

Estate Planning for Retirement

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Ready, Set, Retirement!
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This is Estate Planning

- Understanding whether your **Will or Revocable Trust** controls the distribution of your assets
- Or whether **Asset Title** controls who receives your assets at death
- Or whether a **Beneficiary Designation** controls who receives your assets at death
- When you plan, be sure to consider how **all your assets** will be transferred at death
- Look at your Will or Revocable Trust **each year** to be sure it's current and still reflects your wishes
- Look at Titled assets **each year** to be sure titles are correct
- Look at Beneficiary Designations **each year** for accuracy

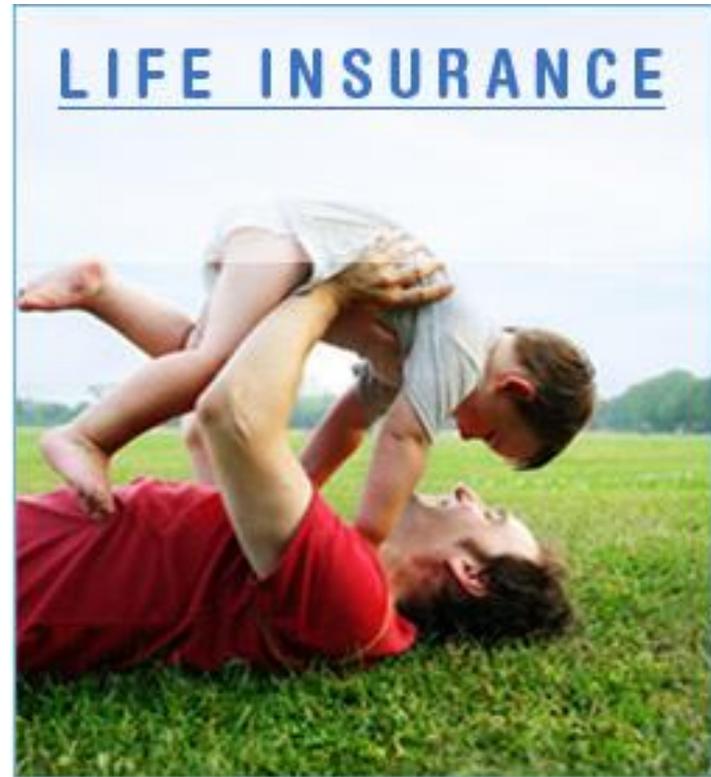
Take an Asset Inventory

- Does the asset pass by Will or Trust? **OR**
- Does it pass because of how it is Titled with another person? **OR**
- Does it pass because you have named an asset Beneficiary?
- **Tip: Your Will or Trust *cannot* override Asset Title or Beneficiary Designation**

Getting Started

- Today: Make your Documents
 - ✓ Make your Will or Revocable Trust
 - ✓ Update your Beneficiary Designations
 - ✓ Make your POAs
- **Incapacity**: Your “Springing” POAs Take Effect
- **Death**: Your Will or Revocable Trust takes Effect;
Your Beneficiary Designations take Effect
- **Remember: POAs End at the Death of the Maker, and
your Will or Revocable Trust Takes Over**

Let's Start by Looking at Assets that Pass by Your Will or Trust



Assets that Pass under a Will are Commonly Called “Probate Assets”



If assets pass under a Will, Probate Court *authority* is needed before these assets can be distributed to the persons named in the Will.



Whereas, if assets pass under a Revocable Trust, the Trustee of the Revocable Trust will oversee the distribution of these assets to the persons named in the Trust.



Which assets pass at death to persons named in a Will or Revocable Trust?

- First up, assets that are titled **solely in the name of the decedent** – Ex: Mary owns an account, vehicle or real estate (really, any asset) titled in her name alone. She has not put another person's name on the title with hers. She has not signed a contract beneficiary designation document naming another person as the successor owner of the asset at her death. Under these circumstances, this asset will pass to the people named in Mary's Will or Revocable Trust.

Which assets pass at death to persons named in a Will or Revocable Trust?

