

THE
CARTER CENTER



Introduction to Estate Planning: Wills

Why you should have one, how it affects your loved ones, and when you should update yours.

Thank You

Our work together continues today to improve the lives of millions of people, and we simply cannot thank you enough for making that possible through your ongoing partnership and support.



Thank You for Your Trust

We would also like to express our gratitude for allowing us to serve as your resource; it is a privilege to be trusted to provide you with information about these important topics.



DISCLAIMER

The information contained in this presentation and these materials are for educational purposes only, and should not be considered legal advice. Any information covered should be discussed with your own estate planning attorney to determine its suitability for your specific situation. The Carter Center is not involved in the practice of law and does not provide legal advice. Mark Williams is an attorney, but he is not your attorney and is not providing you with legal advice; no relationship (attorney/client or otherwise) is created by this educational webinar. By viewing this webinar, you agree to the above.



Overview

1. Two Sets of Estate Planning Rules:

- No Will
- Will

2. Probate Basics

- No Will
- Will

3. Charitable Planning Strategies



What Happens Without A Will?

Every state has a set of rules that will control your estate if you pass away without a will. (Your state has a plan for you that you won't like.)

These rules dictate who gets what, when and how

The rules also state which creditors (people or businesses) get money from you, and in what order.

(Note: Some creditors are given special preference and will get your property before your heirs are even considered)



What Happens Without A Will?

Without a will, you have no control over:

- Who inherits your property, and at what ages
 - ❖ Without a will, your property may go to family members you don't want to inherit, whether you like it or not, but the person you love most might get nothing.
- Who ensures your final wishes are enacted
- How long someone inherits a home or property
- Who will continue your business, or if it will continue at all



What Happens Without A Will?

Without a will or heirs, all of your property (house, cars, bank accounts, stocks, bonds, etc.) could be forfeited and given to the state to sell and spend however it sees fit (rare, but has been known to happen)

Without a will, your estate or heirs may have to pay more in taxes

For those who do not wish to leave assets to family, friends or loved ones, naming a charity as a beneficiary of the estate could benefit so many people



What Happens Without A Will?

Without a will, your estate must be administered under court supervision

This requires the expense of attorneys, and certification by a judge that all of the state rules are complied with before any property goes to heirs

These expenses, and any debts owed, could mean there is nothing left in your estate for heirs



What Happens When You Have A Will?

You set the rules and You have control



Why Else Is A Will Important?

Your will is a last opportunity to communicate with your loved ones and friends. What will you say, and what will be the lasting message?

Your will is a chance to express your values, and to share them with your loved ones.



Requirements For Creating A Will

To make a valid Will, special rules apply:

- Must be a certain, minimum age (14 years +, varies by state)
- Must be competent and have the desire/intent to create
 - ❖ Incapacity Note: After age 18, only you can plan/make a will; if you don't, parents or someone else must be appointed legal guardian – it is costly & time consuming



Requirements For Creating A Will

To make a valid Will, special rules apply:

- No coercion of, or misrepresentation to the person making will
- Must be in writing (Requirements vary by state)
- Must be signed by the maker and witnesses (Varies by state)
- This is not an exhaustive list



Benefits Of Having A Will?

With a will, you:

- Have control over your estate and who gets your property, when, how and for how long
 - Property can be given to loved ones for life, then to someone else (Life Estate)
- Get legal assurance your final wishes are enacted as you specify
 - You get to choose the person who acts on your behalf to implement your will instructions



Benefits Of Having A Will?

With a will, you:

- Control who gets to continue your business, or if it continues at all
 - Your will allows you to restrict or give powers to act to a loved one or trusted advisor so that you can ensure business continuity and that management decisions are made by the right people



Benefits Of Having A Will?

- Nominate who gets custody of your children, minor dependents or pets
- Costs little upfront to ensure your wishes are met, versus your estate paying for court supervision to ensure the state's rules are met, and possible litigation by family members who are unhappy
- Most states allow a person making a will to include a provision for terminating an heir's rights under the will if they sue to change it



Things To Remember When Making A Will

- Keep online account numbers (banks, bills, etc.), passwords, and electronic copies of your estate planning documents on a flash drive, or cloud storage
- Many people keep copies of their will in a safe deposit box at a bank, or ask their attorney to keep their planning documents
- Send physical or scanned copies of your will to someone you trust, this protects against those who might decide to circumvent your wishes



Helpful Items For Making A Will

- Make a list of all of the property you wish to specifically give to loved ones, this helps remember the people you intend and gets the right property to them
- Review the Will Starter Kit emailed to you with the invitation to this event; it contains a checklist that can make talking with an attorney easier
- The Carter Center is happy to provide sample bequest language for a charitable gift to your favorite organizations



Probate: What Is It?

