
UNDERSTANDING HEIRS' PROPERTY AT THE COMMUNITY LEVEL: PREVENTION



Alcorn.

SOCIALLY DISADVANTAGED FARMERS
AND RANCHERS POLICY RESEARCH CENTER



PREVENTION

OBJECTIVES

- Contemplating estate planning
- Important terms
- Basics of estate planning/succession planning
- Preventing heirs' property when writing your will
- Title to real property
- Working with an attorney

ESTIMATED TIME TO COMPLETE

4 hours

BEFORE THE MEETING

- If this is a continuation of the training on the same day, remove the introduction slides. If it is a session held on a day by itself, fill in the date and location information on the first introduction slide.
- Insert today's presenters on the designated slide.
- Print out copies of the Vocabulary fill-in-the-blank sheets for activity on slide 15.
- Prepare cards for What's My Meaning Game by printing on card stock and cutting to make the card deck from slide 15.
- Print out copies of the Estate Planning Worksheet, slide 17.
- Print out copies of the Sample Role Play Scripts (one copy for each person who will play a role). Feel free to adapt these to fit your audience.

MATERIALS NEEDED

- In-person: What's My Meaning Game.
 - Vocabulary fill-in-the-blank sheets with pens and pencils
 - **OR** Definitions and Key Terms Card Set – print on cardstock and cut out for use in the game.
- Virtual: What's My Meaning Game.
 - Quizlet: Use online flashcards and quizzes to learn the terms
 - Jamboard: Write the terms and definitions on sticky notes and participants work in a group to match them up
 - Flippity: Can create online games to facilitate vocabulary quizzes
- Sample Role Play Scripts

HANDOUTS AND TOOLS

- Agenda – A sample agenda for the entire curriculum is included in the Introduction section. If you are doing this session as a separate session, you can adapt that sample to fit your situation.
- Definitions and Key Terms Handout (See **Introduction** section for handout)
- Estate Planning Worksheet
- Evaluation – The evaluation covers all three sections. If you are not doing all three sections together, you can adapt as described in the evaluation instructions.

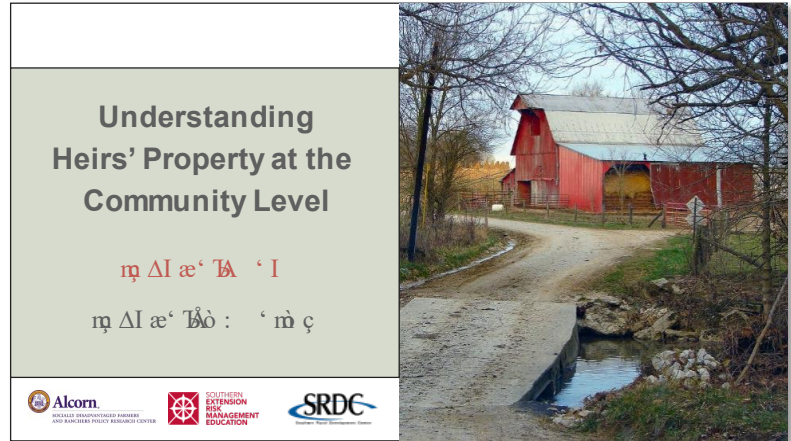
INTRODUCTION

INSTRUCTIONS

Before the session begins, insert the date and location for your event. Have this slide up as participants enter the room.

Please acknowledge that this material was developed in partnership with the Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State University, the Southern Extension Risk Management Education Center, and the Southern Rural Development Center through funding in part from USDA.

NOTE: If you do not do all three segments at the same event, insert slides 1-3 at the beginning of your other sessions as they provide the overarching foundation for the training.



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Explain the purpose of the overall curriculum.



Purpose:

To provide basic training on heirs' property to communities and individuals.

Funding to develop this training provided by:



Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

This slide highlights the partnering organizations that have worked together to develop materials and host trainings.



The slide titled "Partnering Organizations" features three logos. At the top center is the Alcorn logo, which includes a circular seal with a building and the text "ALCORN UNIVERSITY" around the perimeter, followed by the word "Alcorn." in a serif font and "SOCIALLY DISADVANTAGED FARMERS AND RANCHERS POLICY RESEARCH CENTER" in a smaller sans-serif font below it. To the left is the logo for Southern Extension Risk Management Education, consisting of a red square with a white compass rose design and the text "SOUTHERN EXTENSION RISK MANAGEMENT EDUCATION" to its right. To the right is the SRDC logo, featuring the letters "SRDC" in a bold, blue, sans-serif font with a blue swoosh underneath, and "Southern Rural Development Center" in a smaller font below it.

Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Please acknowledge the primary and contributing authors to this material as well as the funding stream through the Southern Rural Development Center and the Socially Disadvantaged Farmers & Ranchers Policy Center at Alcorn State University.

Acknowledgements

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Time: 1 minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Add presenter information and introduce yourselves.

Presenters

Enter presenter information on this slide

Time: 1 minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

This slide shows the three parts of the curriculum and gives a quick view of the components covered in each section.

Topics to Explore	
INTRODUCTION	What is Heirs' Property?
	Impacts of Heirs' Property
	Legal and Cultural Considerations
	Fractional Ownership
	Locating Heirs' Property
	Land Loss
PREVENTION	Preventing Land Loss
	Basics of estate and succession planning
	Steps to prevent heirs' property when establishing a will
RESOLUTION	Review some of the challenges of owning heirs' property
	Importance of working with other family members
	Steps to take to understand who legally owns the property
	Legal structures that can hold land owned by heirs' property owners

Time: 1 Minute

Materials: None

Handouts: None

INTRODUCTION

INSTRUCTIONS

Give time for participants to introduce themselves. You could also include a brief question for them to answer such as what is one question or curiosity you have about heirs' property. Don't take time to answer those at this point. Rather this is about acknowledging where their curiosities are, and how the group can share this time together to learn and support each other.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 1

INSTRUCTIONS

Have this slide up when participants enter the room.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 2

INSTRUCTIONS

Read the disclaimer and answer any questions that may arise.



Important Notes before We Begin:

These materials are intended to present general information as to preventing heirs' property.

They primarily draw upon information in the southern United States.

The information may not be applicable to every state or territory.

These materials do not provide legal advice. Specific advice should be obtained from an attorney or another professional well versed in the facts and circumstances related to the individual seeking advice and the jurisdiction where the property is located.

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 3

INSTRUCTIONS

Go over these guidelines with participants to ensure that participants understand the reasons for not including stories or questions of a personal nature.

Protecting Your Information

- No personal stories
- General questions are welcome.
- Personal questions should be asked outside of the group setting.



Time: 1 minute

Materials: None

Handouts: None

SLIDE 4

INSTRUCTIONS

Use the talking points on the slide to provide an overview of this session.

SESSION OVERVIEW

- Contemplating Estate Planning
- Important Terms
- Basics of Estate Planning/Succession Planning
- Preventing Heirs' Property When Writing Your Will
- Title to Real Property
- Working with an Attorney

Time: 1 minute

Materials: None

Handouts: None

SLIDE 5

INSTRUCTIONS

Ask the participants: What is an estate? Do you have an estate plan? Asking your audience this will help you get an idea of the “mental models” in the minds of the audience. Many people do not feel like the term “estate planning” is far removed from their lives because “estate” signals a high level of wealth.