- Next up, those assets that are titled as **Tenancy in Common**. Tenancy in Common means that there are 2 or more owners named on the title to an asset. The conjunction “and” appears between their names. The title document designates what fraction or % ownership of the asset each person owns. If no fraction or % is stated in the title, the owners own *equal shares* of the asset. Ex: Mary owns an account (or any asset) titled “Mary and Fred, as Tenancy in Common.” Because no fraction or % of ownership is stated, Mary and Fred are equal Tenants in Common. They could have owned the asset 60-40, 30-70, you get the idea, but that would need to be stated in the title. In this instance, at Mary’s death, her 50% ownership of the asset will pass to those named in Mary’s Will or Revocable Trust.

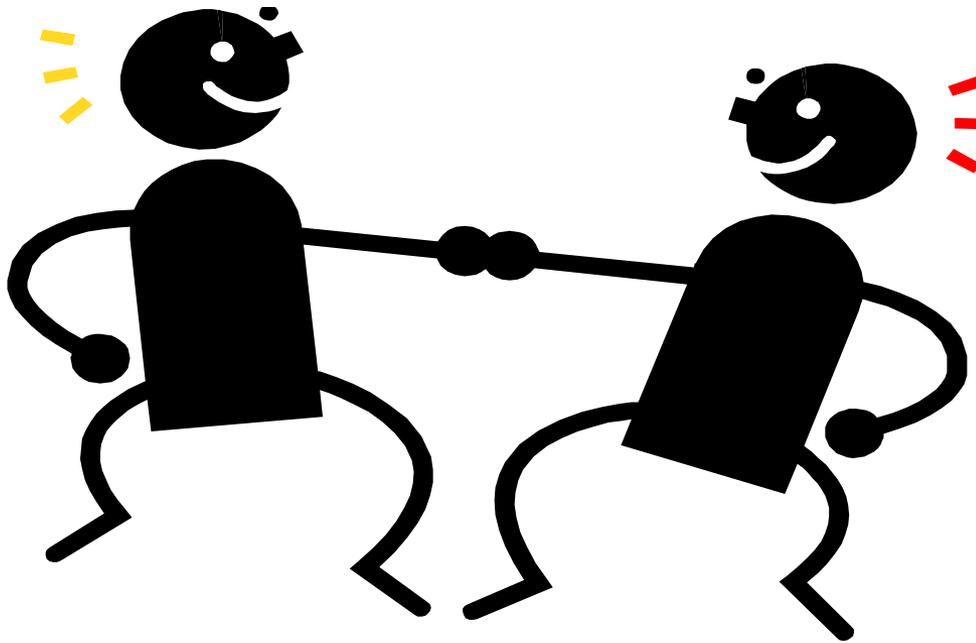
Which assets pass at death to persons named in a Will or Revocable Trust?

- Next up, those assets where the owner has executed a **contract beneficiary designation document and named his/her Estate or Revocable Trust as the beneficiary of the asset**. Ex: Mary has 2 young children. Her employer provides life insurance benefits. Mary executes a contract beneficiary designation document naming her Estate or Revocable Trust as the beneficiary of the life insurance proceeds (\$100,000) at her death. In this instance, at Mary's death, the insurance company will pay the \$100,000 to Mary's Estate (if she made a Will) or Revocable Trust (if she made a Trust). The money will pass to the people named in Mary's Will or Trust. Why would she do this? Perhaps because Mary did not want her children to directly inherit this money. Instead, she set up Trusts for them in (either) her Will or Revocable Trust and named a Trustee to manage this money for her children. Smart Mary!