Probate is the legal process of offering a will (if any) to a court for approval and then distributing property to the people named in the will (or named by state rules where there is no will)

Probate is often a lengthy process and even with a will, a judge must supervise and approve certain things like the claims of creditors, the payment of debts, and transfers to minor dependents or heirs



The Probate Process

Regardless of whether there is a will or not, there are basic procedures that will happen:

- Step 1: File Petition for Probate; Pay fees
- Step 2: Swear in Executor/Personal Representative; Witnesses
- Step 3: Identify and sort estate property, File tax returns
- Step 4: Notify creditors –Publication; Sorting their claims
- Step 5: Pay debts and give remaining property to heirs



What is an Executor or Personal Representative?

An Executor (a.k.a. Personal Representative) is the person (or entity) that you choose to carry out the instructions in your will

If there is no will, the Executor must be appointed by a court and must satisfy all legal requirements before being released from duty and liability



What is an Executor or Personal Representative?

Executor selection is critical – this role requires trust and strict adherence to the instructions of the will maker or courts, including time deadlines



Considerations When Choosing An Executor

- Someone younger than you, or an entity like a trust company or charity
- They are trusted by you, and understand your will and your wishes
- Comfortable dealing with accounting, legal process and maybe negotiating debts or obligations on behalf of you/your family



Considerations When Choosing An Executor

- If naming more than one Executor, consider naming an odd number to avoid having to ask the court to break a tie
- Often, if the will does not set a specific compensation for the Executor, state rules set their compensation as a percentage of the estate



The Probate Estate

- The law defines the estate and the Executor is responsible for gathering all assets, uncovering all debts and heirs, paying all claims and ultimately distributing the property to heirs
- The estate is typically made up of all property owned when we pass away, but there are certain types of property that can be given to our loved ones without the need for probate, including, insurance, stocks, annuities, and sometimes real estate. This varies by state and will be covered in more detail in our next webinar.



Probate: No Will

What Happens to My Property With No Will?

- Generally, state rules list family members, including spouses, children, parents, cousins, and others as heirs, and the closer they are in biological relation to you, the more likely they have priority to receive your property.
- These may or may not be the people you want to inherit, but without a will you can't say who gets what or how much; Example - if you fail to finalize a divorce before passing away, your former spouse may be entitled to claim your estate



Probate: No Will

What Happens to My Property With No Will?

- Preparing a will is one of the best ways to ensure your property goes to those you intended
- Remember, if you have siblings, parents, aunts, uncles, cousins, etc., that you would not want to receive your property, it can happen without a will, and the person you love most may get nothing at all!



Probate: No Will

What Happens to My Debts With No Will?

- State rules typically set a hierarchy of who gets paid, and outside of mandatory elective share or year's support, creditors often have early, priority access to your assets, even ahead of family members



Probate: No Will

What Happens to My Business With No Will?

- Without instructions for carrying on the business, and a clear plan to distribute the ownership interests in that business to family, a court could choose to liquidate your business to pay debts, rather than selling other property like a home or other investments.
- Without a will you are unable to choose how a business, or any property is passed down; this may lead to serious consequences for entrepreneurs and business owners



Probate: No Will

What Happens to My Children or Pets With No Will?

- Guardianship of children can mean contentious litigation and in the absence of a will, courts must appoint special attorneys for children, who act as an opponent to others, all to determine what is in the child's best interests. This is costly and will reduce what the child could otherwise inherit
 - ❖ No one likes to think about this, but it is critical
- The same applies for pets, and without a will, they could be placed in shelters



Probate: No Will – The Horror Stories

Prince:

- Died at 57 in 2016, no will; still in probate litigation
- \$55 Million spent in attorney and legal fees
- Dozens of “heirs” claim the estate, many trying to prove DNA relation
- Court appears no closer to resolution, especially since an heir died recently

Michael Jackson:

- Died 2009; Estate has earned \$2 Billion since his death; \$400 million debt
- His children, siblings, parents, the IRS, and creditors are still fighting in court over this estate