Describe what comes up for you when you hear “estate planning.”

Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 6

INSTRUCTIONS

Ask the participants the questions on slide. Asking these questions will help you get to know where the audience is and what they are interested in learning.

Estate Planning

- . What do you know?
- . What do you want to know?



Time: 4 Minutes

Materials: None

Handouts: None

SLIDE 7

INSTRUCTIONS

Ask the question on the slide. Asking this question will help you see who in the audience might be able to share their experiences.



How many of you have used an attorney to get an estate plan in place?

Time: 1 Minute

Materials: None

Handouts: None

SLIDE 8

INSTRUCTIONS

Ask the participants the question on the slide. Most people are focused on the monetary and time costs of getting a will in place. This will help people think about the hidden costs of not having one.

- Probate can be very costly
- Incapacitation and the need to obtain guardianship can be expensive
- Higher taxes without a trust



Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 9

INSTRUCTIONS

Ask the participants the question on the slide. This will give you an understanding of obstacles your audience feels or experiences.

What are the reasons for not having an estate plan in place?



Time: 2 Minutes

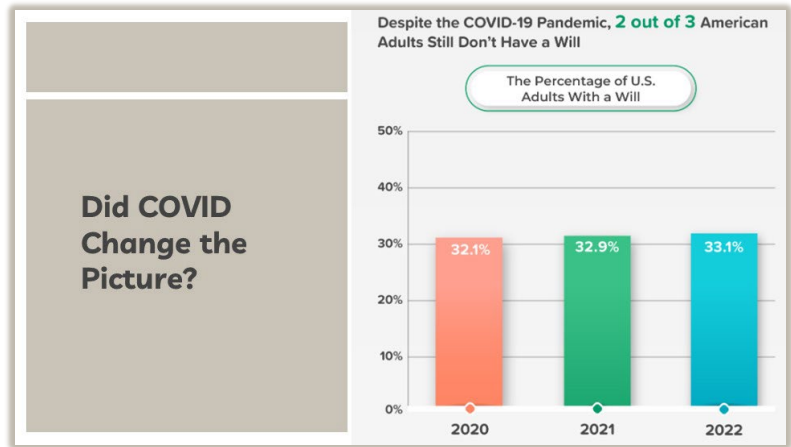
Materials: None

Handouts: None

SLIDE 10

INSTRUCTIONS

Discuss the slide. It is possible that the most important thing that an Extension educator can do in the space of estate planning is to provide motivation for taking action.



Time: 2 Minutes

Materials: None

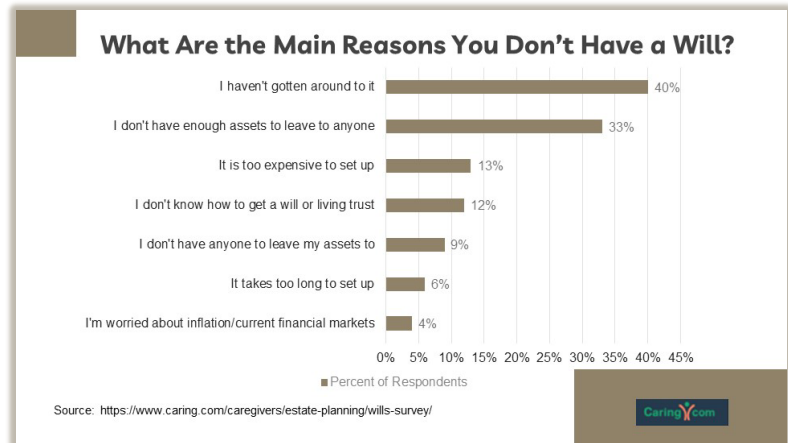
Handouts: None

Source: <https://www.caring.com/caregivers/estate-planning/wills-survey/>

SLIDE 11

INSTRUCTIONS

Discuss the slide. This will give you an understanding of obstacles your audience feels or experiences.



Source:

<https://www.caring.com/caregivers/estate-planning/wills-survey/>

Time: 2 Minutes

Background: Extension has an opportunity to improve the completion rate of wills after workshops by increasing motivation. Tackling the fear of death as one of the main obstacles for having a will is an opening.

Materials: None

Handouts: None

In 2005-2006, Minnesota Extension had twelve farm transition and estate planning workshops with 524 family members making up 301 farm family businesses. 152 (50.4%) farm family businesses completed a six-month follow-up survey. After the workshop itself, 81% intended to begin the process. However, of the 152 that completed the six-month follow-up, 57.4% reported they had begun the process of an estate plan with only 7.3% having completed it. For those who had not begun the process, time was the reported obstacle. For those who had made some progress, developing goals and consensus among family were the most reported obstacles.

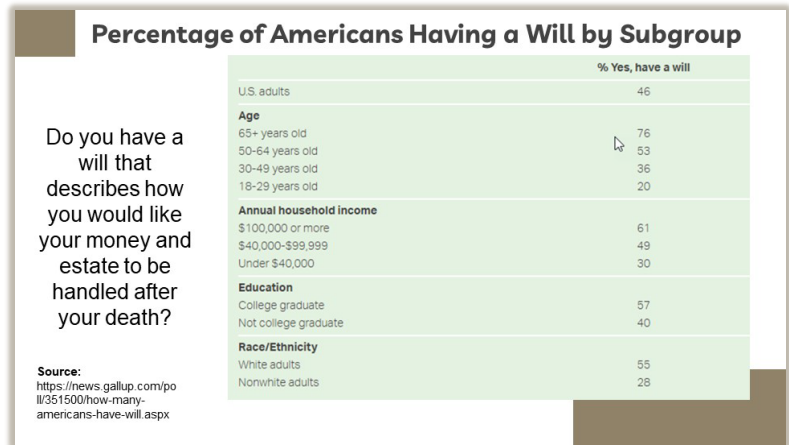
Hachfeld, G. A., Bau, D. B., Holcomb, C., Kurtz, J. N., Craig, J., & Olson, K. D. (2009). Farm Transition and Estate Planning: Farmers' Evaluations and Behavioral Changes Due to Attending Workshops. *The Journal of Extension*, 47(2), Article 8. <https://tigerprints.clemson.edu/joe/vol47/iss2/8>

SLIDE 12

INSTRUCTIONS

Discuss the slide.

- What do you notice?
- What surprises you?



Source: <https://news.gallup.com/poll/351500/how-many-americans-have-will.aspx>

Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 13

INSTRUCTIONS

Ask the participants the question on the slide and discuss.

- While not in the survey of reasons people do not have a will, when talking to people casually about establishing a will, they often mention being worried that if they write a will, it is like they are inviting their death. Many people are not comfortable talking about death.
- Helping people reframe the topic of death is very powerful. Once the audience shares, you can ask about upsides about talking about death, including that it helps us live more fully.
- This quote from Mr. Rogers is applied to a scene in "A Beautiful Day in the Neighborhood" movie about Mr. Rogers' life.

How comfortable are you talking about death?

1 2 3 4 5 6 7 8 9 10

"Anything that's human is mentionable, and anything that is mentionable can be more manageable. When we can talk about our feelings, they become less overwhelming, less upsetting, and less scary. The people we trust with that important talk can help us know that we are not alone."

