wall Street Family Wealth Planning Session along with your existing plan documents and your Family Wealth Inventory and Assessment (obtained from your Attorney in advance).

If you have minor children at home, begin with this section. If not, skip to the next section:

	BWS Kid® Provisions <small>(if minor children or children with special needs)</small>	Has	Needs	N/A
1	Guardians Named in Will: is there at least one primary and two alternates named?			
2	Guardians Named in Will: are guardians named in Will clearly specified so that if a couple is named, clear provisions are indicated as to what should happen if the couple divorces, or if one dies before or at same time as you do.			
3	Guardians Named Outside Will: is a separate guardian nomination for the long- term care of your children made outside the Will, in case you become incapacitated and guardians need to be appointed, but your Will is not yet activated by death.			



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4	<p>Instructions to Guardians: are written or recorded instructions to the long-term guardians provided so your guardians know how to raise your kids, if they are called upon?</p>			
5	<p>Letters to Guardians: are letters provided to guardians to let them know what to do if anything happens to you.</p>			
6	<p>Temporary Guardians: are all guardians named in long-term guardians document local to family? If not, are temporary, local guardians named in a separate document, outside the Will, to ensure children are never taken into protective custody while named guardians are located.</p>			
7	<p>ID Card in Wallet: do you carry an ID card in your wallet that indicates the names of people who should be contacted immediately if anything happens to you?</p>			
8	<p>Letters to Temporary Guardians with Legal Documentation: have temporary guardians been given letters with legal documents to keep on hand, in case they are called upon?</p>			
9	<p>Babysitter Instructions: do your caregivers have instructions about who should be contacted that has legal documentation to take care of your children, if you are unable to do so?</p>			
10	<p>Confidential Exclusion: is there anyone (one or more people) you know you would never want to raise your kids who may try to</p>			



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	challenge your choices or take custody of your kids? If so, a confidential exclusion is required.			
11	Medical Power of Attorney for Minor Children: does your plan include editable medical powers of attorney for your minor children, so you can give medical decision-making power to whoever your children stay with while you are unavailable due to travel or other circumstances.			
12	Correct People Named? Are the people you have named still the people you would want caring for your children?			

	Will Provisions	Has	Needs	N/A
1	Waive Bond? does Will waive bond for executors?			
2	Establish Trust? does Will establish a testamentary trust for beneficiaries under the age of 18?			
3	Executors? does Will name primary and at least two alternate executors?			
4	If Trust Included in Plan: does Will provide pour-over provisions distributing assets to the properly named Trust?			



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5	Probate? do total assets in estate exceed amount that can be passed outside of the Court process known as Probate?			
6	Execution: Is the Will properly executed under State for State under which it will operate?			

	Power of Attorney Provisions	Has	Needs	N/A
1	Agents: does power of attorney include at least one and two alternate agents?			
2	Ability to Amend Trust? can power holder amend trust or will, if necessary?			
3	Ability to Buy/Sell Real Property? can the power holder buy and sell real property?			
4	Ability to Handle IRA/401(k)? can the power holder handle retirement account assets?			
5	Ability to Manage HSA? can the power holder manage health savings account or other insurance accounts?			
6	Ability to Manage Business Interests? can the power holder manage businesses owned by power grantor?			



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7	Ability to Manage Investment Accounts? can the power holder manage investment accounts?			
8	Ability to Handle Tax Matters? can power holder handle tax matters?			
9	Immediately Effective or Springing? is the power of attorney immediately effective or is it springing, and if springing, what are the springing triggers?			
10	Correct People Named? is the correct person or people granted power of attorney?			

	Health Care Directive Provisions	Has	Needs	N/A
1	Agents: does Health Care Directive properly name at least one and two alternate agents?			
2	Living Will: do provisions provide for how end of life decisions should be made clearly? Do provisions include hydration and nutrition in addition to general end of life provisions?			
3	Pregnancy Provisions: are provisions included for what should happen if plan creator is pregnant?			
4	Organ Donation: does document provide for organ donation guidelines?			



