



Planning And Preparing

An Elder Law presentation sponsored by the Richland
County Foundation

PRESENTED BY JACK P. STEWART, CPA, CFP®
CERTIFIED ELDER LAW ATTORNEY*

10/29/2020

*CERTIFIED AS AN ELDER LAW ATTORNEY BY THE NATIONAL ELDER LAW FOUNDATION

Plan & Prepare

- ▶ Living Will
- ▶ Power of Attorney for Health Care
- ▶ Power of Attorney for Financial Affairs
- ▶ Last Will and Testament
- ▶ Trusts
 - ◆ Revocable Trust
 - ◆ Irrevocable Trust
 - ◆ Special Needs Trust
- ▶ Probate

Living Wills and Powers of Attorney for Health Care

Living Will

- ▶ Allows you to express your wishes about the use of life-sustaining treatment if you become terminally ill or permanently unconscious.
- ▶ Becomes effective only when you cannot communicate your wishes and are permanently unconscious.
- ▶ Can be changed or revoked by you – and only you – at any time.

Power of Attorney for Health Care

- ▶ Allows you to authorize another person to make health care decisions for you if you cannot make them for yourself.
- ▶ Becomes effective only when you cannot make health care decisions for yourself.
- ▶ Can be changed or revoked by you – and only you – at any time.
- ▶ Will not overrule a living will if you have both documents.

Power of Attorney for Financial Affairs

- ▶ Used to appoint someone to act on your behalf regarding financial matters.
- ▶ Typically used when an individual becomes unable to handle his or her own financial affairs.
- ▶ Can be used to name one agent, or two or more co-agents, each of whom can act alone, unless specifically stated that they must act together, by majority vote, or by unanimous vote.
- ▶ Becomes effective when the Power of Attorney states that it is to begin, otherwise it becomes effective immediately. For example, can begin on one's incapacity.
- ▶ Will avoid the need for a time consuming and costly guardianship if you become unable to handle your own financial affairs.
- ▶ The Power of Attorney for Financial Affairs terminates at your death.

Wills

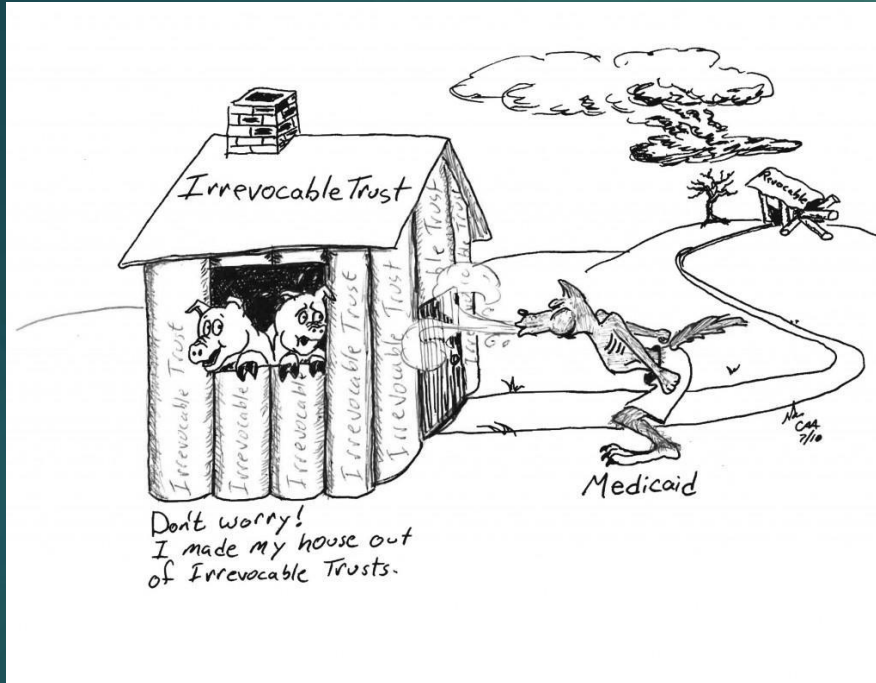


- ▶ A document that sets forth how a person would like to have his or her probate property distributed upon his/her death.
- ▶ Ensures that your assets are distributed the way you want them to be distributed.
- ▶ Allows you to name someone to manage the administration of your estate (an Executor).
- ▶ Can be changed and amended by you at any point in time (as long as you have legal capacity to do so).
- ▶ Can name who will be guardian of your minor children.

Revocable Living Trust

- ▶ A trust exists when one person (a grantor or settlor) gives property to another person (a trustee) to hold and manage for one or more other persons (beneficiaries).
- ▶ A revocable trust is a trust that the grantor/settlor can amend (change) or revoke (cancel) during his or her lifetime.
- ▶ A living trust is a trust that the grantor/settlor creates during his/her lifetime, i.e., while living.
- ▶ The grantor/settlor keeps complete control over any property placed into the trust. This means that the grantor/settlor can withdraw property from the trust at anytime.
- ▶ At the time of the grantor's/settlor's death, all of the property in the trust can be directly given to the beneficiaries without the time and expense of going through probate.
- ▶ Or, at death, the assets in the trust can be held in trust for the trust's beneficiaries.
- ▶ This type of trust does not protect assets from the Nursing Home.