-- Mr. Fred Rogers

Time: 5 Minutes

Materials: None

Handouts: None

Discussion: What do you think about this quote as it relates to estate planning?

SLIDE 14

INSTRUCTIONS

The Conversation Project has talking points and worksheets to help families having hard conversations.

Background:

- “Relationships are the main challenge facing farm families. Participants often pointed out that many programs teach management and planning strategies, but few focus on communication and family dynamics. Treating family members fairly and equally, dealing with off-farm heirs, and addressing in-law relationships are often the largest obstacles farm families face when building estate plans.”

the conversation project

Helping people share their wishes for care through the end of life.

Free Guides:

- Conversation Starter Guide
- Guide to Choosing a Health Care Proxy
- Guide to Being a Health Care Proxy
- Guide for Talking with a Health Care Team

Time: 2 Minutes

Materials: None

Handouts: None

Sources:

- Hogge, J., Eborn, B., Packham, J., Findlay, R., & Harrison, S. (2017). Multiyear Succession and Estate Planning for Farm and Ranch Families. *Journal of Extension*, 55(4), Article 19. <https://tigerprints.clemson.edu/joe/vol55/iss4/19>
- The Conversation Project: <https://www.ih.org/Engage/Initiatives/ConversationProject/Pages/default.aspx>

SLIDE 15

INSTRUCTIONS

There are some common terms you will hear during this training. Let's see who can guess their meaning. We are going to play a Vocabulary Exercise called "What's My Meaning?"

Prepare a vocabulary exercise that matches terms with definitions by having attendees fill in the blanks for each term. Attendees can work independently or in groups. Give the attendees 5-10 minutes to fill in the blanks with the term that matches each definition.

After everyone is finished, spend 10-15 minutes reviewing the terms and definitions with the group, asking a different person at random to provide their answer to each "blank." Discuss the differences in certain similar definitions, as the terms/definitions are grouped together for that purpose. Attendees can take the completed sheets home with them as a reference for future trainings.



Time: 20 Minutes

Materials: Vocabulary fill-in-the-blank sheets and pencils/pens

Handouts: Definitions and Key Terms

Virtual Ideas for the What's My Meaning Game:

1. Quizlet: Use online flashcards and quizzes to learn the terms.
2. Jamboard: Write the terms and definitions on sticky notes and participants work in a group to match them up.
3. Flippity: Can create online games to facilitate vocabulary quizzes.

Alternative Activity for “What’s My Meaning Game”

There are some common terms that you have heard during this training. Let’s see who remembers their meaning. We are going to play a Card Game entitled “What’s My Meaning.”

Prepare index cards before the training (Print index card template on card stock and cut to make the card deck)

1. Have participants to select a card from the stack & place it face down on the table.
2. Review the most common terms with the group.
3. Ask for a volunteer to start the game.
4. Have the volunteer to read their term and tell the group the meaning.
5. To end the game, have everyone turn over the cards, answer if they know and understand the meaning of the term on their card.



Time: 10 Minutes

Materials: Card deck with meanings and terms

Handouts: Definitions and Key Terms

SLIDE 16

INSTRUCTIONS

This is a section divider to introduce the next topic.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 17

INSTRUCTIONS

Most people take care of their property while living, but many of these same people make no plans for its management after their death. Despite concern for families, friends, and property during their lifetimes, they fail to provide guidance when it is most needed—when they are no longer present to make decisions.

We All Need an Estate Plan

This session will focus on questions of property. Estate planning guides your loved ones in decision-making in the event you are no longer capable or if you die.



As a result, the state decides how their belongings will be distributed. Therefore, everyone should consider having an estate/succession plan.

Source: <https://www.investopedia.com/terms/e/estateplanning.asp>

Time: 1 Minute

Materials: None

*Handouts: Estate Planning
Worksheet*

SLIDE 18

INSTRUCTIONS

This important note helps set the stage for why this education is needed. No one wants the state to make the final decision on how their estate is divided after their death.

Important

If you do not decide
how you want your estate divided,
the state where your estate (property) is
located will decide for you.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 19

INSTRUCTIONS

Explain these definitions and key differences between a living will and a simple will or last will and testament.

Living Will

- Is a written statement that details medical treatment preferences in the event the person is not able to express his/her wishes
- Includes a Healthcare Power of Attorney and Advance Health Directive in some states
- No longer is in effect after the person has died

A Simple Will or Last Will and Testament

- Is a legal document that designates how property, assets, and dependent responsibilities are distributed after death.
- Does not take effect until a person has died

Time: 5 Minutes

Materials: None

Handouts: None

Source: https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/power_atty_guide_and_form_2011/

SLIDE 20

INSTRUCTIONS

Review the definition of a holographic will. Holographic wills are not recognized in some states. In states that permit the documents, the will must meet minimal requirements, such as proof that the testator wrote it and had the mental capacity to do so. This type of will can slow the process down and may impact other benefits as well.

Holographic Will



- Handwritten and signed by the testator
- Not witnessed
- Not valid in all states

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 21

INSTRUCTIONS

Review these potential benefits of a will.

BENEFITS OF A TESTAMENTARY WILL

- 01 Specifies wishes for your funeral
- 02 Chooses who you want to carry out your wishes (Executor)
- 03 Limits inheritance disputes
- 04 Clarifies the gifting of possessions and money (subject to state laws pertaining to spousal rights)
- 05 Identifies who should care for your children/dependents
- 06 Helps your heirs access your assets faster and easier
- 07 May reduce inheritance tax

Time: 5 Minutes

Materials: None

Handouts: None

Sources:

- <http://extension.msstate.edu/publications/publications/planning-your-estate-part-2-where-theres-will-theres-way>
- https://www.investopedia.com/articles/pf/07/estate_plan_checklist.asp

SLIDE 22

INSTRUCTIONS

This slide describes the process for validating a will. It also describes situations where probate likely will be needed. Each state will have a specific process for estate administration/succession. Some states file copies of probated wills in the land records. Other states have the executor or administrator file a deed on behalf of the estate.

Probate Process

Process of validating a will

- Executor files in local court
- Not all wills must be probated

Probate will likely be needed if:

- Real estate is involved
- Beneficiaries are minors
- Disputes over asset distribution occur
- Assets are complex and high in value
- Will is not written well

Time: 3 Minutes

Materials: None

Handouts: None

SLIDE 23

INSTRUCTIONS

Discuss the points on the slide that can cause a will to be deemed invalid.

What Could Make a Will Invalid?

- Each state has its own requirements for a "valid" will.
- Generally, it will be *invalid* if it:
 - Was not properly executed
 - Was not properly witnessed (does not apply to holographic wills)
 - Fails to include appropriate language
 - Fails to address spouse and children (states vary as to the right to exclude a spouse or child)
 - Is a product of undue influence, fraud or was executed at a time when the testator was not competent

ACCEPTED

REJECTED

Time: 3 Minute

Materials: None

Handouts: None

SLIDE 24

INSTRUCTIONS

If someone dies without a will, it is called "intestate," which means

- The state uses established rules to determine distribution.
- Dying intestate can add significant time to the process of distribution.
- If your children are minors, the court will appoint a representative to look after their interests.
- Dying intestate may have tax consequences.