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5	HIPAA Provisions/Separate Document? does health care directive provide that named people can access medical records and is there a separate HIPAA authorization?			
6	Proper People Named? are the correct people named?			

	Trust Provisions	Has	Needs	N/A
1	Identification of Trust Does the trust agreement identify the full, formal name of the trust at the beginning of the document? This avoids confusion and provides clarity on how to appropriately identify the trust, and how to title assets to the trust.			
2	Trust Certificate for Financial Institutions Does the trust agreement include a valid, up-to-date Certificate of Trust? This document may save the trustee from having to produce the entire trust document for financial institutions and title companies. Placement of a provision authorizing the Certificate of Trust on the first page of the trust agreement is helpful when a financial institution requests the "authorizing language" - permitting the trustor to produce only the first and last pages of the trust.			
3	"Magic Wand" Funding Provisions Does the trust agreement include a Magic Wand funding provision? This provision supports the argument that assets are			



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	immediately titled to the trust at the time of execution. It increases the likelihood that financial institutions would treat the trust as the owner of the asset even if trustor dies during the funding process, but before institutional forms are submitted and accepted by the financial institution.			
4	<p>Asset Ownership Characterizations</p> <p>Does the trust agreement clearly articulate the treatment of property in a joint trust as community, separate, or jointly-held based upon various default rules? These provisions avoid potential ambiguities when funding marital and non-marital shares in a joint trust.</p>			
5	<p>Retention of Power to Act Alone</p> <p>Does the trust agreement confirm to third-parties that a married trustor/trustee has authority to act when his/her spouse cannot (if desired by client)?</p>			
6	<p>Specific Revocation Provisions</p> <p>Does the trust agreement set forth the specific powers retained by the trustor(s) to revoke the trust agreement?</p>			
7	<p>Names of Family Members</p> <p>Does the trust agreement clearly identify the trust beneficiaries? A provision identifying trust beneficiaries, dates of birth, and relationship to the trustor(s) will assist the acting trustee.</p>			
8	<p>Determination of Incapacity</p> <p>Does the trust agreement include a detailed provision that establishes a prearranged</p>			



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	<p>system for determining incapacity of the trustor(s), free of court intervention - and in a way that comports with the trustor's wishes? <i>Optional: Client may choose a panel of selected persons who can meet with client's personal physician and determine whether client is able to effectively manage his or her assets.</i></p>			
9	<p>Ability to Remove Trustee Does the trust agreement include detailed provisions for removal of a trustee who is acting irresponsibly? This type of provision enables adjustment to changed circumstances. For example, can the surviving spouse (or non- incapacitated spouse) remove a Cotrustee or successor Trustee?</p>			
10	<p>Ability to Appoint New Trustee Does the trust agreement include a provision for naming a new successor Trustee when the position becomes vacant? Many trusts fail to address the situation of a "vacant" trustee position where no named successors exist. It is important to establish a prearranged method to deal with any such vacancies, especially in a multi-generational trust.</p>			
11	<p>Guidelines for Distributions During Incapay Does the trust agreement include detailed guidelines for making trust distributions during trustor incapacity? In addition to benefiting the trustor during periods of incapacity, there may be other important reasons to distribute trust assets to others. Establishing guidelines for when and to whom distributions can be made is an important issue for most individuals.</p>			



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12	Guidelines for Potential Gifting During Incapacity Does the trust agreement clarify whether gifting is permitted during a trustor's incapacity? Continuation of charitable gift habits, gifting to reduce the taxable estate, or gifting to qualify for Medicaid may be desired. The trustee must not only be empowered, but perhaps restricted.			
13	Ability to Distribute Funds to Dependents During Incapacity Does the trust agreement include a provision to make trust funds available for dependents during a trustor's incapacity? Most clients prefer to empower their disability trustee to continue using trust funds for the benefit of the client's dependent children or parents.			
14	Restrictions on Payments from Retirement Plans Does the trust agreement include provisions to restrict payment of estate taxes, expenses, and debts from tax-deferred retirement accounts? Preservation of these assets is important. Provisions within the trust can ensure that taxes and liabilities be paid from sources other than tax-deferred retirement accounts.			
15	Trustee Powers to Make Tax Elections Does the trust agreement include trustee powers to make potential tax elections? It is important to confirm these powers in writing.			
16	Detailed Instructions for Allocation Between Marital and Non-Marital Shares			