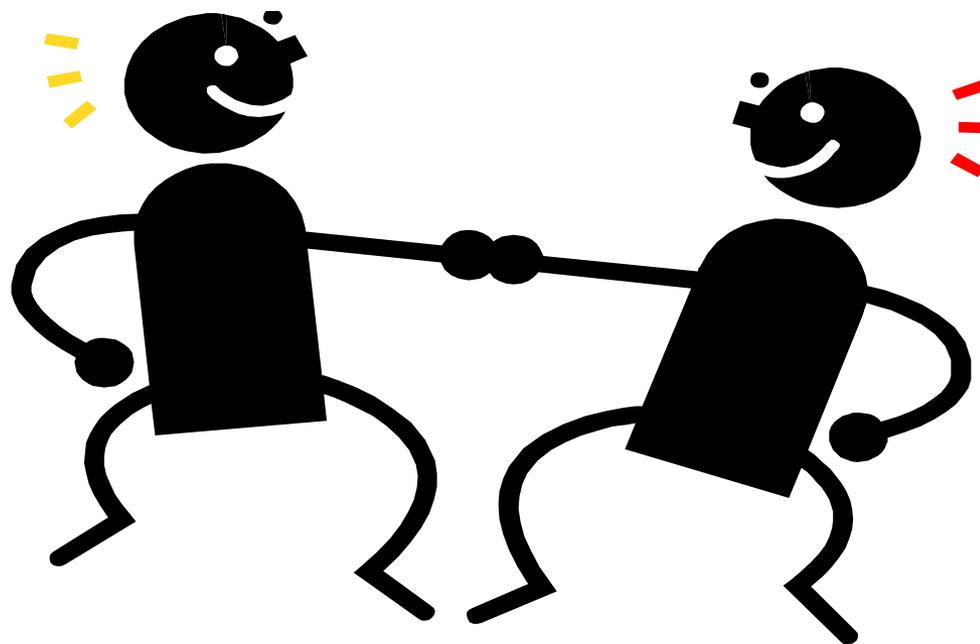
Which assets pass at death to persons named in a Will or Revocable Trust?

- Finally, and similar to the preceding slide, those assets where the owner has executed a **TOD** (transfer on death) or **POD** (payable on death) document **and named his/her Estate or Revocable Trust as the beneficiary of the asset**. Ex: Mary has an investment account with Fidelity. She signs a TOD (or POD) document with Fidelity designating her Estate or Revocable Trust as the entity to receive this account at her passing. At her death, Fidelity will transfer this account to her Estate or Revocable Trust as per Mary's direction. Those persons named in Mary's Will or Trust will receive this account.

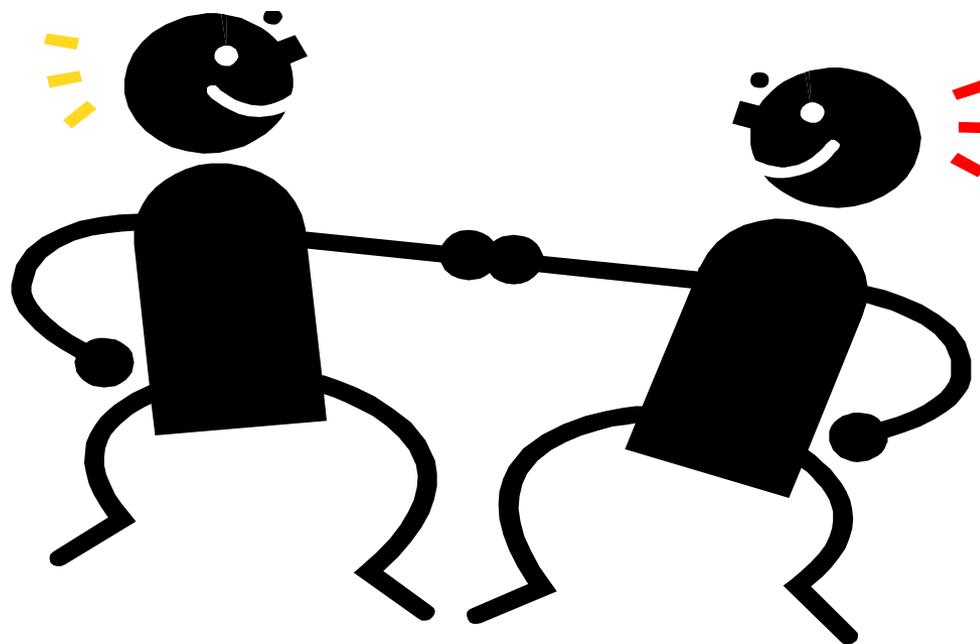
Now, let's think about the "Non-Probate Assets." These are the assets of a decedent that **do not pass** under the language of the decedent's Will or Revocable Trust.