Intestate: Dying Without a Will

Distribution



State law determines distribution

Children



Court appoints children's guardian

Time



Takes longer to settle estate

Taxes



May have tax consequences

Time: 10 Minutes

Materials: None

Handouts: None

SLIDE 25

INSTRUCTIONS

Updating a will after the death of someone named is important to prevent later difficulties. For instance, if a child is deceased and the will conveys property to more than one unnamed grandchild, it creates a risk for difficulties arising from lack of unanimous consent. Updating wills after the death of a spouse or child may avoid this problem. Similarly, a change in circumstances surrounding people or things named in the will should lead to the will being updated.

Updating Your Will

When someone
named in your will
dies
When circumstances
change



Time: 2 Minutes

Materials: None

Handouts: None

SLIDE 26

INSTRUCTIONS

Using the role play samples as a guide, demonstrate how a visit with an attorney may go.



Time: 15 Minutes

*Materials: Sample Role Play
Scripts*

Handouts: None

SLIDE 27

INSTRUCTIONS

The next section explores important considerations in working with a lawyer in the planning process.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 29

INSTRUCTIONS

The cost of having a will developed varies widely. This slide gives some very general ideas of what someone might find locally.

Simple Will generally is around **\$500-\$600** per person.

Nationwide, the average cost for an attorney or firm to create a will is **\$940 to \$1,500** for an individual person. Most firms will reduce their price to a few hundred dollars when adding on a second nearly identical will for a spouse.

It's very common for a lawyer to charge a flat fee to write a will and other basic estate planning documents, **Ranging from \$300 to a more common \$1,000.**

If specific tax planning is needed, the will and tax advice will be more expensive.

Other factors that can influence cost include these:

- Cost will vary from state to state and from attorney to attorney.
- Some attorneys charge by their time and others have a flat rate.
- The more complicated your situation is, the more expensive the fee.

Cost of a Will

<p>Factors that influence cost:</p> <ul style="list-style-type: none"> State Flat fee vs. time Complexity of the situation 	<ul style="list-style-type: none"> Simple may be as low as \$500 - \$600 per person. Nationwide average is \$900 - \$1,500 for an individual will created by an attorney or firm. Lawyers sometimes charge a flat fee to write a will and other estate planning documents, ranging from \$300 to a more common \$1,000
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HOW MUCH WILL IT COST?

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 30

INSTRUCTIONS

Lawyers can have a variety of specialties. This is important to understand so you are choosing one with the best training and experience.

Specialty Areas of Lawyers

- Not all lawyers know all parts of the law
- One part is "Trusts and Estates"
- Some states recognize specialization and certify lawyers.
 - For example: Florida bar recognizes the specialty of, "**Wills, Trusts, and Estates**"
- Some lawyers have advanced degrees (e.g. LLM in taxation)



Time: 5 Minutes

Materials: None

Handouts: None

Sources:

Here are specialties recognized by the American Bar Association for the chart:

<https://www.americanbar.org/topics/>

21 specialty areas of law are listed by the American Bar Association

SLIDE 31

INSTRUCTIONS

This slide gives just a sample of different kinds of specialty areas for lawyers. It helps provide an idea of why finding one with the right expertise is important.



Source:

Here are specialties recognized by the American Bar Association for the chart: <https://www.americanbar.org/topics/>

Time: 1 Minute

Materials: None

Handouts None

SLIDE 32

INSTRUCTIONS

Choosing an attorney is similar to other good shopping. This slide offers some key points to guide the decision.

Choosing an Attorney

Like buying other products and services, you are looking for a "good fit"

- Comparison shop
- Ask for referrals
- Look for experience in estate/succession
- Be sure they are licensed in your state



Time: 5 Minutes

Materials: None

Handouts: None

Sources:

- <https://extension.tennessee.edu/publications/Documents/SP743-B.pdf>
- <https://www.uaex.uada.edu/life-skills-wellness/personal-finance/retirement-and-estate-planning/>
- <https://401kcalculator.net/retirement-calculator/>

SLIDE 33

INSTRUCTIONS

When meeting to interview an attorney about possibly hiring him or her, listen and give the best information so that the attorney can assess your needs in the best way possible. Some questions to ask before deciding who to hire are depicted on this slide.

Questions to Ask



- What percentage of your practice involves estate planning?
- Do you have any conflicts of interests that I should know about before I hire you?
- What documents will be prepared and how long will it take?
- How will you keep me informed of progress?
- What is the ballpark figure of my total bill and what would cause the bill to change?

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 34


INSTRUCTIONS

Being prepared is likely to save you time and money.

Attorneys may have you fill out a form and give you a list of documents to bring with you on your first appointment, which may include:

- Written summary of what you hope to achieve with your estate plan
- Document with your full name and address and the full names and addresses of your spouse and children and anyone you plan to include in your will
- Complete personal income tax returns for 3-5 years
- Balance sheet with assets and liabilities owned by you
- Deeds and mortgages
- List and details of any other oral or written agreements that you have with a lender, creditor, landlord, tenant or other party
- Marital agreements and/or divorce decrees
- Beneficiary designations (insurance, retirement plans, etc.)
- Prior wills, power of attorneys, any other pre-existing versions

Documents to Bring

- 
- Written summary of what you plan to achieve with your estate plan
 - Documents with the full names and addresses for you, your spouse, children, and anyone else you plan to include in your will
 - Complete income tax returns, previous 3-5 years
 - Balance sheet: assets and liabilities owed to you
 - Deeds and mortgages
 - Detailed list of any other oral or written agreements
 - Marital agreements and/or divorce decrees
 - Beneficiary designations (insurance, retirement plans, etc.)
 - Prior wills, power of attorneys, any other pre-existing versions

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 35

INSTRUCTIONS

Ensure that your will is safe by following these three steps.

- Store the original will in a safe place.
- Let your executor know where the original will is stored, along with needed information such as the password for the safe.
- Give duplicate signed copies to the executor and your attorney if you have one.

Originals and Copies of Your Will



- Store the original will in a safe place.
- Let your executor know where the original will is stored.
- Give duplicate signed copies to the executor and your attorney.

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 36

INSTRUCTIONS

This section will discuss important considerations in preventing heirs' property when writing a will.



Time: 1 Minute

Materials: None

Handouts: None

SLIDE 37

INSTRUCTIONS

Having a will does not mean you avoided creating issues similar to heirs' property. Decisions have to be made by owners to manage property and put it to productive use. If property is held jointly by children, all the children as owners must consent to the use of the property. This may lead to disagreements and a deadlock.

Simple Will: How It May Create Similar Issues to Heirs' Property



- A simple will often leaves *all* assets including real property:
 - First, to a spouse
 - Second, if the spouse is deceased, equally to children.
- If children inherit under this type of simple will, they hold an *undivided* interest in the property.
 - **Unlike** heirs' property, the property is titled in their name
 - **Like** heirs' property, they cannot use it without unanimous consent of all siblings involved.

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 38

INSTRUCTIONS

Review these tips for handling property distribution among multiple children. Additional talking points are below:

Physical division of property may require a survey.