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	Does the trust agreement include detailed instructions on the method and manner trust assets should be allocated between Marital and Non- Marital shares? This is vitally important to support the tax planning integrity of the trust.			
17	Disposition of Tangible Personal Property Does the trust agreement include detailed dispositive provisions for tangible personal property? One of the greatest sources of family fall-out after the death of a parent is perceived inequities in the distribution of tangible personal property.			
18	Provision for Tangible Personal Property Memorandum Does the trust agreement include a provision for use of a tangible personal property memorandum? Use of a memorandum enables the trustor to, over time, update a list of enumerated items of tangible personal property earmarked for particular beneficiaries.			
19	Provision to Offset Encumbrances on Gifts of Tangible Personal Property Does the trust agreement include a provision that confirms a beneficiary of personal property that is subject to a loan will inherit both the property and debt? Otherwise, it may be unfair to the other beneficiaries if they are also responsible for paying off the loan.			
20	Marital Share Funding Method Does the trust agreement provide an adequate and flexible funding method			



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	<p>between Marital and Non-Marital shares at the first spouse's death? In today's ever changing estate tax environment, trust provisions must be included which adapt to tax law changes. The drafting attorney must carefully select a funding/allocation formula that comports with the trustors' wishes and also works well with the types of assets subject to allocation.</p>			
21	<p>Provision to Treat Survivors Trust as a Qualified Designated Beneficiary for Tax-Deferred Retirement Accounts Does the trust agreement include a provision to treat the Survivors Trust as a qualified Designated Beneficiary of a retirement account? To the extent that tax-deferred retirement accounts are held inside of a surviving spouse's trust, they should be held separate from the surviving spouse's other assets in order to maximize the potential tax deferral.</p>			
22	<p>Inclusion of Powers of Appointment Does the trust agreement include either limited or general powers of appointment for continuing trusts after the death of the trustor? Inclusion of powers of appointment enables a surviving trustor greater flexibility, if desired, to alter distribution patterns.</p>			
23	<p>Remarriage Protection for Trust Assets Held by Surviving Spouse Does the trust agreement include provisions to alter distributions to a surviving spouse in the event of remarriage after the death of the first spouse? These types of provisions protect</p>			



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	ultimate inheritances for children of the first marriage.			
24	<p>Common Pot Trust Options for Beneficiaries</p> <p>Does the trust agreement include a common trust provision when one or more of the primary beneficiaries has not yet graduated from college? Under these provisions, beneficiary distributions are made out of a collective pot, versus the separate shares of the beneficiaries.</p>			
25	<p>Flexibility to Treat Beneficiaries Differently Based Upon Needs</p> <p>Does the trust agreement give the trustee of a continuing trust an appropriate amount of flexibility to make disproportionate distributions based upon the relative needs of the beneficiaries? If these circumstances exist, these provisions need to be included - otherwise the trustee may be forced to make identical distributions.</p>			
26	<p>Inheritance Protection Provisions</p> <p>Does the trust agreement set up continuing, lifetime asset protection trusts for the beneficiaries, which are tailored to the needs of each trust beneficiary? Does the trust protect children's inheritance from:</p> <ul style="list-style-type: none"> ● Bankruptcy ● Divorce ● Lawsuit ● Creditors <p><i>Optional: The trust agreement may include dynasty provisions that provide asset protection and estate tax savings for multiple generations.</i></p>			



