

# Wills & Estate Planning

CBA's Law at the Library - Planning Ahead: Wills, Trusts and Estate Planning



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## Let's address the obvious:

- Death is typically not a comfortable conversation for many to have. However, it is essential if you want to save your loved ones added frustration during their heartache of your passing.
- Getting the proper documents filled out correctly, and having them organized, will help give you and your family peace of mind.

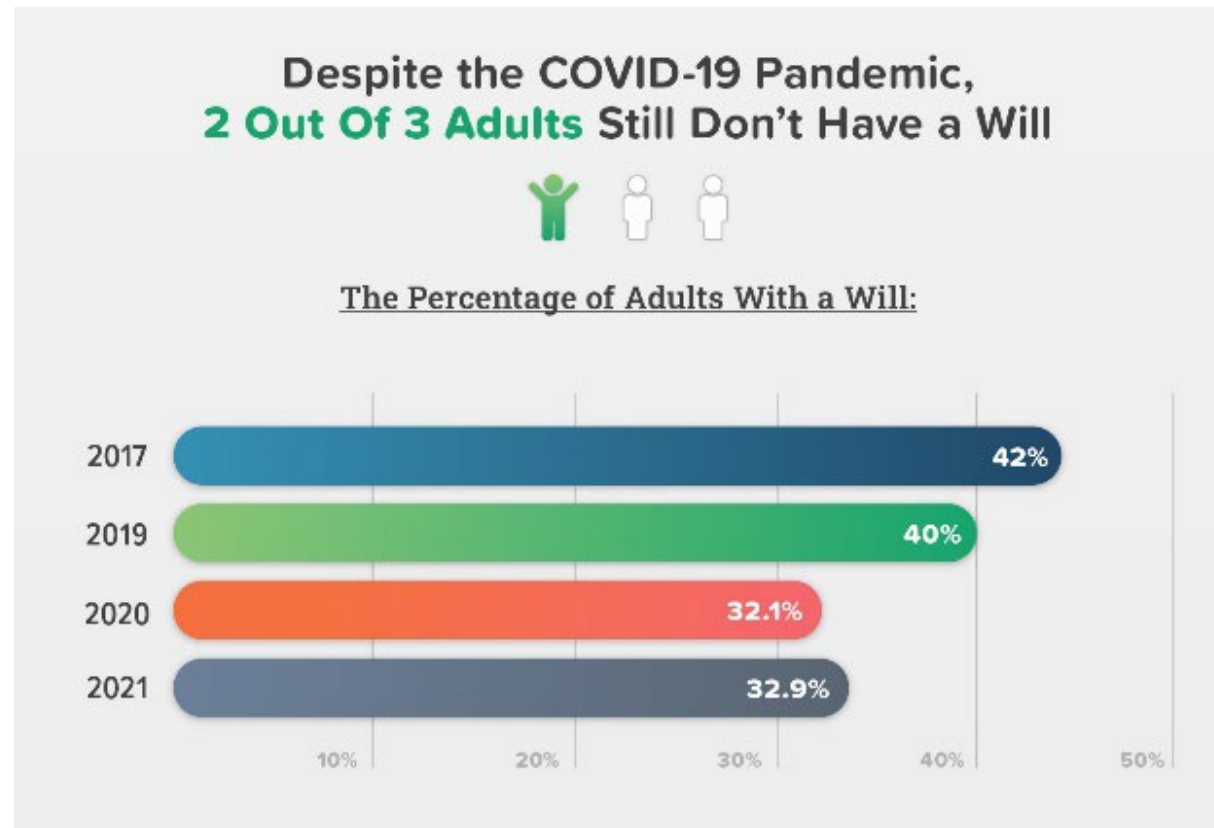
The most important part:

Tell someone where you keep your documents!



# Who needs estate planning?

Everyone needs estate planning, whether your estate is large or small.