Properties of the same acreage may have different values. For example, some properties having higher value are those having greater road frontage, more fertile soils, having utilities present, etc. Thus, some choose to have the property divided after death based on equal value of parcels (perhaps divided by an appraiser or other person).

Sometimes, if an appraiser or other person is asked to divide property after the death of the property owner, they might first divide the overall property into pieces of equal value (not necessarily equal size) and then there may be a drawing where each child obtains a parcel at random.

Your lawyer should advise you on:

- How provide for the payment of debts and taxes so the property division is not affected by claims of creditors or required tax payments
- What is needed in terms of a temporary process to manage the farm, ranch or forest to avoid interruption in the business

Other problems are created if the children are under the age of majority when they inherit the property.

Tips to Avoid Heirs' Property Issues in a Will

Helpful Tips

Put in writing how the land would be divided among spouse and children if they inherit. Common ways to divide:

- Physically divided into separate parcels for each person using valid legal descriptions.
- Financially divided based on equal value of parcels by a process specified in the will.

Ask your lawyer to advise you on:

- How to provide for the payment of debts and taxes so the property division is not affected by claims of creditors or required tax payments.
- What is needed in terms of a temporary process to manage the farm, ranch or forest to avoid interruption in the business.

Time: 5 Minutes

Materials: None

Handouts: None

SLIDE 39

INSTRUCTIONS

Some might quickly assume that all that is needed is a will. However, several points come into the picture as families navigate this space.

Question:



Is a will the way to prevent heirs' property?

YES and NO

Time: 1 minute

Materials: None

Handouts: None

SLIDE 40

INSTRUCTIONS

This slide discusses the “yes/no” in more detail.

Multiple Ways to Prevent Heirs' Property



YES: a properly executed will, written according to state law, that divides land into specific acreages or parcels, can secure title to land from one generation to the next.

NO: a properly executed will is not the only way that property can be transferred from one generation to the next.

Time: 2 minutes

Materials: None

Handouts: None

SLIDE 41

INSTRUCTIONS

One spouse/parent may prefer to leave real property as a life estate to a spouse or a child in the event of circumstances important to that parent.

A life estate may be limited so as to require the holder to live on the property for a specified number of months each year if there is a concern that commitment to a nursing home or other facility would not enable the holder to manage the property. The property could be managed by others in order to keep the income stream benefitting the nursing home resident. This may have implications on eligibility for the government benefit.

A life estate ensures the parent that the children receive the property after the death of the person holding the life estate. For instance, if property solely owned by one person is first left by that person to their spouse, the surviving spouse may later remarry and change their will or for other reasons cut a child out of their will (as allowed by law).

Life estates may provide for a child with special needs so that they may remain in the family home if it is in their best interest.

Life estates may also allow a child who earns their livelihood on the farm/ranch to continue living there for their life.

Your lawyer should advise you as to what rights/obligations pass under a life estate under the law of the state where your property is located so that you could make changes to match your desires.

In most states, a life tenant has exclusive control of the property during their life. They generally must keep property in good repair.

Granting a Spouse or a Child a Life Estate



One spouse/parent may prefer to leave real property as a life estate to a spouse or a child in the event of circumstances important to that parent. Examples include:

- Planning for property management if a spouse needs to go to a nursing home after inheriting.
- Ensuring a child receives the property after the death of a spouse.
- Providing for the care of someone with special needs.
- Allowing someone earning their livelihood from the property (farm/ranch) to remain there.

Your lawyer should advise you on rights/obligations of a life estate based on the state laws where the property is located.

Time: 10 minutes

Materials: None

Handouts: None

SLIDE 42

INSTRUCTIONS

Using a trust or business entity can avoid partition and the decedent can determine the use and management of the property after his or her death.

Generally, interests in entities could include shares of stock in a corporation, membership interests in a limited liability company, partnership shares/units in a partnership, etc.

Placing Property in an Entity – An Alternative Approach to Physically Dividing Property

Your property can be conveyed to a trust, corporation, limited liability company or other entity

- Prior to your death – Seek advice on property taxes (if homestead)
 - Upon death if designated in your will
- Be sure to seek a lawyer's assistance.

Some trusts are created by a will. Other trusts are created prior to the owner's death by a trust instrument.

Prior to your death:

If the trust is created prior to the owner's death, the owner will deed their property to the trust. Trusts are managed by one or more trustees who have broad discretionary powers. Prior to the death of either spouse, your lawyer may help you convey property to a trust, corporation, limited liability company or other entity.

NOTE: Seek advice as to the effect on property taxes, if the property is your homestead.

If property is placed in an entity prior to your death, your will provides for the interests in the entity you created to be left to a spouse or children.

Upon death through a will:

Upon death, if you have kept the property in your name, a will may place property in a trust for the benefit of a spouse or children.

Time: 5 minutes

Materials: None

Handouts: None

SLIDE 43

INSTRUCTIONS

Discuss these advantages and disadvantages of placing property in an entity.

Advantages include:

- The property stays together in one undivided tract and is managed by a trustee (if held in a trust) or a board, manager(s) or general partner(s) if held in another entity.
- This does not require unanimous consent for most management actions.
- There may be a prohibition on sale of property or interests.

Disadvantages include:

- Restrictions placed on transfer of interests in the entity may make a sale difficult when a child needs to sell for health, financial or other personal reasons.
- Disagreements over management decisions made by others may cause family dissention.

In entities other than a trust, unanimous consent of the owners of an interest in the entity may be required to sell the property or place a mortgage on it. General day-to-day affairs are decided by majority vote of the board of directors (for a corporation), the manager(s) (for a limited liability company) and the partners (for a partnership). A holdout will usually not create a deadlock.

A common requirement may include restrictions on transfer of interest in the family-owned entities. A proposed sale may first be required to be offered to the other owners or the entity before being sold to a third-party.

Placing Property in an Entity – An Alternative Approach to Physically Dividing Property

Advantages:

- Property stays together in one undivided tract.
- Unanimous consent is not required for most management actions
- There may be a prohibition on sale of property or interests



Disadvantages:

- Restrictions may make sale of a person's interest difficult.
- Disagreements on management decisions may cause friction.

Time: 5 minutes

Materials: None

Handouts: None

SLIDE 44

INSTRUCTIONS

False. Having a will does not necessarily mean you avoided creating heirs' property.

Big Picture Quiz: True or False?



True or False?

Making a will prevents heirs' property.

Time: 5 minutes

Materials: None

Handouts: None

SLIDE 45

INSTRUCTIONS

Understanding how your property is titled is vital to drafting your will. This next session explores some things to consider.



Time: 1 minute

Materials: None

Handouts: None

SLIDE 46

INSTRUCTIONS

This slide depicts the types of information typically found on a title certificate or report.

A few things to note:

- Generally, only the surface title is examined (not mineral title).
- The examiner reviews all instruments for a period of years required by the law of the applicable state.

Title to Real Property: Examining Title

A title certificate or report will generally specify the:

- Record title owner(s)
- Type of shared ownership, if applicable (e.g., Joint Tenancy with Survivorship Rights or Tenancy in Common)
- Legal description
- Tax parcels and status of payment
- Encumbrances (e.g., easements, covenants)
- Title claims or unresolved issues

Title should be examined by a lawyer or a title company.