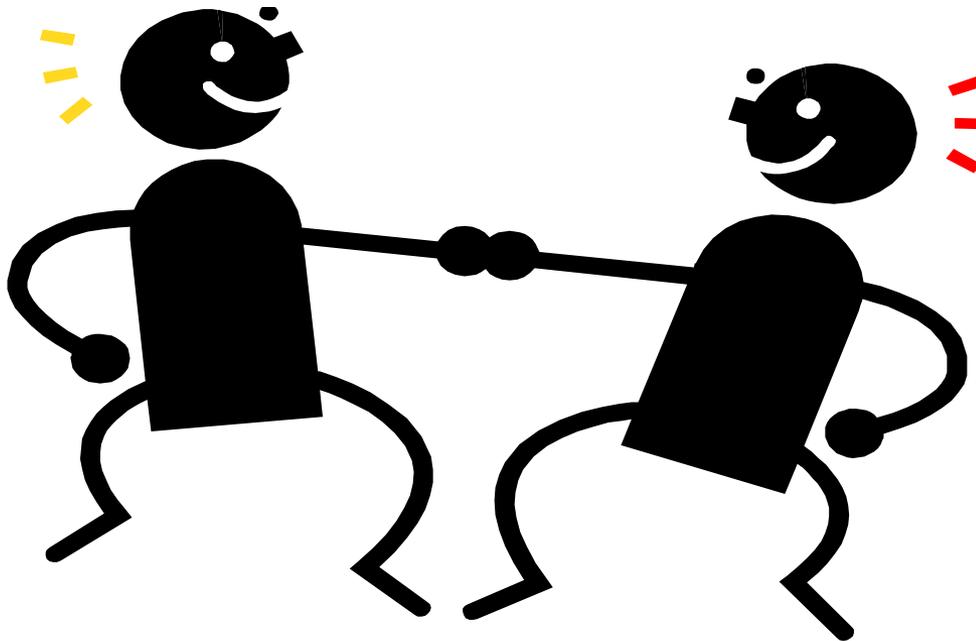
Instead, These Assets Pass Directly from the Custodian of the Asset to the Person Named on the Title or Contract Beneficiary Designation Document



These assets can pass to the same people who also benefit from the decedent's Will or Revocable Trust, but it's **how they are transferred** to these people that's different.



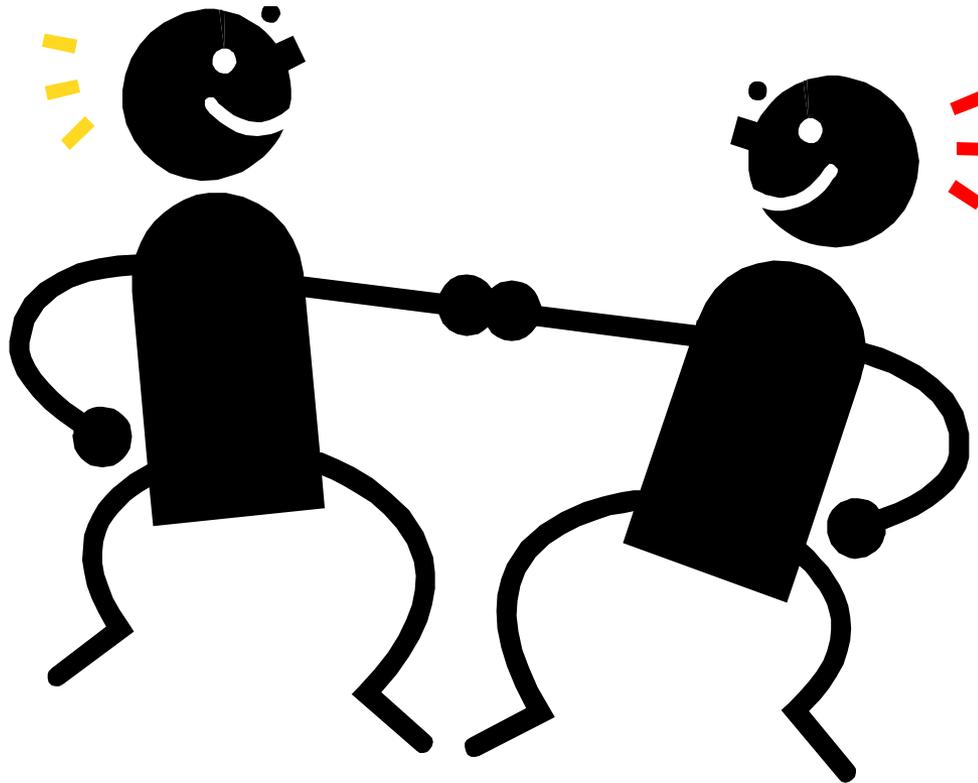
As you work on your Estate Plan, ask this question about each of your assets: “How will this asset pass?” By the language of my Will or Revocable Trust, or “outside” my Will or Trust because of how I set up the **asset title** or because I executed a **beneficiary-naming document**.



