

## ESTATE PLANNING & PROBATE

### What documents do you need to get your estate in order?

- Power of Attorney (medical and financial)
- Living Will
- Last Will and Testament
- Revocable Trust (maybe)



### Why is it important to have a Will?

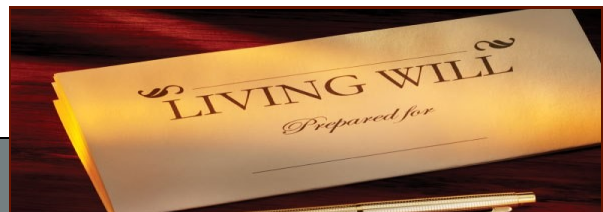
- Cost of estate administration is more without a Last Will and Testament
- Statute dictates who inherits in the case of second marriages and blended families (can have unintended results based on who dies first)
- Making unequal distributions and cutting out heirs is not possible without a Will
- Your estate may have to pay inheritance taxes that could be avoided with a valid Will
- Without a Will, you don't have the right to:
  - Name your Executor
  - Make specific gifts to particular individuals
  - Make gifts to charity like your church

### What is a Living Will?

A Living Will is a legal document in which a person makes known their instructions regarding terminal medical decisions.

Tennessee law requires Living Wills to contain the following language:

“If at any time I should have a terminal condition and my attending physician has determined there is no reasonable medical expectation of recovery and which, as a medical probability, will result in my death, regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life, or life process, I direct that medical care be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medications or the performance of any medical procedure deemed necessary to provide me with comfortable care or to alleviate pain.”



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## Irrevocable Life Insurance Trust (ILIT)

ILIT is a trust established to hold a life insurance policy on an individual. The ILIT is the owner and beneficiary of the life insurance policy.

- Upon death of the insured, the Trustee invests the insurance proceeds and administers the ILIT for the benefit of the beneficiaries of the trust

### Good reasons to consider an ILIT:

- Minor children or young adults as beneficiaries
- If you have an heir who needs protection (spendthrift, substance abuse, mental problems, etc.)
- Life insurance proceeds may effect estate tax liability (depending on type of policy, amount of gross estate and tax laws at time of death)



## Why do you need a Power of Attorney?

A Power of Attorney is required for someone else to make healthcare or financial decisions for you if you become incapacitated.

### Remember:

- You may want to name different persons as your Power of Attorney for health vs. financial purposes
- It is a good idea to name at least one alternate
- Your Power of Attorney must to be notarized for health care and most financial needs

## Revocable (Living Trusts)

### Good reasons to consider a Revocable Trust:

- If you own out-of-state property
- If you have an heir who needs protection (minors, young adults, spendthrift, substance abuse, mental problems, etc.)



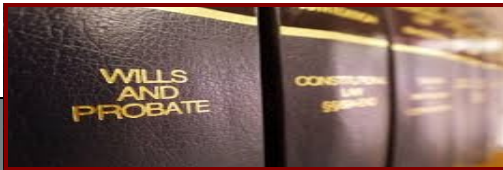
### Things to watch out for:

- Adding adult child's name to parents' bank accounts
  - Make sure it is not a "joint account" but just gives the adult child signature authority
  - Make sure the child has rights of survivorship
- Out of date Beneficiary Designations
  - Be sure beneficiary designations are up to date and correct on life insurance policies, pension plans, and IRA, etc.
- Printing forms from the internet to save money
- Advice to put assets in a Living Trust to avoid probate (not a good reason in Tennessee and usually very expensive)

## What is probate?

Probate is a legal process that takes place after someone dies. It includes:

- proving in court that a deceased person's Last Will and Testament is valid
- identifying and accounting for the deceased person's property
- having the property appraised
- paying debts and taxes
- distributing the remaining property as the Will (or estate law, if there's no Will) directs



## What assets do not pass through your Will or your Probate Estate?

- Real property titled in both a husband and wife's names will pass directly to the surviving spouse
- Anything payable to a named beneficiary
- All of these go to the person(s) named on the Beneficiary Designation Form:

Life insurance policies

Joint bank accounts with right of survivorship

401K; IRAs; pension plans

Assets POD (Payable on Death)



## What are some important terms used in probate?

A **“Testate”** estate exists when the decedent had a valid Last Will and Testament (“will”) and the Will is properly admitted into probate by the probate court. There are a number of statutory requirements for the creation of a valid Will and it is not uncommon for a document which the decedent intended to be his or her Last Will and Testament to be rejected by the Probate Court because the requirements are not satisfied.

An **“Intestate”** estate exists when the decedent did not have a Will or the Will fails to meet the statutory requirements. When there is no Will or no valid Will, the decedent's assets will be distributed according to statutes on descent and distribution in the Tennessee Code.

A **“Personal Representative”** is an individual or series of individuals appointed by the probate court to administer the decedent's estate.

An **“Executor”** (male) or **“Executrix”** (female) is the individual or series of individuals named in the decedent's valid Will to be the personal representative of the decedent's estate.

An **“Administrator”** (male) or **“Administratrix”** (female) is the individual or series of individuals appointed by the probate court to be the personal representative for an intestate estate. The Tennessee statutes define an order of precedent among the decedent's family and creditors which aids the court in appointing an administrator or administratrix.

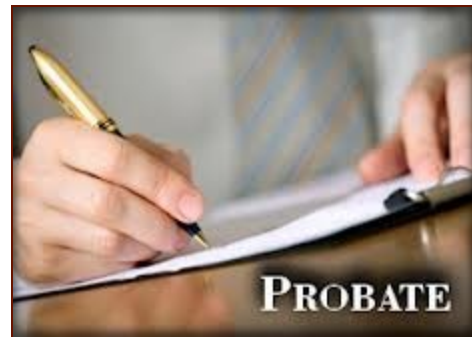
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### How does the probate process work?

After a death, the attorney for the estate or the personal representative files the Last Will and Testament (if the decedent died with a valid Will) and a petition for probate in the probate court in the decedent's county of residence, along with a few other forms, to open the estate. Once the probate court appoints or approves the personal representative, the chancellor will issue an official document entitled "Letter Testamentary" (testate estate) or "Letter of Administration" (intestate estate) giving the personal representative authority to act for the estate. Then, the personal representative must begin the process of administering the estate.

To administer the estate, the personal representative must:

- give notice to the heirs and beneficiaries of the existence of the estate
- publish a notice of the existence of the probate estate to creditors
- give written notice to known creditors
- review claims of creditors to confirm that they are properly filed, due and payable
- collect, protect and sometimes liquidate the decedent's assets
- prepare and file final income tax return(s)
- prepare and file necessary inheritance and gift tax returns
- determine if the decedent had TennCare benefits and if reimbursement is owed to TennCare
- file reports and inventories with the court, if required
- make court appearances when appropriate
- pay creditors, pay expenses and distribute the estate, which involves payment of allowable claims; payment of court costs and administrative expenses; and distribute the estate either pursuant to the terms of the Will and/or pursuant to the statutory provisions



Probate proceedings can be relatively simple or they can be extremely complex, depending on the particular circumstances of each estate.

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