# What is estate planning?



# What is the goal of estate planning?

Even before estate tax, the goal of estate planning is to:

- Protect assets from creditors
- Preserve family wealth for future generations
- Provide for support and income flow to family under all circumstances
- Manage assets for those who cannot manage it themselves
- Business Succession



# What can I expect?

## A small estate plan may focus on:

- How and who will manage your assets for your benefit during your lifetime if you ever become unable to manage them yourself.
- Under what circumstances it makes sense to distribute your assets during your lifetime.
- How and by whom your personal care and health care decisions will be made during your lifetime if you become unable to care for yourself.
- How and to whom your assets will be distributed after your death.  
Who will be the guardian of your minor children when you are unavailable

# What can I expect? (cont'd)

## A large estate plan must address:

Various ways of preserving the estate assets for the beneficiaries' benefit

Tax Planning : Any strategy required to reducing or postponing estate tax

# Powers of Attorney

Legal document granting authority

To another

Whom you trust

To act for you

In certain circumstances

Your “legal clone”





# Power of Attorney for Property

- Appoints an agent to manage your financial affairs upon incapacitation
  - Avoids guardianship proceedings
  - Includes authority to manage real estate
- Especially useful to manage assets that cannot be owned jointly:
  - Health Savings Accounts
  - IRA's
  - Retirement Plans
  - Property not put in trust.
- Additional Powers
  - Handle income and other tax activities, such as signing/filing returns
  - Create estate and/or tax planning instruments and make gifts on your behalf
  - Establish a Medicaid planning (OBRA) trust
  - Change title to property
  - Gain access to, or consent to the release of, all types of medical information and records (so that your agent will have the information necessary to plan how best to pay for the services necessary to meet your needs).



# Power of Attorney for Health Care



- Appoints an agent to make health care decisions on your behalf if you become incapacitated.
- A Health Care Power of Attorney gives your agent general directives that must be followed but allows flexibility.
- Your agent can decide what you would have wanted done in each scenario.
- A Health Care Power of Attorney is also useful because it allows your doctor or the hospital to release all necessary medical information to whomever you choose as agent.

# Last Will and Testament

- Last Will and Testament
  - Operative upon death
  - Appoints Executor
  - Directs payment of debts and last expenses
  - Directs distribution of estate upon death
  - Public document
- Does not avoid probate



# Revocable (Living) Trusts



- Takes place of will
- Assets assigned to trust avoid probate
- Document is private
- May be amended at any time
- Avoids need for guardianship
- Allows for estate tax planning

## Revocable (Living) Trusts (cont.)

- No Asset Protection for Grantor (the trust maker)
- Provide for mechanism to manage assets for beneficiaries and can provide for creditor protection
- Integral part of estate plan



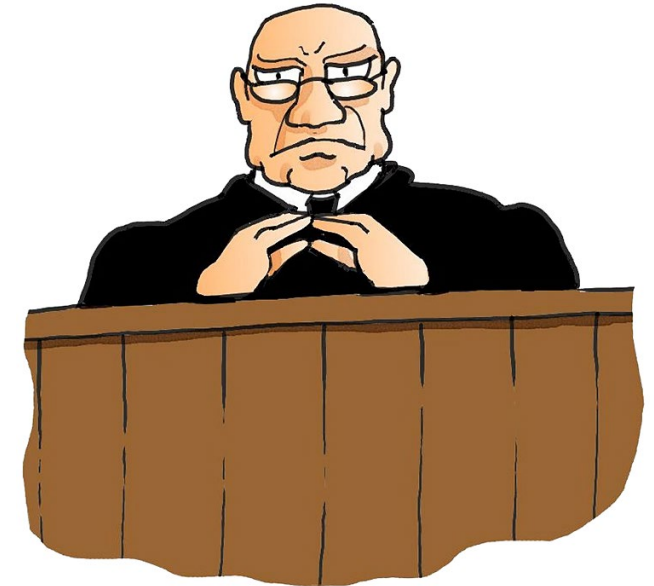
# Irrevocable Trusts

- Primary use is to facilitate gifts to children and/or individuals that require asset protection.
- Grantor can't make changes to the trust or retain the right to take the money back.
- Most complex estate tax reduction strategies incorporate irrevocable trusts.

# What is Probate?

## Court-Supervised Transfer of Assets

- All assets held in own name that do not have a named beneficiary must go through probate
- Typical Delay
  - 9 months – 2 years
- Typical Costs
  - Attorney Fees
  - Executor Fees
  - Court fees
  - Will contests
- Public Process



## Example of Probate

<b>Gross Estate</b>	<b>\$10,165,434</b>
Debts	\$3,878,539
Administrative, Legal & Executor Fees	\$1,961,128
Estate Taxes	<u>\$3,339,520</u>
<b>To Heirs</b>	<b>\$986,247</b>



Of his \$10 million estate, about 73% was lost in the probate process to estate taxes and other settlement costs. His case illustrates why a trust is often the best way to protect an estate. If Elvis had used a trust, the estate could have avoided the costs and delays associated with the probate process, and in most states, keep the disposition of the estate out of public view. With a trust, he could have used some estate tax minimization strategies.