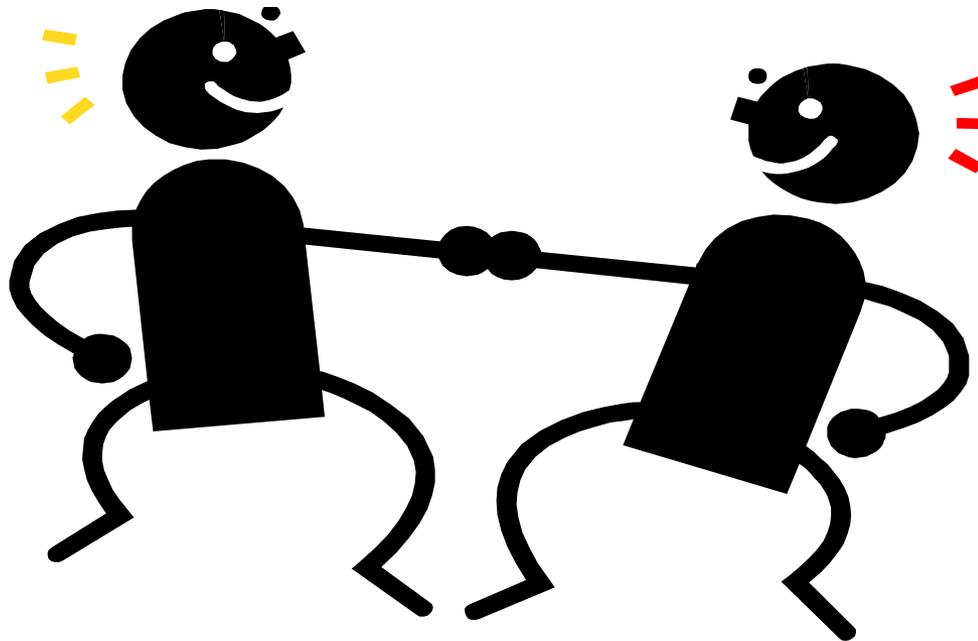
The “Non-Probate Assets” Here’s the List

- Joint Tenancy Assets (Wis. Stat. § 700.17(1))
- Survivorship Marital Property Assets
- Beneficiary Designation Assets
Payable to a Person or Entity
- POD or
- TOD Assets Payable to a Person or
Entity

I can't stress enough how important it is to understand this distinction!



Let's go through the "Non-Probate Assets" now!



#1 Joint Tenancy Assets

- Real or personal property assets
- 2 or more owners named on the title
- Conjunction “or” between their names
- “Right of Survivorship” characteristic
- Simultaneous 100% ownership by each owner
- “One signature” feature
- “Last person standing” feature

Joint Tenancy Assets – Here’s an example!

- Mary owns a savings account (or any asset, really) at UBS with her sister, Carol. Title to the account reads “Mary or Carol, as Joint Tenants.” Under the rules of joint tenancy, both Mary and Carol own 100% of the account at the same time. Yes, they do. Think about this. It means that either one of them can withdraw the entire amount of the account – and spend it - legally. You only want to set up joint tenancy ownership with a person you (truly) love and trust. You can’t get upset if they clean out the account because you both own 100% at the same time. It’s how you set things up. At death, no Will or Trust can transfer a joint tenancy asset. When the first owner passes, the account is owned (still) 100% by the survivor. Period. If there are 10 joint tenancy owners on an asset, which is not common but can occur, it truly is a “last person standing” rule. The last survivor owns the asset. That’s what we mean by right of survivorship. This right DOES NOT exist for Tenancy in Common assets that we talked about earlier.

