



# *Estate Planning 101*



**Portland  
Community  
College**  
Foundation

# Overview

- Transfer of Property at Death
- Tax Considerations
- Planning for Incompetency
- Tax Efficient Charitable Planning



# Transfer of Property at Death

- What Property Must Go Through Probate?
- Who Is Entitled to Probate Property if There Is No Will?
- What a Will Can Do
- Revocable Living Trusts

# What Property Must Go Through Probate?

## Assets Controlled by Will (Probate)

Real Estate, Securities,  
Household Goods, Cash, Business Interests  
Held in Decedent's Name Alone

Undivided Interests in Property Without  
Rights of Survivorship



To Individual or Trust  
Beneficiaries as Provided  
in a Will

## Assets Not Controlled by Will (Nonprobate)

Joint Property  
with Rights of  
Survivorship  
or Owned TOD  
or POD



To Surviving  
Joint Tenants  
or Owner

Assets Owned  
by a Revocable  
Living Trust  
or Other Trust



To Individual  
or Trust  
Beneficiaries  
as provided in  
Trust Document

Contractual  
Assets, such as  
Life Insurance,  
Employee Death  
Benefits, IRAs



To Designated  
Beneficiaries



# Who Is Entitled to Probate Property if There Is No Will?

- If a person dies without a will, the state decides who will receive his or her probate property. This is known as “intestate succession.”
- In Oregon, the surviving spouse will receive all of the decedent’s estate unless he or she had children for which the surviving spouse is not the parent. In that case, the surviving spouse and those children are each entitled to half of the decedent’s estate.
- If the decedent has no surviving spouse, the decedent’s children (or descendants of a deceased child) are entitled to all of the estate.
- If the decedent has no surviving spouse or descendants, his or her parents are entitled to the estate, or, if no parents survive, his or her siblings and their descendants.





**What a Will Can Do**

# What a Will Can Do

- A will is a legal document by which a person, called a **testator**, directs how his or her property will be distributed at death.
- The requirements for a valid will in Oregon are:
  - A person must be at least 18 years old or married.
  - Oregon law requires that a will be signed in the presence of two witnesses, who must sign the will in the presence of the testator and each other.
  - The witnesses must understand that a will is being signed, but they do not need to know its contents.



# What a Will Can Do *(cont'd)*

- Appoint a personal representative (executor) and waive bond.
- Set up a trust for beneficiaries, including minor or disabled children.
- Nominate guardians and conservators for children and a trustee for any assets in trust. Appointing a guardian for a child may also be done in a separate document.



# What a Will Can Do *(cont'd)*

- Wills specify who will receive the probate property, but do not control who will receive nonprobate property, such as life insurance, retirement benefits and joint property with rights of survivorship.
- If the decedent was married and lived in Oregon, his or her spouse is entitled to a minimum portion of the net estate regardless of what the will says, unless there is a valid premarital agreement.

# Revocable Living Trusts

- Assets held by the trustee of a trust are administered and distributed according to the terms of the trust, and do not need to pass through the probate process.
  - Purposes of Revocable Living Trust
    - Will Substitute
    - Asset Management Vehicle
    - Probate Avoidance
    - Assurance of Privacy
    - Does Not Save Estate Taxes
- Still need a will (“pourover”).



# How to Choose Between a Will and a Revocable Living Trust

- When a Revocable Living Trust Is Best
  - Real Property in Other Jurisdictions
  - Age; Illness
  - Management (organization and cleanup)
  - Privacy
- When a Will Is Best
  - Youth and Good Health
  - Changing Assets (harder to keep assets in the trust)
  - Disorganized (harder to put or keep assets in the trust)





# Planning for Incompetency

# Planning for Incompetency

- Durable General Powers of Attorney
  - Principal (person signing the power) designates one or more persons (each, an “agent”) to handle finances when principal requests help or while principal is incompetent or otherwise unable to act.
  - Most clients are able to avoid having a court-supervised conservatorship for their assets.
  - Allows for tax planning in the event of incapacity.
  - Power of attorney ceases to be valid when principal dies.



