

Legal Workshop

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Purpose: Review basic estate planning techniques used before Obergefell to provide protections and rights
Discuss the documents involved in the two primary paths to estate planning, Trusts and Wills

General Info:

- Three primary goals: Where your assets are going, who will handle distribution, and avoiding probate
- Arkansas (AR) recognizes estate planning from other states, if valid under that state's laws
- Documents should be reviewed periodically for any needed changes (every 5 years recommended)
- Estate planning is important for blended families, otherwise the state overrules the families wishes (i.e. If both sides have children, assets would go to surviving spouse and then their descendants)
- Geographic proximity matters in areas of Powers of Attorney and Final Disposition

Basic building blocks of Estate Planning:

- Revocable Living Trust

- This method is advised if there are multiple beneficiaries or complex estate to be accounted for
- Creates a separate entity to which assets are added (real estate, bank accounts, etc.)
- Avoids probate, bypasses gifting limits, and appoints someone to oversee distribution
- Steps must be taken to ensure there are no unintended consequences (i.e. If funds would affect the beneficiary's disability benefits)
- Inefficient to transfer vehicles in AR (Difficult, so often avoided)

- Will

- Advised in cases of simple estate where primary assets can be handled through beneficiaries
- Does not avoid probate, but acts as a guide for the court's decisions
- Should always be used in conjunction with other documentation
- May be used with a Trust to ensure the Trustee has the power to include additional assets (Simplified or Pour Over Will)

- Beneficiary Designation (POD / TOD)

- Advised in conjunction with a Will where there are only one or two beneficiaries or simple estate
- Bank accounts, 401K, IRA, etc. can be transferred using designated beneficiaries
- Can be applied to real property as well as financial accounts
 - Real estate can be transferred using a Beneficiary Deed
- Vehicles require a Transfer on Death (TOD) be applied for in AR
 - Must not have a lien against the vehicle
 - Beneficiary must apply for a new/updated title

- Living Will

- Outlines your specific wishes or preferences for medical treatment
- Only applies in the event of a terminal illness or permanent unconsciousness
- AR requires that when artificial feeding or hydration be withdrawn be designated specifically

- Medical Power of Attorney

- Appoints someone to make all healthcare decisions on your behalf if you are unable to do so
- Power is triggered by a physician's decision that you are incapacitated
- May apply to times of temporary limited capacity (i.e. in a confused state)
- Power ends at time of death or, in cases of organ donation, life support is removed

- Power of Attorney

- Broad power over finances, assets, and decisions other than medical
- Cannot change beneficiaries or revoke a trust without express authority
- Power ends at time of death

- Final Disposition Form

- Designates wishes for what occurs to your person upon death
- Designates who is responsible, type of service, location, payment, etc.