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27	<p>Special Needs Trust Options</p> <p>Does the trust agreement include a Special Needs Trust option for inheritance given to a disabled heir? A Special Needs Trust is intended to prevent a beneficiary's inheritance from making the child ineligible for government assistance such as SSDI payments.</p> <p><i>Optional: Trust provisions can be added to create Special Needs Trust for any beneficiary who becomes disabled after the trust is executed but before trust assets are distributed.</i></p>			
28	<p>Remote Contingent Distribution</p> <p>Does the trust agreement include detailed remote contingent beneficiary distribution provisions? Trust provisions are included to ensure proper distribution of assets in the event there are no named beneficiaries surviving the trustor(s), or if there are no lineal descendants.</p> <p><i>Optional: Custom drafting can be included to alter the default rules of the intestacy statutes, which often fail to comport with the trustor's true desires.</i></p>			
29	<p>Protection for IRA Distributions</p> <p>Does the trust agreement include provisions to maximize the tax-deferred growth of a trustor's retirement accounts after the trustor is deceased? Tax-deferred compounding over the lifetime of a trust beneficiary can result in significant increased value to the beneficiary over time ("Stretch IRA"). In addition, these provisions can provide a level of asset protection for the retirement account</p>			



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	beneficiary that could not be achieved outside of the trust.			
30	QTIP Marital Trust Provisions Does the trust agreement include valid QTIP Marital Trust provisions in a blended family situation? This permits the deceased spouse to provide for the surviving spouse during his or her lifetime, but ensure that trust principal reverts back to the deceased spouse's children from a prior marriage. Most clients prefer to ensure that monies not spent by the surviving spouse are distributed according to the deceased spouse's desires at the second death.			
31	Unambiguous Identification of Beneficiaries Upon Death Does the trust agreement carefully identify the distribution of assets upon death? Often it is not clear what would happen in the event a primary beneficiary predeceases or disclaims assets. Estate and trust laws require particular wording that must be used to follow precedent.			
32	Credit Shelter Trust Provisions Does the trust agreement include valid Credit Shelter Trust provisions when the estate tax is a concern? Proper use of the unlimited marital deduction against estate tax may double the amount that can be left estate tax free to children.			
33	Expressions of Intent to Guide Trustees on Making Distributions			



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	<p>Does the trust agreement include any guidelines regarding how to distribute assets from continuing trusts to beneficiaries? Trustees need as much direction as possible to interpret standards of distribution. Trust provisions should be added and customized to ensure the intent of the trustor is carried out.</p> <p><i>Optional: Custom trust provisions may also be added to assist guardians on the parenting of minor children.</i></p>			
34	<p>Default Distribution of Inheritance if Beneficiary Fails to Exercise Power of Appointment</p> <p>Does the trust agreement identify a default distribution plan if a trust beneficiary fails to exercise a power of appointment?</p>			
35	<p>Guidance to Trustee on Determination of Income and Principal Distributions</p> <p>Does the trust agreement provide guidance to the trustee for determining what constitutes income and principal for purposes of trust distributions? Most state laws set forth general rules, but they often fail to fully articulate how these determinations are made.</p> <p><i>Optional: Trust provisions may be added to enable the trustee to invest for total return and pay the income beneficiary a "unitrust" amount, out of both income and principal in order to avoid a conflict of interest between income and remainder beneficiaries.</i></p>			
36	<p>Trust Accounting Guidelines</p> <p>Does the trust agreement include a provision that establishes accounting guidelines and reporting requirements? Laws vary with</p>			



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	regard to the level of accounting a trustee must make to all of the beneficiaries. The trust should include a provision that provides guidance and consistency to this process.			
37	Trust Protector Provisions If appropriate, does the trust agreement include trust advisor (aka trust protector) provisions? Sometimes the intent of the trustor is thwarted by unanticipated changes after death. Trust protector provisions are added to enable a hand-picked "trust advisor" to modify the terms and conditions of the trust in order to comport with the trustor's original intent. These provisions are especially important in multi-generational trust planning.			
38	Successor Trustee Authority to Delegate Does the trust agreement permit the successor trustee to delegate authority to various agents? Successor trustees are often unable to carry out by themselves all of the necessary tasks associated with the administration and ultimate termination of the trust.			
39	Merger & Severance of Continuing Trusts Does the trust agreement permit the trustee to combine or sever trusts for greater flexibility and asset management?			
40	Common Investments Does the trust agreement enable the trustee to invest the funds of various sub-trusts in common investments where such investment would be beneficial to affected trust beneficiaries?			