Probate: With A Will

- Executors control everything; they collect your assets, determine all debts to be paid and with which assets, based on your instructions
- Your will controls the Executor; you get to decide who gets your house, your stocks, bonds, jewelry, art, cars, etc. You can be as specific as you wish
- This often has the benefit of halting costly fights over property



Probate: With A Will

- Nominate the guardians of your children, minor dependents, and/or pets with your will
- You control who makes immediate management decisions for your business, how the business transfers to later generations, and who gets to vote your stocks in the other businesses you may invest in or own.
- Once all property is collected, taxes are done and debts (if any) are paid, the court will allow property to be given to your heirs and the estate can close



Probate: With A Will

- Many states permit self-proving wills; this special instrument allows the Executor to avoid some of the formal, burdensome rules that slow probate and add expense
 - ❖ For example, witnesses are not required to appear in court or otherwise formally answer questions from the court to prove they witnessed the maker signing the will, as well as placing their own signatures on the will document



How Do I Make Changes To My Will?

- Updating your will is important, and most attorneys suggest doing so every five years
- Moving, divorce, child birth, major changes in health, wealth or circumstances, etc., should also prompt an update



How Do I Make Changes To My Will?

- Is it necessary to start over from scratch?
 - ❖ No. A Codicil is a short amendment form that most attorneys have available for small changes to your will, such as adding the name of an heir if additional grandchildren are born, or adding a gift to charity.
- **DO NOT MAKE CHANGES TO YOUR WILL BY HAND!**



Other Important Estate Planning Documents

- General Power of Attorney
- Advanced Directive/Living Will
- Healthcare Power of Attorney/HIPAA Power
- Trusts

Tune in next time for a more detailed discussion of these instruments



Charitable Estate Planning with Wills & More

- Simple Bequests:
- By naming The Carter Center, and your other favorite charities, in your will with a simple bequest, you can provide a specific amount, or a percentage of your estate, to fund programs of your choice.
- This option has the benefit of providing a gift, without having to give up your control of your assets now.



Charitable Estate Planning with Wills & More

- Beneficiary designations are easy; no lawyers (generally), no probate and no cost; examples include: Insurance policies, IRAs, and annuities
- A codicil can be prepared for minimal expense and we are happy to provide sample language for you to use with your attorney



Charitable Estate Planning with Wills & More

Creating a Charitable Gift Annuity or Charitable Remainder Trust through your will, using retirement account funds, can help you:

- Avoid high taxes that reduce the inheritance, and,
- Provide a lifetime income to your loved ones, as well as a charitable gift

For more information, please [CLICK THIS LINK](#) to replay at any time our webinar on the details of this important estate planning strategy



Charitable Estate Planning with Wills & More

- Giving smarter and more strategically: Step-Up Basis
- Certain assets can be given to loved ones with the added benefit they will pay no taxes on the inheritance (some state taxes may apply)



Charitable Estate Planning with Wills & More

- Family business shares, a family vacation home, your stock portfolio/bonds, and many other assets can qualify for a reset in value to their current market value, eliminating taxes due when the heir sells the property.
- This means they get the full value of the gift you intended to give, rather than paying income taxes



Be Sure To Tune In Next Time!

Our Introduction to Estate Planning series will continue with a discussion of other estate planning documents such as:

- Powers of Attorney
- Advanced Directives/Living Wills
- Trusts (During life, by will and why)
- Probate and Will Substitutes
- Charitable Planning Strategies



Barry Nickelsberg and Mark Williams
are happy to work with you and your
advisors to discuss how these strategies
can fit your specific needs and goals.



THE
CARTER CENTER



BARRY NICKELSBURG, CAP
Chief Development Officer

ESTATE & GIFT PLANNING

453 Freedom Parkway
Atlanta, GA 30307 USA
Tel (404) 420-3868
Fax (404) 420-3453
barry.nickelsberg@cartercenter.org
www.cartercenter.org

THE
CARTER CENTER



MARK WILLIAMS, ESQ., CAP
Associate Director

ESTATE & GIFT PLANNING

453 Freedom Parkway
Atlanta, GA 30307 USA
Tel (404) 420-3883
Fax (404) 420-3453
mark.williams@cartercenter.org
www.cartercenter.org

THE
CARTER CENTER



Q & A

THE
CARTER CENTER

