

# **LEGAL ASPECTS OF END OF LIFE**

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# **PLANNING FOR END OF LIFE**

- 1. Preliminary steps**
- 2. Incapacity during life**
- 3. Distributing property at death**
- 4. Planning for family members**
- 5. Death and dying**

# PRELIMINARY STEPS

- 1. Gather factual information**
- 2. Think about your goals**
- 3. Identify those you trust**
- 4. Choose professional advisers**

# PRELIMINARY STEPS

## 1. GATHER FACTUAL INFORMATION

- a. Family
- b. Property
- c. Income

# PRELIMINARY STEPS

## 1. GATHER FACTUAL INFORMATION

### a. Family

- Name
- Address
- Relationship
- Age/date of birth
- Social Security #
- Education
- Employment
- Special needs

# PRELIMINARY STEPS

## 1. GATHER FACTUAL INFORMATION

a. Family

b. Property

- Description
- Location
- Owner(s)
- How/when acquired
- Cost
- Current fair market value
- Balance owed

# PRELIMINARY STEPS

## 1. GATHER FACTUAL INFORMATION

a. Family

b. Property

c. **Income**

- **Salary/employee benefits**
- **Business & partnership interests**
- **Investments**
- **Social Security**
- **Retirement plans**
- **Other benefits**
- **Miscellaneous income**

# PRELIMINARY STEPS

**1. GATHER FACTUAL INFORMATION**

**2. THINK ABOUT YOUR GOALS**

- a. Now
- b. During retirement
- c. During disability
- d. At death



# PRELIMINARY STEPS

**1. GATHER FACTUAL INFORMATION**

**2. THINK ABOUT YOUR GOALS**

- a. Now
- b. During retirement
- c. During disability
- d. At death

**Transfer taxes no longer drive planning,  
but income taxes may.**

# PRELIMINARY STEPS

1. GATHER FACTUAL INFORMATION
2. THINK ABOUT YOUR GOALS
3. IDENTIFY THOSE YOU TRUST
  - a. To care for you or your children
  - b. To make health care decisions
  - c. To manage your money
  - d. To administer your estate

# PRELIMINARY STEPS

1. GATHER FACTUAL INFORMATION
2. THINK ABOUT YOUR GOALS
3. IDENTIFY THOSE YOU TRUST
4. **CHOOSE PROFESSIONAL ADVISERS**  
(as needed)
  - a. Attorney
  - b. CPA
  - c. Financial planner
  - d. Trust officer

# **INCAPACITY DURING LIFE**

- 1. Managing financial affairs**
- 2. Making health care decisions**
- 3. Long-term care**
- 4. Financing long-term care**

# INCAPACITY DURING LIFE

## 1. **MANAGING FINANCIAL AFFAIRS**

- a. **Conservator of estate**
- b. **Custodian**
- c. **Representative payee**
- d. **Durable power of attorney**
- e. **Trustee**

# INCAPACITY DURING LIFE

## 1. MANAGING FINANCIAL AFFAIRS

- a. Conservator of estate
- b. Custodian
- c. Representative payee
- d. Durable power of attorney
- e. Trustee

**TRUST** = an arrangement under which one party (the “trustee”) holds **LEGAL** title to property and manages it for the benefit of designated persons (the “beneficiaries”), who are considered to own the **EQUITABLE** interest in the property.

# INCAPACITY DURING LIFE

## 1. MANAGING FINANCIAL AFFAIRS

## 2. MAKING HEALTH CARE DECISIONS

a. Hospice

b. Guardian of person

c. Surrogate decision maker

d. Advance medical directive

- “Key Conversations” guide
- Health care instructions
- Health care representative
- Mental health directive
- Proper execution

# INCAPACITY DURING LIFE

1. MANAGING FINANCIAL AFFAIRS
2. MAKING HEALTH CARE DECISIONS
3. **LONG-TERM CARE**
  - a. At home
  - b. Assisted living facility
  - c. Adult foster home
  - d. Residential care facility
  - e. Nursing home
  - f. Continuing care facility



# INCAPACITY DURING LIFE

1. MANAGING FINANCIAL AFFAIRS
2. MAKING HEALTH CARE DECISIONS
3. LONG-TERM CARE
4. **FINANCING LONG-TERM CARE**
  - a. Few government benefits!!!
  - b. Long-term care insurance
  - c. Private-pay

# **DISTRIBUTING PROPERTY AT DEATH**

- 1. NONPROBATE PROPERTY**  
**(“will substitutes”)**
- 2. PROBATE PROPERTY**

# WILL SUBSTITUTES

**Give everything  
away during life**

**Create will  
substitutes**

**Keep everything in  
sole name until death**



# WILL SUBSTITUTES

Give everything  
away during life

Create will  
substitutes

Keep everything in  
sole name until death



1. Retain control during life
2. Get property → beneficiaries at death without probate

**NONPROBATE  
PROPERTY**

**automatic**

**successors**

# **WILL SUBSTITUTES**

- 1. Living trust**
- 2. Life insurance**
- 3. Retirement plan**
- 4. Pay-on-death (POD) account**
- 5. Transfer-on-death (TOD) deeds  
and securities**
- 6. Survivorship ownership**

