



Wills, Trusts & Estate Planning Basics

REALIFE PLANNING

BEST CASE LAW OFFICE OF JUDITH MOMAN

ReaLifePlanning.com



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- By receiving this information have no obligation to work with me now, or in the future
- No attorney client relationship is formed between you and *any* attorney with out a written contract
- This is educational fun, not a personal consultation



Why make a plan?

- ▶ Plan for incapacity
- ▶ Bequests to charity and non-relatives
- ▶ Choose the right decision makers

*It's not about Estate planning
It's about Real Life Planning*



What is a “basic” estate plan?

1. **Power of Attorney:** *names a financial agent*
2. **Health Care Directive:** *names a medical agent*
3. **Will, Trust, or other property transfer mechanism:** *directs the distribution of assets*



“ReaLife Planning”

(not just Estate Planning)

- ▶ **Reframe this confusing process**
 - ▶ Provide an opportunity to *consider values, priorities and relationships*.
 - ▶ It means more than just transfer of generational wealth
- ▶ **Emphasize the significance of conscious decision-making**
- ▶ **Focus on empowerment, education, and achieving desired outcomes**
- ▶ **Create opportunities for social reinforcement and support**
 - ▶ Through group workshops and document production
 - ▶ Through group rates for accessible, affordable plans



Competent adults have power of appointment

- ▶ **Power of Attorney:**
 - ▶ Authority to act only during life
- ▶ **Health Care Agent:**
 - ▶ Authority to act only during life
- ▶ **Personal Representative (named in Will):**
 - ▶ Authority to act only after death
- ▶ **Trustee (named in Trust):**
 - ▶ Authority to act during life and after death



Ways to transfer assets

- ▶ Wills
- ▶ Trusts
- ▶ Transfer on Death Deed
- ▶ Life Estate
- ▶ Accounts with Payable on Death Designation
- ▶ Lifetime gifts



Wills



- ▶ **Many kinds**
 - ▶ Testamentary = *after death*
 - ▶ Can be simple and inexpensive, or
 - ▶ Complex with imbedded Trusts for minors or special needs
- ▶ Covers all unknown assets
- ▶ Names Guardians for minors if both parents die
- ▶ Probate Required

versus

Trusts



- ▶ **Many kinds**
 - ▶ Revocable Living Trust "*Intervivos*" (during life)
 - ▶ Used during temporary or permanent incapacity
 - ▶ Complex & expensive
- ▶ Assets must be transferred into trust
- ▶ Avoids Guardianship/Conservator for beneficiary settlor
- ▶ Probate not required



Wills



▶ **Probate
Required**

versus

Trusts



▶ **Probate not
required**



What is Probate?

From Latin “to prove”

It's a Noun!



It's a Verb!

- ▶ Estate administration is called probate
- ▶ Determined by *how property is titled*
- ▶ No probate for payable on death accounts:
 - ▶ retirement accounts, bank accounts, life insurance, joint accounts, joint tenancy with right of survivorship



How does Probate work?

- ▶ Public court proceeding after a death
- ▶ Costs \$\$: fees determined by value & size of estate, time minimum of four months, attorney fees \$2,000- \$5,000
 - ▶ Small estate affidavit for less than \$75,000 + \$200,000 property= < \$275,000 total
- ▶ Estate is filed → Will is “proved” or “intestate” estate filed*
- ▶ Personal representative or “administrator” appointed
- ▶ All beneficiaries or “heirs at law” are notified; notice of estate is published to alert debtors; assets located & identified to court
- ▶ Taxes & debts paid, court supervises inventory & all costs
- ▶ Assets and monies distributed & estate “closed”



Probate is sometimes the solution

**when no valid documents exist*

- ◆ Who has authority to make decisions and act during incapacity? Guardianship or Conservatorship proceeding
 - ▶ Best interests used to designate decision makers:
 - ▶ Family
 - ▶ Friends (If they petition)
 - ▶ Licensed professional
 - ▶ Person assigned by the court.
- ◆ Who Inherits when there's no will?
 - ▶ "Heirs" determined by statute
 - ▶ Legal family only-→ Spouse +children +kin



How are Wills made?

- ▶ Competent adult
 - ▶ Over 18, of sound mind, no duress
- ▶ Observe the formalities
 - ▶ Witnessed
 - ▶ Affidavit
- ▶ Name Personal Representative
- ▶ Make directions about how to pay taxes, debts & fees
- ▶ Name beneficiaries and direct how to distribute assets
 - ▶ ONLY Spouses are entitled to inherit!



How do Wills work?

File PROBATE at the PROBATE court



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How are Trusts made?

- ▶ **“Settlor/Grantor”**
 - ▶ Legal adult
 - ▶ Names “Trustee” (e.g. self) then “successor Trustee”
 - ▶ Directions for distribution
 - ▶ Purpose- must have one
 - ▶ Timing- not Immortal
- ▶ **Only includes properly titled assets:**
 - ▶ Can be funded by “pour-over” will
 - ▶ Can be created by “simple” will



How do Trusts work?

- ▶ Contain many pages of direction
- ▶ Authorization & language regarding asset distribution
- ▶ Assets are managed by Trustee
 - ▶ Can be personal or professional Trustee
 - ▶ Good for incapacity planning → no need for guardianship or conservatorship of the “settlor”
- ▶ Avoiding probate is not always best:
 - ▶ Private transactions with no supervision
 - ▶ Who is the Trustee → Family conflict
 - ▶ Significant debtors permanently discharged through probate
- ▶ NOTE: Revocable Living Trust → does not limit estate taxes



Many kinds of trusts

- ▶ Revocable and Irrevocable Trusts
- ▶ Revocable Living Trust → Lifetime transfer
- ▶ Special Needs Trusts
- ▶ Irrevocable Life Insurance Trusts → avoids estate tax
- ▶ Trusts for minors and pets
- ▶ Spendthrift Trusts
- ▶ Qtip (Qualified Terminable Interest Trust)
- ▶ Disclaimer Trusts



Correcting common misunderstandings

- ◆ ONLY Spouses cannot be disinherited
 - ◆ No other family member has a *right* to inherit under a will
 - ◆ Spouses can waive inheritance rights
- ◆ Probate does not increase your tax burden
- ◆ Probate might decrease your tax burden
- ◆ Revocable Living Trusts do not eliminate Federal or Oregon Estate taxes
- ◆ Other types of trusts *can* limit Federal or Oregon Estate taxes



Questions?



RealLife Planning

Best case plans for worst case scenarios

Judith Moman, Esq.

Licensed in Oregon and Massachusetts

OR: 541-203-0205

MA: 413-387-7373

Judith@ReaLifePlan.com

ReaLifePlanning.com



Other Resources

▶ Oregonfuneral.org →

▶ OSBar.org

▶ Oregon.gov

▶ Theconversationproject.org

