

# True or False

- Estate planning is only marginally more interesting than watching ice melt.

# What is Estate Planning?

- Applying the law of property, trusts, wills, insurance, retirement plans, business, and taxation to the ordering of a client's affairs.
- The goal is the efficient and effective administration of a client's assets during their lives and at the time of their death.
- Provide clients with a means to select who will administer their affairs during their lives and at their deaths.

# What kind of tools do we use?

- Wills
- Trusts
- Powers of attorney
- Living wills

# Why should you care?

- You see the aftermath of the plan recorded in the public records
- You may be the only one who has to explain to your “customer” the legal effect of their planning
- You get to be the bearer of the occasional bad news

# What is a will?

- A will is the document that tells us what to do with the assets that are subject to the probate administration
- Should be executed with the formalities required by law.
- Should designate a personal representative.
- Hopefully, contains provisions consistent with the testator's intent and the law

So someone dies with a will.  
What's next?

- Probate

- **THREE MAIN CONCERNS:**

- What are the assets subject to administration?
- Who are the creditors?
- Who are the beneficiaries?

# How do clients typically try to avoid probate?

- Joint ownership
- Beneficiary designations
- Trusts

# Any problems with joint ownership?

- Potential for unequal distributions or unintended results
- Opens up the assets to sometimes questionable relatives or others
- Opens the assets to creditors, judgments, etc.
- Can really mess up title to real property

# What about problems with beneficiary designations?

- Potential for unequal distributions or unintended results
- Unintended tax consequences
- Qualified retirement plan assets have different rules

Are there any other problems I should know about?

- Intestacy laws
- Elective share
- Homestead

# Intestacy

- The state or condition of dying without having made a valid will.
- Can lead to unexpected results. For example, if the decedent is survived by a spouse and lineal descendants (all of whom are children of the spouse), spouse gets the first \$60K and 1/2 the balance of the intestate estate.

# Elective share

- The surviving spouse of a person who dies domiciled in Florida shall have the right to a share of the estate of the deceased spouse, which we affectionately call the elective share. The elective share equals 30% of the fair market value on the date of death of an augmented estate.

# True or False

- I can avoid the elective share by having a living trust.

# What is a trust anyway?

- Black's Law Dictionary defines a trust as "a right of property, real or personal, held by one party for the benefit of another."
- A grantor (or settlor) establishes a legal relationship with respect to property where a trustee will hold property for the benefit of certain beneficiaries.

# So doesn't everyone need a trust?

- The assembly, drafting, execution, and funding of a living trust document constitutes the practice of law and a licensed attorney must make the “determination as to the client’s need for a living trust.” Advice concerning the application, preparation, advisability or quality of any legal instruments or forms in connection with trusts by a lay person also constitutes the unlicensed practice of law.

# What benefit does somebody get from a trust?

- May reduce costs and fees
- Properly established credit shelter trusts can save estate taxes
- May avoid ancillary administration
- Can provide for professional trustee to administer assets
- Could avoid guardianship
- Specialized trusts: ILITS, CRTs, etc. ad nauseum

# True or False

- If you have a trust then you no longer need a will.

# Power of Attorney

- Greatest thing since sliced bread or license to steal?
- Designates an attorney in fact to carry out duties
- Power of attorney is exercisable as of the date of execution
- Revisions under Florida Statute Section 709 effective for documents executed after 10/1/95.

# Health Care Advance directives

- What life prolonging procedures would the client want if they had a terminal condition and there was no medical probability of recovery?
- Health care surrogate is the person expressly designated by a principal to make health care decisions on behalf of the principal upon the principal's incapacity.
- Should be as specific as possible.

# Guardianships

- How's it work?
- The client can designate who they want to serve as their guardian. The designation carries a rebuttable presumption that the preneed guardian is entitled to serve as guardian.
- Not necessary if there is an alternative which will address the problems of the incapacitated person.

# So you think you know homestead?

- Creditor protection
- Ad Valorem tax issues
- Doc stamp tax issues
- Restrictions on alienation and devise

# How about a little True or False Homestead test??

- No cheating
- We'll post the results on your Facebook page
- I have the final say on answers
- And please, no wagering.

# Homestead- our legal chameleon

- Article X, Section 4c of the Florida Constitution provides: “The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner’s spouse if there be no minor child.”

# True or False #1

- Bubba is newly married (second marriage) and he wants his homestead (which you know is titled in his name alone and not jointly with his new spouse) to go to his children from his prior marriage. His will says that all of his property “shall pass to my beloved children.” The house will go to his kids.

# So where does the homestead go?

- Florida Statute 732.401(1) provides: “If not devised as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and lineal descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the lineal descendants in being at the time of the decedent’s death.”

## True or False #2

- Dad dies survived by three children: two adult sons and a minor daughter. The sons have been mean and nasty to Dad for years. His will states that the sons each get \$1.00 and everything else goes to his “beloved daughter.” Dad’s not married at the time of his death. Dad’s house goes to his minor daughter.

## True or False #3

- Assume the same facts as #2, except Dad is survived by a spouse also. The spouse's name is not on the property. Wife gets a life estate and the minor daughter gets what's left (the remainder).

## True or False #4

- Assume the same facts as #3, except that spouse signed a prenuptial agreement that waived her rights to homestead. Minor daughter gets the property.

# True or False #5

- Assume Dad and Wife own the property as “husband and wife”. Wife gets a life estate and the remainder goes to all three kids.

# True or False #6

- Dad can fix this whole homestead problem by putting his homestead in a living trust.