Type of shared ownership - your interest may be limited by the form of the deed to you if you hold title by:

- Joint Tenancy with right of survivorship (typical for husband and wife) that vests title in the survivor of the decedent.
- Tenancy in Common (typical for siblings) that vests title in the heirs of the decedent at law (in the absence of a will).

Time: 5 minutes

Materials: None

Handouts: None

SLIDE 47

INSTRUCTIONS

Discuss these key points related to transferring land by deed.

These options have been noted earlier but are repeated here to weave the connections.

- Conveying real property before death
- Reserving or granting a life estate when conveying property to allow limited use by the life tenant prior to death
- Conveying title by a transfer on death deed that transfers full title on death

Transferring Title by Deed

- **Real Property can be conveyed by deed rather than by will.**
- **A recorded deed takes precedence over a will disposing the same property.**
- **Deeds should be prepared by a licensed attorney.**
- **Options for transferring include:**
 - Conveying real property before death
 - Reserving or granting a life estate
 - Conveying title by a transfer on death deed (in some states)



Time: 5 minutes

Materials: None

Handouts: None

SLIDE 48

INSTRUCTIONS

Discuss these key elements involved in keeping a title current.

Maintaining Property as Heirs' Property through Current Marketable Title

After title is examined, the names and percentage interests of each family member should be determined.

Record. Title should be updated to reflect current ownership and percentage interest according to the law of the states where the property is located which may include:

- Affidavit of Heirship
- Probate of wills
- Administration of Estates
- Judicial Determination of Heirship



Time: 5 minutes

Materials: None

Handouts: None

SLIDE 49

INSTRUCTIONS

Discuss the advantages and disadvantages of this approach using the talking points on the slide.

Maintaining Property as Heirs' Property through Current Marketable Title (cont'd.)

Advantages

- Keeps family current as to names and percentage of ownership of family members
- Keeps relationships between family members

Disadvantages

- Must be updated upon the death of each heir
- Does not address disabilities (incompetence) during lifetime
- Does not prevent an heir from selling their fractional interest
- Does not prevent any heir or purchaser from seeking partition of the property

Time: 3 minutes

Materials: None

Handouts: None

SLIDE 50

INSTRUCTIONS

Wrap up this session with any questions participants may have.



Time: 5 minutes

Materials: None

Handouts: None

Heirs' Property Key Terms Cards – Print on Cardstock and cut apart for activity

<p>Administrator</p>	<p>a court-appointed person ordered to manage the estate of a deceased person who died intestate</p>
<p>Assets</p>	<p>real or personal property (including cash/liquidity) owned by a person or company, regarded as having value and the ability to meet debts, commitments, or legacies</p>
<p>Beneficiary</p>	<p>a person entitled to receive funds or other property under a trust, Last Will & Testament, retirement account, or insurance policy</p>
<p>Codicil</p>	<p>an addition or supplement that explains, modifies, or revokes a Last Will & Testament or part of one</p>
<p>Community Property</p>	<p>property owned jointly by a married couple (in some states)</p>

<p>Conservatorship</p>	<p>the appointment of a guardian or conservator by a judge to manage the financial affairs and/or daily life of another person due to old age or physical or mental limitations</p>
<p>Corporation</p>	<p>a legal entity that is separate and distinct from its owners. For profit corporations act through a board of directors selected by its shareholders (owners)</p>
<p>Decedent</p>	<p>a person who has died</p>
<p>Estate</p>	<p>a person's property or net worth. When the person is deceased, their estate goes through probate and is distributed according to the terms of their Last Will & Testament. If there is no will, the estate is “administered” in accordance with the state’s laws of intestate succession</p>
<p>Executor/Executrix</p>	<p>a court-appointed person or institution who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate</p>

<p>Heir</p>	<p>a person legally entitled by law to the property of a decedent; a person inheriting and continuing the legacy of a predecessor</p>
<p>Heir's Property</p>	<p>property owned jointly by numerous co-owners, most of whom are related. It usually passes from one generation to another when a landowner dies intestate or with no succession/estate planning for the land</p>
<p>Holographic Will</p>	<p>a handwritten and testator-signed document that is legally binding in some states, but not produced by a lawyer</p>
<p>Intestate</p>	<p>the decedent died without a valid Last Will & Testament. When a person dies intestate, the estate is distributed in accordance with the state's laws of intestate succession, after creditors are paid</p>
<p>Irrevocable Trust</p>	<p>created when a person gives up his/her rights to change the terms of a trust once created. The trustor/grantor cannot later change the terms of an irrevocable trust.</p>

<p>Joint Tenancy with rights of Survivorship</p>	<p>the holding of an estate or property jointly by two or more parties, the share of each passing to the other or others upon death.</p>
<p>Last Will & Testament (Will)</p>	<p>a document which directs how property (including minor children) is to be distributed to beneficiaries and heirs upon a person's death</p>
<p>Life Estate</p>	<p>an interest in property only for the life of a person with the remaining interest (remainder) to vest in others upon the death of the person holding the life estate</p>
<p>Limited Liability Company</p>	<p>a legal entity that is separate and distinct from its owners. It acts through its manager(s) or its members (owners)</p>
<p>Living Trust</p>	<p>a legal arrangement established by an individual (the grantor/trustor) during their lifetime to protect their assets and direct their distribution after the grantor's death. Avoids the probate process.</p>

<p>Living Will (Advance Healthcare Directive)</p>	<p>a written, legal document that spells out medical treatments you would or would not want to be used to keep you alive, as well as your preferences for other medical decisions, such as pain management or organ donation, when you can no longer make decisions for yourself</p>
<p>Mutual Will</p>	<p>a type of will, usually executed by a married or committed couple, that is mutually binding</p>
<p>Notary</p>	<p>a person authorized to perform certain legal formalities and certify/witness signatures on estate planning documents, contracts, deeds, etc.</p>
<p>Per Stirpes</p>	<p>a way of distributing the estate of a decedent where each branch of the family receives an equal share of an estate. Latin term = "by roots" or "by branch"</p>
<p>Personal Representative</p>	<p>a collective name for either Executors or Administrators</p>

<p>Power of Attorney (POA)</p>	<p>a legally binding document that allows you to appoint someone to manage your property, medical, or financial affairs</p>
<p>Probate</p>	<p>a court-administered process in which the probate court confirms the validity of a Last Will & Testament and allows other people the option to challenge the will. The estate is then administered in accordance with the Last Will & Testament (called "succession" in Louisiana)</p>
<p>Revocable Trust</p>	<p>allows the trustor/grantor to amend and make changes to the trust after it has been formed</p>
<p>Spouse</p>	<p>a life partner in a marriage, civil union, or common-law marriage as recognized by state law</p>
<p>Testate</p>	<p>the decedent died with a valid Last Will & Testament</p>

<p>Testator /Testatrix</p>	<p>a court-appointed person or institution who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate</p>
<p>Transfer on Death Payable on Death</p>	<p>lets beneficiaries receive assets at the time of the person's death without going through probate</p>
<p>Trustee</p>	<p>a trustee is a person or business that administers a trust</p>
<p>Trust</p>	<p>a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries.</p>
<p>Testamentary trust</p>	<p>a trust that is specified in and created by a person's Last Will & Testament</p>

HEIRS' PROPERTY DEFINITIONS EXERCISE

"DURING LIFE" CONCEPTS, ROLES, & DOCUMENTS

Conservatorship and/or Guardianship

Living Will/Advance Healthcare Directive

Power of Attorney (POA)

Durable Power of Attorney (DPOA)

_____ a written, legal document that spells out medical treatments you would or would not want to be used to keep you alive, as well as your preferences for other medical decisions, such as pain management or organ donation, when you can no longer make decisions for yourself.