Survivorship Marital Property Assets

- Think of this as “Joint Tenancy Between Spouses/Partners”
- Plus, a great tax advantage
- These assets qualify for a double basis tax adjustment at the death of the first spouse/partner



Survivorship Marital Property Basis Step-Up Example

Joint Tenancy

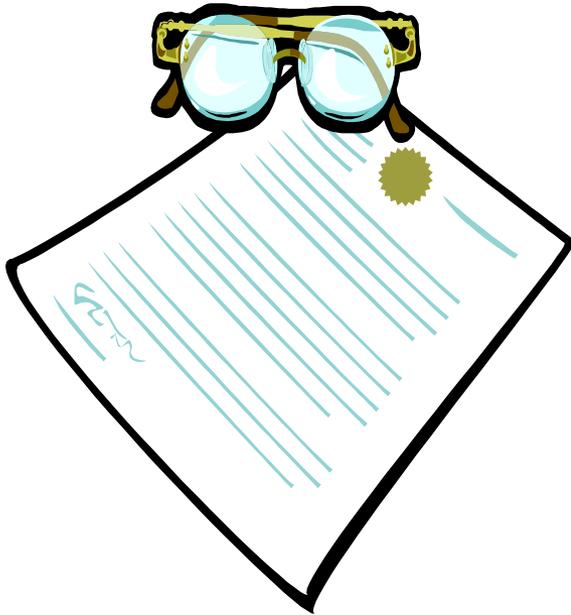
- 1978 Cottage: \$150,000
- Joint Tenancy Title
- H dies in 2021
- DOD Value: \$300,000
- W's Basis: \$75,000 (half of original purchase price) +
- H's Basis: \$150,000 (half of DOD value – H's half was stepped up) = \$225,000

Survivorship Marital Property

- 1978 Cottage: \$150,000
- Joint Tenancy Title
- 1986 Re-titled in SMP
- H dies in 2021
- DOD Value: 300,000
- W's Basis: \$300,000 (Both W and H halves received a step-up basis)

Beneficiary Designation Assets that Do Not Pass by Will or Revocable Trust

Life Insurance Payable to a Person or Charity



Retirement Plan Benefits Payable to a Person or Charity



POD and TOD Assets that Do Not Pass by Will or Revocable Trust

**Payable on Death to a
Named Person**



**Transfer on Death to a
Named Person**



Here's a Tip

- Keeping your beneficiary designations current is so important
- Beneficiaries can die before the person making the designation, leaving a void, meaning no one is named as a beneficiary for that asset
- In this case, the asset will usually pass, by default, to the owner's estate and pass by Will

The Next Slide is a Good Summary



How Assets Pass at Death

By Will or Revocable Trust

- ✓ Solely-Owned Assets (One Name on Title): Pass by Will or Trust
- ✓ Tenancy in Common Assets (2+ Names on Title, “And,” Each Owning a % or Fraction of Ownership): Pass by Will or Trust
- ✓ Beneficiary Designation Assets Payable to Your Estate: Pass by Will or Trust

NOT by Will or Rev Trust

- ✓ Joint Tenancy Assets (“A or B”): “Or,” Right of Survivorship, Pass by Title
- ✓ Survivorship Marital Property Assets (“Husband & Wife, as Survivorship Marital Property”): Right of Survivorship, Pass by Title
- ✓ POD or TOD Assets: Pass by Contract to Named Beneficiary
- ✓ Beneficiary Designation Assets Payable to a Person or Charity: Pass by Contract to Named Beneficiary

Should You Use Joint Tenancy to Avoid Probate? Consider

- All joint tenants own 100% of the asset at the same time
- One signature only to sell/change
- A “or” B (“or” C, etc.)
- “Last one standing takes all”
- It looks convenient and easy, but there are risks
- Risks: Divorce; Creditor Claims; Sales w/o Notice; Disability; Lack of Capacity
- Remember, the other owners own 100%, just like you



The Final Exam



Problem #1: Joint Tenancy

- Mark is a single adult resident of Madison, Wisconsin.
- Mark owns a hunting cabin in Antigo, Wisconsin with his brother, Bob, who is also an adult. The deed to the cottage reads, “Mark or Bob, as joint tenants.”
- Mark has prepared a Will. His Will leaves all of his assets to his adult daughter, Carmine.
- At Mark’s death, who gets the hunting cabin?

#2: Survivorship Marital Property

- Larry and Carol are adult residents of Madison, Wisconsin.
- They own their house, purchased in 1992, jointly. The deed to their house reads, “Larry and Carol, husband and wife, as survivorship marital property.”
- Both Larry and Carol have made Wills. Each has left all of their assets to the other. At the death of the second, any remaining assets go equally to their two children.
- At Larry’s death, Carol will become the owner of the house. Why is this?

