



Chapter 50: **Wills, Trusts, and Elder Law**

§ 1: Wills

- Will provides for a *Testamentary disposition* of property.
 - A will is the final declaration of how a person desires to have his or her property disposed of after death.
- Testate (One who dies after having made a valid will).
- Executor v. Administrator.

Laws Governing Wills

- Probate Laws (vary widely among states).
 - To *probate* a will means to establish its validity and carry the administration of the estate through a process supervised by a probate court.
- Uniform Probate Code.

Gifts By Will

- Devise: gift of real estate.
- Bequest or Legacy: gift of personal property.
- Types of Gifts: specific, general, or residuary .
- Abatement.
- Lapsed Legacies.

Requirements for a Valid Will

- Testamentary Capacity and Intent.
 - Case 50.1: *Estate of Klauzer* (2000).
- Writing Requirements.
- Signature Requirements.
- Witness Requirements.
- Publication Requirements.

Revocation of Wills

- Revocation by a Physical Act of the Market.
- Revocation by a Subsequent Writing.
- Revocation By Operation of Law.

Rights Under a Will

- The law impose certain limitations on the way a person can dispose of property in a will. Some states force the testator to give a certain amount of their estate to their surviving spouse and/or children.
- Beneficiaries can renounce (disclaim) their shares.
 - Spouses in some states can renounce what is given them in the will and elect to take the forced share.

Probate Procedures

- Informal Probate Proceedings.
 - Family Settlement Agreements.
 - Small Estates.
- Formal Probate Proceedings.
 - Larger Estates.
 - Guardianship appointment to a minor or incompetent person and trust has been created to protect that minor or incompetent person.

Property Transfers Outside the Probate Process

- Living Trusts.
- Joint Ownership of Property.
- Gifts *Intervivos* (while one is alive).
- Life Insurance Policies.
- Individual Retirement Accounts (IRA).
- Case 50.2: *Bielat v. Bielat* (2000).

§ 2: Intestacy Laws

- Statutes of descent and distribution which attempt to carry out the likely intent and wished of the decedent.
 - Surviving Spouse and Children, Not in-laws.
 - Stepchildren, Adopted children, Illegitimate children.
 - Grandchildren.

Surviving Spouse and Children

- Surviving spouse usually receives only a share of the estate.
 - 1/3 if two or more children.
 - 1/2 if one surviving child.
 - Entire estate if no children or grandchildren.
- If no surviving spouse or child the order of inheritance is:
 - Lineal descendants.
 - Collateral heirs (if no lineal descendants).
- Not spouses of the children, in-laws.

Stepchildren, Adopted Children, Illegitimate Children

- Stepchildren -- not considered children of deceased.
- Adopted children -- considered children of deceased.
- Illegitimate -- must prove paternity.

Grandchildren

- *Per stirpes.*
 - Method of dividing an intestate share by which a class or group of distributees take the share that their deceased parent would have been entitled to inherit had that parent lived.
- *Per capita.*
 - Each person takes an equal share of the estate.

§ 3: Trusts

- Trust -- A right of property (real or personal) held by one party for the benefit of another.

Essential Elements of a Trust

- Essential Elements:
 - Designated beneficiary.
 - Designated trustee.
 - Fund sufficiently identified to enable title to pass to the trustee.
 - Actual delivery to the trustee with the intention of passing title.

Express Trusts

- Living Trusts.
- Testamentary Trusts.
- Charitable Trusts.
- Spendthrift Trusts.
- Totten Trusts.

Implied Trusts

- Constructive Trusts.
 - Arises by operation of the law in the interest of equity and fairness.
- Resulting Trusts.
 - Arises from the conduct of the parties.

The Trustee

- Trustee's Duties.
 - Act with honesty, good faith, and prudence in administering the trust and must exercise a high degree of loyalty toward the trust beneficiaries.
- Trustee's Powers.
- Allocation Between Principal and Income.

Trust Termination

- Trust ends when expressly specified in trust; if trust does not provide specification of termination, trust doesn't end at death of beneficiary or trustee.
- When its purpose has been fulfilled.
- When trust's purposes become illegal or impossible.

§ 4: Estate Administration

- Locating the Will.
- Duties of the Personal Representative.
- Estate and Inheritance Taxes.
- Distribution of Assets.

Locating the Will

- If a will -- an executor is usually named.
- If no will or not executor -- court will appoint an administrator.

Duties of the Personal Representative

- Inventory and collect assets.
- Have assets appraised.
- Manage the estate prudently.
- Receive and pay valid claims.
- Pay federal and state income taxes and estate or inheritance taxes.
- Post bond -- unless excused.

Estate and Inheritance Taxes

- Federal tax is levied **upon the total value of the estate** after debts and expenses for administration have been deducted and after exemptions have been allowed.
- State tax is levied in form of inheritance tax **imposed on the recipient** of the bequest rather than on the estate.
 - The closer the relative receiving bequest - the lower the tax.

Distribution of Assets

- Executor or Administrator.
 - submits distribution plan to court.
 - court approval.
 - distributes assets pursuant to court order.
 - accounting is rendered to court.

§ 5: Elder Law

- Legal practice area in which attorneys assist older persons in dealing with problems relating to age.

Planning for Disability

- Durable Power of Attorney.
- Health-Care Power of Attorney.
- Living Will.

Medical Planning

- Medicaid v. Medicare.
- Medicaid Planning.
- Criminalizing Medicaid Planning.

Law on the Web



- Famous wills.
 - Senior Law Website.
 - Uniform Probate Code at Cornell U.
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- Legal Research Exercises on the Web