Irrevocable Living Trust



- ▶ An irrevocable trust is a trust that the grantor/settlor can amend, but **CANNOT** revoke (although many times, these trusts are drafted such that the grantor/settlor cannot amend the trust either).
- ▶ In addition, typically the grantor/settlor **CANNOT** withdraw or alter property within the trust. However sometimes, the trust will give the grantor's/settlor's children the authority to withdraw assets from the trust.
- ▶ Irrevocable trusts are a valuable tool in estate and Medicaid planning. They can be used to protect assets if one were to go into a Nursing Home.
- ▶ You can gift assets to an irrevocable trust, and then the individual would wait out the 5 year look-back period imposed by Medicaid.
- ▶ Typical structure of an irrevocable trust is as follows: 1) The grantor/settlor **CANNOT** receive assets from the trust, but 2) The grantor's/settlor's children can receive assets from the trust.

Special Needs Trust

- ▶ A special needs trust is a trust that can have assets contributed to it by an individual who is under age 65, and who is disabled. It is established for the benefit of such an individual by the individual, a parent, grandparent, legal guardian of the individual, or a court.
- ▶ The special needs trust's assets typically are not treated as "owned" by the individual; and, therefore, the special needs trust does not affect the disabled individual's government benefits.
- ▶ Special needs trusts may contain provisions requiring the assets of the trust to be paid to the state, upon the death of the individual, up to an amount equal to the total medical assistance paid by the state on behalf of the individual.
- ▶ The assets of a special needs trust can only be used for certain supplemental needs of the individual.

Probate

- ▶ Probate is a legal proceeding that is used to administer the property owned by someone who has died, and to see that claims, expenses and taxes of the estate are properly paid. The remaining estate is distributed to those entitled to receive it.
- ▶ It can be **time consuming**, as estates can take months and even years to be settled.
- ▶ It can be **expensive**, as there will be court costs, attorney fees, and the Executor is entitled to fees set by the State of Ohio.
- ▶ However, with the use of legal tools and specific types of asset ownership, probate can be avoided.
- ▶ **NOTE-** For a variety of reasons, even after acknowledging all of the above, sometimes it actually makes sense to have probate. For example (as discussed later), a POD designation will not “work”.

Simple Probate Avoidance Tactics

Part 1

- ▶ **Bank/Investment Accounts** You should verify the ownership of your bank accounts and investment accounts. Do you want a “signer” on the account? Do you also want this “signer” to be a Joint Owner with Rights of Survivorship? There is more information on the following slides regarding this.
- ▶ **Signer** If you choose to add someone to your accounts only as a signer, this will allow them to sign checks and access your account on your behalf. This, however, will not entitle them to receive any of the funds directly upon your death. Instead, the account would be probated per the instructions of your last will and testament (or the account might avoid probate if you have a joint owner with rights of survivorship or a POD on the account).

Simple Probate Avoidance Tactics

Part 2

- ▶ **Joint Ownership with Rights of Survivorship** By adding a joint owner with rights of survivorship, you will be allowing them to sign checks and access your account on your behalf. In addition, they will also be entitled to receive any of the funds directly upon your death. This account will **NOT** need to be probated and, therefore, will **NOT** be probated per the instructions of your last will and testament. It will be distributed only to the particular joint owner(s) that you have on the account with you.
- ▶ **Payable on Death (POD) Designation for Bank Accounts** If you have your beneficiaries' names attached by POD, you will ensure that your accounts go directly to your surviving beneficiaries (for example, your surviving children) without the need to probate the account upon your death.

NOTE – You might not be able to do a “per stirpes” POD designation. In other words, if a child predeceases you, a POD designation typically does not allow for the deceased child’s share to be distributed to that deceased child’s children. Most people do not want this format. **Ask your banker about this.**

Simple Probate Avoidance Tactics

Part 3

- ▶ **Transfer on Death (TOD) Designation for Investment Accounts** By having your beneficiaries' names (for example your children) attached by TOD, you will ensure that your account goes directly to your surviving beneficiaries (for example your surviving children) without the need to probate the account upon your death.

NOTE – You might not be able to do a “per stirpes” TOD designation. In other words, if a child predeceases you, a TOD designation typically does not allow for the deceased child’s share to be distributed to that deceased child’s children. Most people do not want this format. **Ask your financial advisor about this.**

Simple Probate Avoidance Tactics

Part 4

▶ Real Estate – Survivorship Deed

For a married couple, ascertain that your deed is a Survivorship Deed. Even if the Deed has both your names on it, it may not be a Survivorship Deed; and if it is not, then you would have to probate ½ the house on the first spouse to die. The Deed needs to have language similar to “for their joint lives, remainder to the survivor of them”.

▶ Real Estate - Transfer on Death Designation Affidavit

The Transfer on Death Designation Affidavit can be used to avoid probate with real estate. You can name who you want to get the real estate upon your death. Be careful, the real estate will go to the survivors named in the Transfer on Death Designation Affidavit, unless you put in contingent beneficiaries.

Sometimes you may not want a Transfer on Death Designation Affidavit; probate would be better. For example, if the real estate goes to 4 married children upon your death, your children will need 8 signatures to sell the real estate (Your children would need all 4 children’s signatures and all their spouse’s signatures). But if the real estate goes through probate, your children would only need one signature to sell it, the Executor’s signature.

Jack P. Stewart, Esq., CPA, CFP®

- ▶ Certified as an Elder Law Attorney by the National Elder Law Foundation
- ▶ No cookie cutter approach. Plans are specialized to meet your specific needs.
- ▶ Hands on assistance. We work with you through the whole process.
- ▶ Local. I own and operate my own law and tax practice, Jack P. Stewart, Inc., located in Ontario, Ohio.

Phone: 419-529-9755

Email: jstewart@jpslawandtax.com

Disclaimer

These materials should not be used for legal advice, and you should not rely on these materials when taking any action. For your particular situation, appropriate professionals, legal or otherwise, should be consulted.

Questions?



search ID: man2572

"I can't believe she left everything
to that stupid *parakeet!*"