# **\*WILL SUBSTITUTES**

- 1. Living trust**
- 2. Life insurance**
- 3. Retirement plan**
- 4. Pay-on-death (POD) account**
- 5. Transfer-on-death (TOD) deeds and securities**
- 6. Survivorship ownership**

**\*DO NOT ESCAPE TAXATION!!!**

# **REVOCAABLE LIVING TRUST**

**The most effective way to:**

- 1. Plan for incapacity**
- 2. Avoid probate**
- 3. Get property to right people**



# **REVOCAABLE LIVING TRUST**

- 1. Put all (or most) assets in the trust.**
- 2. Attach a list of trust assets.**
- 3. Transfer titles to the trustee!**
- 4. Understand trust distributions.**
- 5. Follow proper trust procedures.**

# WILL SUBSTITUTES

1. Living trust
2. Life insurance \*
3. Retirement plan \*
4. Pay-on-death (POD) account
5. Transfer-on-death (TOD) deeds and securities
6. Survivorship ownership

**\* PROPER BENEFICIARY DESIGNATIONS  
ARE CRITICAL!!!**

# WILL SUBSTITUTES

1. Living trust
  2. Life insurance
  3. Retirement plans
  4. Pay-on-death (POD) accounts
  5. \*Transfer-on-death (TOD) deeds and securities
  6. Survivorship ownership
- \* MUST BE TO NAMED PERSON(S), NOT TO A CLASS (such as “my children”)

# **DRAWBACKS TO JOINT TENANCY**

- 1. Gift tax consequences**
- 2. Child can unilaterally sever**
- 3. Child shares income**
- 4. Child must consent to sale  
(and gets share of \$)**
- 5. Child's creditors may make claims**
- 6. Child may die first**
- 7. Child is ungrateful/greedy**
- 8. Litigation**

**NONPROBATE  
PROPERTY**

**automatic**



**successors**

**NO NEED FOR A WILL OR COURT  
PROCESS!**

**NONPROBATE  
PROPERTY**

**automatic**



**successors**

**NO NEED FOR A WILL OR COURT  
PROCESS!**

**WILL HAS NO EFFECT ON THIS  
PROPERTY!**

**NONPROBATE  
PROPERTY**

*automatic*

**successors**

**PROBATE  
PROPERTY**

*informal  
shortcut*

**successors**

1. Title doesn't matter
2. Statutory affidavit
  - a. Specific type of asset
  - b. Small estate

**NONPROBATE  
PROPERTY**

**PROBATE  
PROPERTY**

**automatic**

**successors**

**informal  
shortcut**

**successors**

- 1. Title doesn't matter
- 2. Statutory affidavit
  - a. Specific type of asset
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**probate**

**will**

**will Bs**



**NONPROBATE  
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**automatic**

**successors**

**PROBATE  
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**informal  
shortcut**

**successors**

- 1. Title doesn't matter
- 2. Statutory affidavit
  - a. Specific type of asset
  - b. Small estate

**probate**

**will**

**will Bs**

**no will**

**heirs**

# PLANNING FOR FAMILY

- 1. Surviving spouse**
- 2. Minor children**
- 3. Disabled family members**

# PLANNING FOR FAMILY

## 1. SURVIVING SPOUSE

- a. Rights as heir
- b. Elective share rights
- c. Rights under retirement plans
- d. Pre- and post-nuptial agreements
- e. Divorce

# PLANNING FOR FAMILY

## 1. SURVIVING SPOUSE

## 2. MINOR CHILDREN

- a. Guardian of person
- b. Conservator of estate
- c. Custodianship
- d. Contingent trust for minors

# PLANNING FOR FAMILY

1. SURVIVING SPOUSE
2. MINOR CHILDREN
3. **DISABLED FAMILY MEMBERS**
  - a. Guardian of person
  - b. Conservator of estate
  - c. Trusts
  - d. Government benefits

# DEATH AND DYING

- 1. Physician Orders for Life-Sustaining Treatment (POLST)**
- 2. Physician-assisted death**
- 3. Organ donation**
- 4. Funeral and burial**

# DEATH AND DYING

## 1. Physician Orders for Life-Sustaining Treatment (POLST)

- CPR
- Medical interventions
  - Comfort measures only
  - Limited additional interventions
  - Full treatment
- Artificially administered nutrition
- Oregon POLST Registry

# DEATH AND DYING

1. **Physician Orders for Life-Sustaining Treatment (POLST)**
2. **PHYSICIAN-ASSISTED DEATH**



# DEATH AND DYING

1. **Physician Orders for Life-Sustaining Treatment (POLST)**
2. **PHYSICIAN-ASSISTED DEATH**
3. **ORGAN DONATION**
  - **Document expressing choices**
  - **Delegation of authority**
  - **Registry**

# DEATH AND DYING

1. **Physician Orders for Life-Sustaining Treatment (POLST)**
2. **PHYSICIAN-ASSISTED DEATH**
3. **ORGAN DONATION**
4. **FUNERAL AND BURIAL**
  - **Advance arrangements**
  - **Document expressing choices**
  - **Delegation of authority**