# Planning for Incompetency *(cont'd)*

- Advance Directive
  - An Oregon statutory form that combines the former Health Care Power of Attorney and Living Will documents.
  - Allows client to designate an agent to make health care decisions if the client is unable to do so.
  - Enables the client to make advance end of life instructions in specific situations.
  - May enable client to avoid a guardianship.
- Washington Health Care Power of Attorney and Health Care Directive can accomplish the same objectives.
- POLST – limited cases, working with attending physician.





# Federal Gift and Estate Tax System

# Federal Gift and Estate Tax System

- Basic Structure
  - Federal Estate Tax
    - Escalating Exemption Amounts (\$11,700,000 exemption in 2021)
    - Unlimited Marital Deduction
    - Unlimited Charitable Deduction
    - Sunset Provision Causes Reduction in 2026
  - Federal Gift Tax
    - Exemption Linked to Estate Tax
    - \$15,000 Annual Exclusion per Person per Donee
    - Unlimited Exclusion for Tuition and Medical Expenses (if paid to provider)



# Federal Gift and Estate Tax System *(cont'd)*

- Basic Structure *(cont'd)*
  - Generation-Skipping Transfer Tax
  - Estate and Trust Income Tax, known collectively as the “fiduciary income tax”
  - State Estate Tax
    - \$1,000,000 Exemption in Oregon
    - \$2,193,000 Exemption in Washington



# Federal Gift and Estate Tax System *(cont'd)*

- Estate Tax
  - Includes All Assets (wherever located)
  - Exemption Linked to Lifetime Gifts – Federal Only
  - Deductible
    - Administration Expenses
    - Funeral Expenses
    - All Debts Owed by Decedent
    - Value of Property Given to Charity at Death
    - Value of Property Qualifying for the Marital Deduction



# Charitable Giving



# Charitable Giving

- Tax Benefits
  - Estate, Gift, and Income Tax Benefits
  - Differences between Lifetime Gifts and Gifts At Death
  - Split-Interest Gifts
    - Charitable Remainder Trusts (“CRTs”)
    - Gift Annuities
    - Remainder Interest in Residence
  - Special Considerations for Retirement Accounts
    - Qualified Charitable Distributions
    - Income Tax Consequences to Beneficiaries





# Bequests and Bequest-like Gifts:

## Doing Good Through Charitable Giving at Death

- Unrestricted use: "I give [all of (or a specific percentage of) the residue and remainder of my estate] **OR** [(the sum of \$\_\_\_\_\_) **OR** (the following described property: \_\_\_\_\_)] to the Portland Community College Foundation, a non-profit corporation of the State of Oregon, to be used to further the purposes of Portland Community College as the Board of Trustees of said Foundation in their discretion may deem appropriate."
- Bequests should contain exact name of charity. Address of charity – at least city and state. Possibly tax identification number of charity.
- Beware of restricted bequests:
  - Can the charity honor the purpose?
  - Is it something that needs doing?
  - Difficult to make future changes, even with changes circumstances.
- Other Bequest-like Gifts
  - POD and TOD designations
  - Checking, savings and brokerage accounts
  - Real Property – TOD deeds – since 2012 in Oregon
  - Retirement Accounts and Life Insurance



# Charitable Gift Annuities

- Contract – generally two pages long
  - No attorney involvement needed
  - Backed by every stick of furniture in your organization
- Age dependent
  - Generally the older the donor, the higher the payout rate
- Three types
  - Current
  - Deferred
  - Variable
- ACGA Rates
- One or two lives



# Charitable Remainder Trusts

- **Two flavors** – CRAT and CRUT (with several variations)
- Settlor (Trustor), Trustee (self, bank or fiduciary, charity) Beneficiary (income and residuary)
- Lives or Term of Years (up to 20)
- A number of beneficiaries possible depending on many factors
- Rates 5%-50% (dangers of setting rate too high)
- IRS tests for viability of trust and charitable intent
- Disposition of highly appreciated property with mitigation of capital gains
- Income source for surviving spouse or beneficiary who cannot manage large sums of money
- Planning for successive generations
- Removing assets from estate
- Ongoing funding for charitable purpose while providing income for beneficiary





# Additional Questions?

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*Thank You*

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