Legal Disclaimer

- 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 without a written contract.

- This is educational fun, not a personal consultation.

ReaLifePlanning.com
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 versus Trusts

**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

**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 versus Trusts

- Probate Required
- 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
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

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Other Resources

- Oregonfuneral.org
- OSBar.org
- Oregon.gov
- Theconversationproject.org