

Life Planning Strategies for Supporting the Needs of Older Adults and their Families

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Logistics

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

About the Center for Governmental Responsibility at University of Florida Levin College of Law

The Center for Governmental Responsibility at the University of Florida's Levin College of Law is the oldest and most influential legal research and public policy center in the State of Florida. Founded in 1972, CGR has leveraged its position in Florida's flagship law school to promote government accountability, steer emerging democracies in their quest for the rule of law, and enable law and policy-makers to respond to changing times and environmental pressures.

About Legal Counsel for the Elderly

For more than 45 years, Legal Counsel for the Elderly has championed the dignity and rights of Washington, D.C. elders by providing free legal and social work services to those in need. Their work addresses the most important aspects of an older adult's life, including housing, economic security, self-determination, and health and safety. They impact the lives of nearly 10,000 people annually, while advocating for city-wide reforms in laws, regulations, and long-term care facilities.

What is Life Planning?

- Creating plans for your assets and outlining preferences for how you wish to be supported in the event that your decisional capability changes.
 - Life planning tools include wills, trusts, health care proxies, living wills, transfer on death deeds and other will-substitutes.
- While life planning includes putting plans in place for distribution of assets after death, it can also help older adults during their lifetime to preserve housing and economic security, as well as put mechanisms in place that can avoid unnecessary guardianship and conservatorship.
- Life planning promotes self-determination and ensures that the wishes of older adults are affirmed even after their death.

The Importance of Life Planning for Older Adults to Preserve Generational Wealth

Importance of Generational Wealth

- Baby boomers (born 1946-1964) will inherit \$4 trillion. Gen X (1965-1980) will inherit \$30 trillion. Millennials (1981-1996) will inherit \$27 trillion.
- For families in the lowest quintile of income, home equity and other assets (most commonly business assets and vehicles) were the dominant types of wealth. For those in the highest income quintile, other assets (primarily business equity) and nonretirement financial assets accounted for the largest shares of wealth.
- In 2019, White families' median wealth was 6.5 times that of Black families, 5.5 times that of Hispanic families, and 2.7 times that of Asian and other families.

Comprehensive Life Planning

	During Life	At Death
Person	Health Care Proxy Living Will DNR Designation	Funeral Arrangements Organ Donation Disposition of Bodily Remains
Property	Power of Attorney Joint Tenancies Revocable Living Trust Lifetime Gifts	Will TOD/POD Beneficiary Designations Joint Tenancies Revocable Living Trust
Default – State Decides	Guardianship/ Conservatorship	Intestacy

Decisional Capability

- 46% of Americans over age 60 have a disability and as high as 10% of adults over 80 have some form of dementia.
- If a person becomes unable to care for themselves during life, a formal guardianship might be sought to enable someone to make arrangements for nursing home care and payment of expenses.
 - Life planning can provide alternatives to guardianship and avoid unnecessary guardianship

Planning for Health Care During life

- Health Care Proxy or Durable Power of Attorney for Health Care to designate a health care surrogate decision-maker
- Living Will states what you want to happen if you are in a terminal condition and require artificial life support
- Do not Resuscitate Order (DNR) tells doctors whether to place you on life support
- If no designation, then doctors will turn to statutory surrogates and will usually resuscitate and use artificial life support

Disposition of Bodily Remains

- Organ Donation
- Disposition of Bodily Remains – embalming, cremation, mushroom suit, green burial, etc.
- Funeral Arrangements
- Note: Make dispositions about bodily remains in a separate document and give it to the people who will likely be executing on your wishes – it may take a while to find your will

Management of Property When Decisional Capability Changes

- Durable Power of Attorney – terminates at death of principal
- Revocable Living Trust – does not terminate at death
- Non-probate mechanisms like joint tenancies and lifetime gifts
- Note: If you have not established a plan for management of property, a court-ordered guardianship might be sought.
 - Planning can help avoid unnecessary guardianship and help preserve autonomy and choice

Transfer of Property at Death

- 1. Probate Property:** Clothes, furnishings, artwork, jewelry, tools, books, cars, home – anything titled solely in decedent's name
- 2. Non-Probate Property:** Trust assets, joint tenancies, accounts with Payable on Death (POD)/Transfer on Death (TOD) designations, Real Property with TOD designations, Life Insurance
- 3. Property that Terminates at Death:** Social Security, lifetime trust interests, defined benefits from pension plans