_____ a legally binding document that allows you to appoint someone to manage your property, medical, or financial affairs. This document terminates at the expiration date set by the appointer or at the appointer's incapacity or death, unless revoked earlier.

_____ a legally binding document that survives incapacity, meaning it will stay in place even when the appointer becomes incapacitated. Once the appointer passes away, the durable power of attorney agent's authorization and responsibilities end.

_____ the appointment of a guardian or conservator by a judge to manage the financial affairs and/or daily life of another person due to old age or physical or mental limitations.

"AFTER LIFE" CONCEPTS, ROLES, & DOCUMENTS

Key Concepts

Assets	Decedent	Estate	Estate Administration
	Intestate	Succession	Probate
			Testate

_____ a person who has died.

_____ a person's property or net worth. When the person is deceased, their estate goes through probate and is distributed according to the terms of their Last Will & Testament. If there is no will, the estate is "administered" in accordance with the state's laws of intestate succession. Some assets pass outside the administrative estate including insurance policies and retirement plans naming beneficiaries, financial accounts with survivorship rights in another person, and real property where the deed vests survivorship rights in another person.

_____ Louisiana's process of settling a deceased person's estate and distributing the property of those who inherit after debts are paid. The equivalent of administration/probate in other states.

_____ the decedent died with a valid Last Will & Testament.

_____ the decedent died without a valid Last Will & Testament. When a person dies intestate, the estate is distributed in accordance with the state's laws of intestate succession, after creditors and administrative costs are paid.

_____ a court-administered process in which the probate court confirms the validity of a Last Will & Testament and allows other people the option to challenge the will. The estate is then administered in accordance with the Last Will & Testament

_____ a court-administered process in which the probate court confirms the validity of a Last Will & Testament and allows other people the option to challenge the will. The estate is then administered in accordance with the Last Will & Testament.

_____ a court-administered process in which the probate court administers the estate in accordance with the state's laws of intestate succession and the laws defining the decedent's heirs-at-law.

_____ real or personal property, property (including cash/liquidity) owned by a person or company, regarded as having value and will be liquidated to meet debts, administrative costs or distributed according to the Last Will & Testament.

Roles

Administrator	Beneficiary	Executor/Executrix	Heir	Notary
Personal Representative	Testator/Testatrix	Trustee		Spouse

_____ a person who has written and executed a Last Will & Testament.

_____ a court-appointed person ordered to manage the estate of a deceased person who died intestate.

_____ a court-appointed person or institution usually named by the Decedent in the Last Will & Testament who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate.

_____ a collective name for either Executors or Administrators.

_____ a person entitled to receive funds or other property under a trust, Last Will & Testament, retirement account, or insurance policy.

_____ a person legally entitled to inherit the property and assets of a decedent.

_____ a person or business that administers a trust.

_____ a person authorized by the law of the state where they reside to perform certain legal formalities and certify/witness signatures on estate planning documents, contracts, deeds, etc.

_____ a life partner in a marriage, civil union, or common-law marriage as recognized by state law.

Documents

Codicil	Holographic Will	Irrevocable Trust	Last Will & Testament (Will)	
	Living Trust	Revocable Trust	Testamentary Trust	Trust

_____ a document which directs how property is to be distributed to beneficiaries and heirs upon a person's death and who is suggested as the guardian for minor children in the event the decedent is the last parent of the child to die.

_____ an addition or supplement that explains, modifies, or revokes a Last Will & Testament or part of one.

_____ a handwritten and testator-signed document that is legally binding in some states, but not produced by a lawyer.

_____ generally a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries according to specified terms and conditions.

_____ a legal arrangement established by an individual (the grantor/trustor) during their lifetime to protect their assets and direct their distribution after the grantor's death. Avoids the probate process.

_____ a trust that is created by a person's Last Will & Testament.

_____ created when a person gives up his/her rights to change the terms of a trust once created. The trustor/settlor cannot later change the terms of an irrevocable trust. This type of trust can protect assets from Medicaid estate recovery with proper Medicaid planning.

_____ allows the trustor/settlor to amend and make changes to the trust after it has been formed.

Ownership/Distribution of Property

Community Property Survivorship	Per Stirpes	Heirs' Property Life Estate Transfer on Death/Payable on Death	Per Capita	Joint Tenants with Rights of Tenants-In-Common
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_____ property owned jointly by a married couple or registered domestic partners (in some states).

_____ co-owners who jointly own property without rights of survivorship, meaning a decedent's interest in the property passes as directed in the decedent's Last Will & Testament or by intestate succession.

_____ co-owners who jointly own property with rights of survivorship, meaning a decedent's interest in the property passes to the surviving owner(s) upon the decedent's death.

_____ property owned by numerous tenants-in-common, most of whom are related. It usually passes from one generation to another when a landowner dies intestate or with no succession/estate planning for the land.

_____ an interest in property only for the life of a person with the remaining interest (remainder) to vest in others upon the death of the person holding the life estate.

_____ lets beneficiaries receive assets at the time of the person's death without going through probate.

_____ "by roots," "by branch," or "by representation." The term refers to every person down a branch of a family tree. An estate of a decedent is distributed per stirpes if each heir of a deceased person takes the share to which their deceased relative would have been entitled had that relative been alive.

_____ "by head" or "for each head." The inheritance is distributed equally among beneficiaries within the same generation/class.

Entities

Corporation	Limited Liability Company
-------------	---------------------------

_____ a legal entity created according to state law that is separate and distinct from its owners. For profit corporations act through a board of directors selected by its shareholders (owners).

_____ a legal entity created according to state law that is separate and distinct from its owners. It acts through its manager(s) or its members (owners)

ESTATE PLANNING WORKSHEET

NAME: _____

DATE: / /
DAY MONTH YEAR

OVERVIEW

An estate plan is the process and documents that express what should happen to a persons assets (valuable things owned) after they pass away. It commonly includes 1) Last Will & Testament, 2) Durable Power of Attorney, and 3) Advance Health Care Directive. Although an estate plan is important, only 33% of people make a plan. This worksheet can be used to weigh the benefits and costs of making a plan as a first step to creating an estate plan.

MY VALUES

People value and prioritize different things in life. Consider the statements below. Using the rating scale, on a 5-point scale rate how important each item is to you from not at all important to very important. There are no right or wrong answers.

QUESTIONS	RATING SCALE				
	Not At All Important	Low Importance	Neutral	Important	Very Important
Taking pressure off family members about my end-of-life decisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Having a plan for my children's care	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reducing risk of family disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Knowing who will get family heirlooms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing input on my funeral/memorial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Choosing who handles my affairs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping family get quick access to my assets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Saving more money overtime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

MY STRATEGY

Estate planning costs, benefits and values will vary from person to person. Create a persona l estate plan strategy based on your responses to the estate planning questions on costs, benefits, and values.