# Probate Avoidance Methods

- Joint Tenancy
- Life Insurance
- Payable on Death Accounts
- Lifetime Gifts
- Living Trusts



# How to Avoid Probate

## Joint Tenancy (with rights of survivorship)

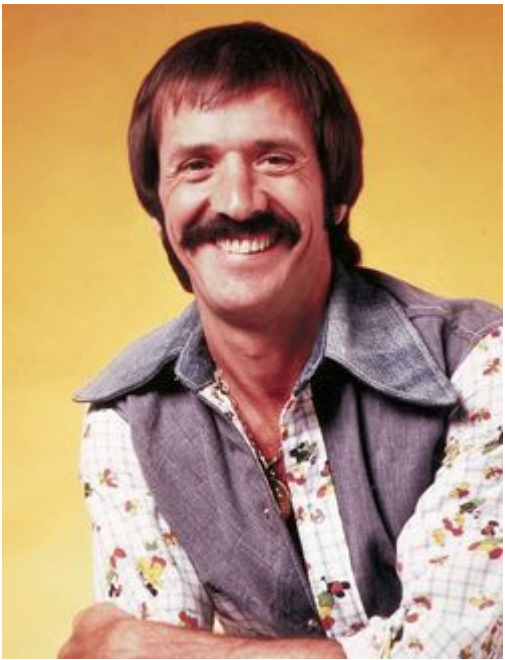
- Owning assets jointly can cause problems
- Only really postpones probate until second spouse's death
- Difficult to remove co-owner
- Exposes assets to debts of other individuals
- May unintentionally disinherit heirs

## Trusts

# Poor Celebrity Estate Planning



# Sonny Bono



- Died January 5, 1998 of a skiing accident leaving behind a wife, 4 children and an approximate \$2 million estate.
- Sonny had NO estate planning documents in place.
- His 4<sup>th</sup> wife, Mary, had to petition to be appointed executor.
- Cher filed a lawsuit against his estate for the approx. \$1.6 million he never paid her in their 1975 divorce.
- A man filed a lawsuit claiming to be Sonny's "love child" before dropping the case when asked to provide DNA.
- The estate was eventually divided between his wife and children.

# James Gandolfini

- Actor from the TV series *The Sopranos*.
- Gandolfini died of a heart attack at age 51 with an estate worth an estimated \$70 million.
- His will left about 80% of his estate exposed to taxes.
- Gandolfini's estate had to pay about \$30 million in Estate Taxes, depleting nearly half of his estate.



# Philip Seymour Hoffman



- The Academy Award winning actor died in 2014 leaving behind his longtime girlfriend, 3 children with her, and a \$35 million estate.
- His will was executed in 2004 before his two youngest children were born and left his entire estate to his girlfriend with nothing going directly to his children.
- The estate was taxed approximately \$12 million which could have been significantly reduced, or even eliminated, with trusts and other estate planning tools.
- His will became public record and was even published by local news outlets.

# Jim Morrison

- Singer, songwriter for the Doors, died in 1971 of heart failure at age 27.
- Morrison had an overly simple 2-page will.
- His entire estate was left to his girlfriend, or if she had passed, to his siblings.
- Jim's girlfriend died intestate, so Jim's estate and interest in the Doors then transferred to the girlfriend's parents.
- Jim's parents disputed the estate going to the girlfriend's parents - her parents ultimately agreed to provide Jim's parents with half of the inherited estate.



# Takeaways

You don't have to be rich or famous to need proper estate planning. No matter the size of the estate, proper planning is important. Mistakes can turn into a costly and potentially public process.

## Estate Plan Review

- Does your will or trust match your wishes?
- Are your assets titled correctly?
- If you created a trust, have you funded it?
- Are you still comfortable with your agent under your Power of Attorney for Health Care and/or Property?



# Thank you!

Kerry R. Peck

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