#3: Contract Beneficiaries

- Julie is a single adult resident of Madison, Wisconsin.
- She has a retirement plan through her employer. She filled out the beneficiary form to leave her retirement plan to "My children who survive me, in equal shares."
- Julie has made a Revocable Trust in which she leaves her assets equally to her three children. If any child predeceases her, their share will pass to their children to be shared equally.
- At Julie's death, if she is survived by two of her three children (one child having predeceased her, but leaving two grandchildren), who will receive the money in Julie's retirement plan? Why?

#4: Payable on Death (POD)

- Cory is a single adult resident of Madison, Wisconsin.
- He owns numerous U.S. Savings Bonds purchased over a period of many years. On each of the bonds, there is a statement which reads, “Payable on Death to _____.” The name of a grandchild is shown at the end of this statement on each bond.
- Cory has made a Will. His Will leaves his assets to his *alma mater*, the University of Wisconsin-Madison.
- At Cory’s death, who gets the savings bonds? Why?

#5: Beneficiary Dies First

- Last question: Woody is a single adult resident of Madison, Wisconsin.
- He owns a policy of life insurance in the amount of \$250,000. Many years ago, he designated, "My brother, Steven," as the beneficiary of this policy. Oops! Will never named a secondary (contingent) beneficiary.
- Steven died two years ago, and Woody never updated the beneficiary designation on this policy. Woody has made a Will leaving his assets to his children in equal shares.
- If Woody dies owning this policy of insurance, what happens to the \$250,000 of insurance?

Wills and Revocable Trusts

What's the difference?

Which should I choose?

Let's look at the components of each!

Payment of Debts

- Both Wills and Rev Trusts Provide for Payment of Debts at Death
 - Secured Debts v.
 - Unsecured Debts
 - This Clause Usually Pays **Unsecured Debts Only**



Specific Bequests

- Both Wills and Rev Trusts Can Make Gifts of Money or Property to Persons and Organizations
- EX: “I give my diamond engagement ring to my daughter, Mary Parker, provided she survives me by 30 days.”

Tangible Personal Property

- Both Wills and Rev Trusts can Make Gifts of Tangible Personal Property
- Generally, tangible personal property means “moveable goods” (things you can touch)
- Not Money, Real Estate or Accounts
- EX: Household Goods, Collectibles
- “Distribution by Memorandum” Option

Distribution of “Residue”

- Finally, both Wills and Revocable Trusts Distribute the Residue of the Decedent’s Estate (Will) or Trust
- This Comes After Unsecured Debts Have Been Paid
- Specific Bequests Distributed, and
- Tangible Personal Property Distributed
- Residue is what Remains to be Distributed
- Typically Given by % or Fraction
- Can be Given “Outright” or “In Trust”

Nomination of Guardians

- Are there any minors (under age 18) for whom you are a legal guardian?
- This is a “Nomination” NOT an “Appointment”
- Can Name an Individual or a Couple
- Can “Attach Strings”
- EX: “I nominate Ryan and Mary Parker as guardians, if they are married to each other at the time”
- This is done in a Will (not a Revocable Trust)

Appointing Your Personal Representative or Trustee

- This is the Person who Will Work with Your Attorney to Probate Your Will or With Your Family to Oversee Distribution of Your Trust
- Duties: Take Charge of Assets; Pay Bills; Pay Taxes; Distribute Estate or Trust
- Choose Wisely
- Need NOT be a Relative

Wills v. Revocable Trusts

- Trusts Can Expedite Estate Settlement
- Trusts are Private with No Court Involvement
- Probate Costs are Saved/Eliminated
- Trusts are Usually More Expensive than Wills to Prepare
- Wills are Less Expensive than Trusts to Prepare
- Estate Settlement Process is Supervised by the Court – Can be a Good Thing, if Needed
- Provides for Guardianship Where this is Needed

ESTATE “DEATH” TAXES

- Federal Estate Tax
- Current Tax Structure (11+M/Person)
- Basis Step-Up for Assets is Preserved
- **Gift Tax Exclusion 2021: 15,000/Person**
- Wisconsin Estate Tax: None in Wisconsin at this Time

Any Questions?