I CHOOSE TO: Work With An Attorney Use an Online Software or Template Hand Write My Own

I WILL COMPLETE MY PLAN BY: / /
DAY MONTH YEAR

STEPS I WILL TAKE:	STEP 1:	STEP 2:	STEP 3:



ESTATE PLANNING WORKSHEET

NAME: _____

DATE: / /
DAY MONTH YEAR

COSTS TO CREATING A PLAN

When estate planning, a person might 1) work with an attorney, 2) use a template or software, or 3) hand write the plan. Consider and describe potential costs of creating an estate plan. Consider your money, time, energy, and other factors.

	Working with an Attorney	Using an Online Template	Handwriting
Money			
Time			
Energy			
Other			

BENEFITS TO CREATING A PLAN

Think about the potential benefits or perks of each estate planning option. Write the benefits of creating an estate plan in this section. Consider your money, time, energy and other factors.

	Working with an Attorney	Using an Online Template	Handwriting
Money			
Time			
Energy			
Other			

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HEIRS' PROPERTY

LAWYER SKIT - PREVENTION

Role play a situation between a lawyer and a person or couple coming to visit a lawyer for the first time to begin working on a will. You may use some of the questions under "Questions a Lawyer May Ask" and allow the other person to make up answers. Or you may use the suggested script. Feel free to edit any of this content to fit your audience and the amount of time you have allotted for this activity.

Meeting with a Lawyer - Drafting a Will

Questions a Lawyer May Ask

- I require a retainer to begin. I will need you to pay me \$250.00 before I can begin work.
- I need you to sign an engagement letter. It explains the legal services I am rendering to you and the terms, the use of the retainer, and the terms and conditions of my employment. Please let me know if you have any questions. If not, please sign the letter and return it to me.
- What is your full (legal) name and date of birth, address, and phone?
- Are you married and if so, what is the name of your spouse?
- Do you have children and if so, what are their names and ages?
- Who do you want to be the executor of your estate, that is the person who will handle carrying out the wishes for your estate you set out in your will?
- Do you have real property?
- To whom do you want to leave your real property (your home and any other land)?
- To whom do you want to leave your personal property (furniture, cars, jewelry, or other personal property)?

- Do you have any children who are under 21, and if so, who do you want to designate as their guardian (if their other parent is not living at the time of your death)?
- Did you want to create a trust for any minor children or other person in your will and if so, let me know what you want to accomplish with the trust?
- Do you want to also execute a power of attorney for healthcare and a general power of attorney when you execute your wills? If so, I will have some more questions concerning those documents.

Suggested Script

Participants:

- Lawyer (whose practice includes wills and estates)
- Client (divorced woman who has not remarried)

Setting:

First meeting of the lawyer and client concerning drafting a will.

Skit:

This is a suggested skit. It should be modified as desired, or participants could ad lib as desired. Information that is needed is represented by brackets [with an explanation within the brackets].

[Lawyer] Good [morning/afternoon]. My name is [insert name]. I practice law in [insert city] and my practice include wills and estate work. Thank you for meeting with me today.

[Client] It is nice to meet you. My name is [insert name]. I received your letter about meeting today and explaining the terms of my engaging you as my lawyer. I also brought documents as you requested and ones that I thought would help you in drafting a will for me.

[Lawyer] Good. Before we proceed, I need to make certain we are clear on who I represent (only you or others) and the terms of my engagement including the retainer payment. Please let me know if you have any questions concerning the engagement letter so that I can answer those and revise it to reflect our agreement. I need you to sign it before I begin working for you.

[Client] You will only represent me. I am divorced and have not remarried. I do have a question as to why you want me to pay you something now when you have not done any work for me.

[Lawyer] My practice is to charge \$500 for a simple will. I am paid \$250 up front and \$250 upon completion and execution of the will. I found this keeps clients committed to complete their will and prevents me from not having any payment for the work I have done if a client changes their mind and does not complete their will. If that is satisfactory, please sign and return the letter to me along with your check for \$250 made payable to my firm's trust account as described in the engagement letter. Please let me know the names and ages of your children and where they presently live, as well as the names and city of residence of anyone else to whom you would make a bequest (gift) under your will?

[Client] I have three children. They are:

- [Name of child] who is [list age* should be 21 and above] and lives in [list city] whose father was my first husband who died.
- [Name of child] who is [list age* should be 21 and above] and lives in [list city] whose father was my first husband who died.
- [Name of child] who is [list age* should be 21 and above] and lives in [list city], whose father is my second husband from whom I am divorced.

I do not plan to give anything to anyone other than my three children.

[Lawyer] Please give me the name and date of death and date of divorce of your husbands.

[Client] My first husband was [name], and he died on [date]. His estate was probated in [name] County, and I inherited everything from him. My second husband was [name], and we divorced on [date] and that divorce proceeding was in [name] County. I brought a copy of the order closing the estate of my first husband and the final decree of divorce from my second husband as you requested in your letter to me.

[Lawyer] Thank you. Do you own any real property now and if so, please describe it and where it is located?

[Client] Yes. I own two properties. One is my home located at [insert street address and city]. The other property is 160 acres of family [farm/timber] property in [insert name] County that I inherited. I want to leave both to my children equally. They will sell the home since none of them need or want it. They will

keep the family [farm/timber] property in the family. I brought a copy of the deeds to both properties as you requested in your letter to me.

[Lawyer] Thank you. Tell me about the ownership and any debt on the property. Do you own both properties in your name? Do you have any mortgage or deed of trust on the property?

[Client] I own both properties solely in my name. I have a mortgage on my home with [name] bank. I do not have any debt on the family [farm/timber] property. I brought a copy of the mortgage as you requested in your letter to me.

[Lawyer] Thank you. What you are describing is typical for a simple will that a lawyer prepares where there is no living spouse. Let's talk about your home first. I suggest you will direct your home to be sold by your executor and the mortgage or deed of trust paid from the proceeds and the net proceeds be paid equally to your children. This keeps one child from holding up the sale by refusing to sell it if you leave it jointly to all three. How does that sound?

[Client] I had not thought of them having a dispute over the sale. One of my children is a little hard to deal with at times and enjoys fighting with the other siblings, so I agree with that suggestion.

[Lawyer] Let's talk about your family 160 acre tract. Many people like you would choose to leave this property jointly to their children. Although when your will is probated, the title will be clear on the property, you will have created an heirs' property issue in that the three of them jointly own the property as a whole. This means none of them own any particular part and they all have to agree on how to use the property. There could be problems arising from these heirs' property issues. Solutions include: (1) splitting the property into 3 distinct pieces of equal value; (2) putting the property in a limited liability company (LLC) where they each have a 1/3rd interest but where decisions as to management and use are made by a majority vote of each of them as a member/manager; or, (3) creating a trust that has similar provisions for a trustee to manage the property for the benefit of all three children. There are other options, but first tell me whether any of these options appeal to you or if you have another approach you would like to discuss. Some of these options will require you to pay me additional fees. I will estimate those for you when you decide how to proceed.

[End of skit.]