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41	<p>Termination of Continuing Trusts Does the trust agreement enable the trustee to terminate trusts early under appropriate circumstances? Events may transpire where it is no longer economically feasible for the trustee to continue the trust administration.</p>			
42	<p>Funeral & Other Expenses for Beneficiary Does the trust agreement include a provision enabling the trustee to pay the funeral expenses, burial or cremation expenses, enforceable debts and other expenses incurred due to the death of an income beneficiary?</p>			
43	<p>Provisions for Closely Held Business Does the trust agreement include expanded trustee power authority if trust owns a closely-held business? The trustee should be authorized to serve as an officer, director, manager, or in any other capacity or any proprietorship, partnership, joint venture, corporation or other enterprise in which the trust has an interest.</p>			
44	<p>Special S-Corp Stock Provisions Does the trust agreement include special QSST provisions to enable the trust to hold S-Corp stock after the death of the clients? The trustee should be given discretion to elect to hold any S-Corp stock as a separate "electing small business trust" or as a separate "qualified subchapter S trust."</p>			
45	<p>Coordination with Buy-Sell Agreement Does the trust agreement include provisions to coordinate trustee authority with a separate</p>			



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	buy- sell agreement of a closely-held business? Specific trust provisions are needed to ensure that the trustee is bound by and follows the terms of any buy-sell agreement entered into by the trustor.			
46	Professional Practice Provisions Does the trust agreement include provisions to enable the trust to appropriately address state laws that regulate “professional practices?” These provisions are appropriate when a trustor owns a medical, dental, legal, veterinary, accounting, architectural, engineering or other professional practice.			
47	Comprehensive Definitions Does the trust agreement include comprehensive definitions of important legal terms? All such terms should be defined to avoid confusion and provide greater clarity.			
48	No Contest Provision to Prevent Conflict Does the trust agreement avoid heirs/beneficiaries from contesting trust?			
49	Complete Funding of Trust to Keep Assets and Family out of Court and Out of Conflict Is there evidence that the trust is properly funded? An unfunded or partially funded revocable living trust does not avoid probate. Great care must be taken to ensure that all necessary assets held by the trustor individually are either retitled to the trust, or that the trust is considered as an appropriate “designated beneficiary.”			



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	Additional Provisions to Ensure Plan Works for Family	Has	Needs	N/A
1	Family Wealth Inventory? does plan include an updated inventory of assets so nothing is lost to the State Department of Unclaimed Property?			
2	Letters to Fiduciaries: have letters been provided to all people named in the plan instructing them what to do if anything happens to you.			
3	Family Wealth Legacy Interview: does plan provide audio or video recording that is a living legacy and passes on the most important assets that are most often lost when you die -- your intellectual, spiritual and human assets, values, insights, stories and experience.			
4	Regular Review and Update: has plan been reviewed and updated in the last three years?			
5	Family Meeting: has plan been explained to family/beneficiaries regarding why it has been prepared the way it has and what to do if anything happens to plan creators for purposes of avoiding conflict after death.			
6	Conflict Avoidance: does plan provide specifically for how "special assets" such as heirlooms, memorabilia, furnishings, art,			



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	jewelry and clothing should be handled by family.			
7	Full Color Plan Diagram: does plan include easy to read and understand plan diagram?			
8	Documents on CD and In Cloud: are documents easily accessible electronically and in the cloud?			

Additional Notes:

Disclaimer:

This self-performed trust review was provided as a courtesy to you, so you could be aware of what may be needed to ensure your plan works to keep your family out of Court and out of conflict, when something happens to you. Your use of this worksheet does not create an attorney-client relationship. For a comprehensive review of your estate plan, please consult a Black Wall Street Family Business Lawyer.