Probate Property

Court-Supervised Probate

- **Probate Property:** Clothes, furnishings, artwork, jewelry, tools, books, cars, home – anything titled solely in decedent's name
- Probate Property passes to default takers under law of **intestacy** if there is no will, or to will beneficiaries if there is a validly executed **will**

Non-Probate Property

- **Non-Probate Property:** Trust assets, joint tenancies, accounts with POD/TOD designations, Real Property with TOD designations, Life Insurance
- **Non-Probate Property** passes automatically to designated beneficiaries or co-owners through non-probate transfers.

Property That Terminates At Death

- **Property that Terminates at Death:** Social Security, lifetime trust interests, defined benefits from pension plans
- **Property that terminates at death** is not included in an estate plan and the decedent has no control over the succession of that property.

Can Probate Be Avoided?

- **Yes,**
 - if married and the decedent is the first spouse to die
 - if decedent does not own real property
- **No,**
 - if decedent has debts
 - if decedent owns real property and it is not in trust or a joint tenancy or TOD deed
 - if decedent has bank accounts or securities accounts without beneficiary designations
 - if decedent owns digital assets or has digital accounts

How to Avoid Heirs Property

- Heirs Property is particularly problematic – it arises when heirs fail to probate real property and title is cloudy and often fractionates as it passes by intestacy.
- Writing a will or using a TOD deed to transfer property to a single (or at most 2) beneficiaries helps keep fractionation at bay.
- Putting real estate into bucket 2 (non-probate property) helps by allowing the property to pass outside probate, thus avoiding the cloudy title issues when heirs delay clearing title
- Learn More: [Heirs Property: Legal Strategies to Keep Older Adults in the Family Home](#)

Transfer Of Assets Through Probate

- Probate is one of several **legal**** ways to transfer ownership of a ***decedent's*** assets
- Opening and closing of decedent's **estate**
- If a ***testate*** estate, the named Personal Representative in the will provides the will to the Register of Wills and files documents to begin probate
- If an ***intestate*** estate, laws dictate who may file to begin probate, and which relations (**heirs**) inherit

Various Types of Probate Estates

- Small (Affidavit Procedure)
- Large
- Foreign
- Supervised (Formal)
- Unsupervised (Summary)
- Ancillary

Items Needed To Begin Probate

- Generally...
 - Will
 - Petition for Probate
 - Filing Fee
 - Heirs' Waiver of Bond (no will waiving bond)
 - Heirs' Consent
 - Heirs' Assignment
 - Bond (no will; heirs refuse to sign bond waiver)
 - Copy of Decedent's Death Certificate
 - Names, Addresses Interested Persons
 - Legatees, Heirs, Debtors
 - Dates of Death Deceased Legatees, Heirs
 - Proof of Funeral Expenses

Intestate Succession

- Can lead to fractionation of property passing outside the family
- Heirs at Law are determined by State statutes
- Laws determine percentage of estate heirs entitled to receive
- Example
 - Survived only by Spouse or domestic partner (DP); or children; or parents; or siblings
 - Survived by Spouse or DP and descendants
 - Survived by Spouse and parents
 - No distinction between legitimate and illegitimate children as long as parenthood of father established

Costs of Probate

- Court filing fees
- Bond
- Publication fees
- Lawyer fees
- Other Fees
 - Vital Records
 - Heirs Search
 - Recording new deed

Community Partnerships

- Legal Services Providers
 - Client Referrals
 - Community Outreach Events
 - Development of Outreach Materials
- Private Bar (Pro Bono/Low Bono)
 - Establishment of Clinics (life planning/tax credits)
 - Client Referrals/Systemic Research Projects
- Governmental Agencies
 - Departments of Aging
 - Housing Counseling Agencies
 - Tax and Regulatory Agencies

Outreach Strategies

- Developing materials
 - Font size
 - Quantity of information
 - To PowerPoint or not to PowerPoint
- Developing messaging
- Locating an accessible outreach site
- Determining length of outreach event
- Managing the attendees' expectations
- Following up

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.