

Estate Planning

Martin County Estate Planning Council Symposium

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What is Estate Planning?

- The preparation for the distribution and management of a person's estate at death through the use of wills, trusts, insurance policies, and other arrangements, esp. to reduce administration costs and transfer-tax liability.

– Blacks Law Dictionary

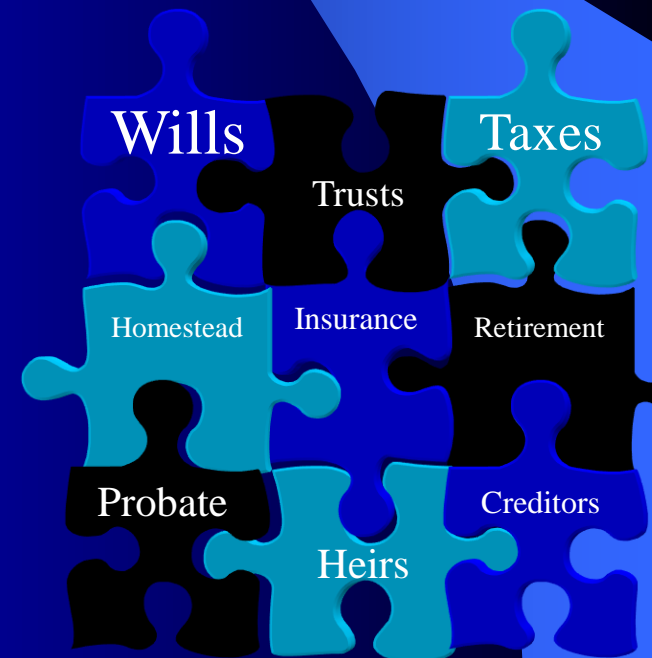
Today's Topics

- Estate Planning Process
- Property Ownership
- Estate Planning Documents
- Common Misconceptions
- Protected Homestead
- Estate Taxes
- Questions and Answers

Estate Planning Process

(Not just drafting documents)

1. Determine Objectives
2. Determine Property Ownership and Values
3. Identify obstacles (taxes, state laws)
4. Maximize #1 with #2 in light of #3



Property Ownership

Fee Simple

Survivorship

Contract

Individual

JTWROS

Insurance

TBE

IRA's

POD/TOD

Annuities

Life Estate/Rem

Ladybird

RTODD?

Typical Estate Planning Documents

- Last Will and Testament

- Revocable Trust - A document by which a person directs his or her estate to be distributed upon death.

- Durable Power of Attorney - Trust in a property interest held by one person (the *trustee*) at the request of another (the

- Declaration of the Beneficiary of a Life Insurance Policy - instrument granting someone authority to act as agent or attorney-in-fact for the grantor.

- Designation of Health Care Surrogate - a written document that names a person to serve as the durable power of attorney capacity. Florida must contain the words

- Living Will - This durable power of attorney is not affected by subsequent "Revised document designating a surrogate to make health care decisions for a principal."

to be terminated, written to terminate the trust and recover the trust property, and any withdrawal of principal or income. A witnessed document in writing, voluntarily executed by the principal, clearly expressing the principal's intent to designate a guardian for a principal who is unable to make decisions or a person has principal in a principal's best interests condition, or is in a persistent vegetative state.

Common Misconceptions

- A will avoids probate
- My will controls the disposition of all of my assets
- If I don't have a will my assets will pass to the State
- There is a probate tax
- There is/is not a Florida Estate Tax
- I have to file for "homestead" to protect my residence from creditors

Homestead

- - CONSTITUTION OF THE STATE OF FLORIDA
 - ARTICLE X
 - MISCELLANEOUS
- SECTION 4. Homestead; exemptions.—
 - (a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
 - (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;
 - (2) personal property to the value of one thousand dollars.
 - (b) These exemptions shall inure to the surviving spouse or heirs of the owner.
 - (c) 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. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

Protected Homestead

- Article X, Section 4, Florida Constitution

- **Protection from Creditors**

- Exemption from forced sale
 - Shall inure to the spouse or “heirs” of the owner

- **Limits on devise**

- Shall not be subject to **devise** if:
 - Survived by a spouse, or
 - Minor Child(except may be devised to spouse if no minor child)

- **Limits on alienation**

- May **alienate**, if joined by spouse

§733.608 F.S. - Not subject to probate

- *Warburton* case – could not be sold to satisfy general bequests



Homestead Assessments & Tax Exemption

- Article VII, Section 4, Florida Constitution
 - “Save our homes cap”
 - Save our homes “portability”
 - Includes school district levies
- Article VII, Section 6, Florida Constitution
 - **Exempt** from taxation up to \$25,000
 - And for value from \$50,000 to \$75,000
 - Except school district levies



Federal Estate Tax

<u>Year</u>	<u>Applicable Exclusion</u>	<u>Maximum Rate</u>
1997	\$600,000	55%* +surtax
...
2009	\$3,500,000	45%
2010	Repealed	--
2011	\$5,000,000 (indexed/portable)	35%
...
2023	\$12,920,000	40%
2024	\$13,610,000	40%
...
2026	\$5,000,000 (indexed/portable) [\$6,805,000 at 2024 inflation adjustment]	40%

Links

The Florida Bar - Consumer Information:

- Related consumer pamphlets
- Do You Have a Will?
- Florida Powers of Attorney
- Probate in Florida
- The Revocable Trust in Florida
- What is Guardianship?

<https://www.floridabar.org/public/consumer/consumer003/>

Florida Health Finder:

- Health Care Directive Forms:

<https://quality.healthfinder.fl.gov/report-guides/advance-directives>



Questions & Answers

If needed, my contract information

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