Estate Planning 101

What You Need to Know About Estate Planning in Kansas and Missouri

Greater Kansas City Federal Executive Board Pre-Retirement Planning Seminar

Written and Presented by

Craig C. Reaves

Reaves Law Firm, P.C.

Kansas City, Missouri

Copyright 2020 - Craig C. Reaves

Introduction

We are going to talk about some of your favorite topics –

Death

Probate

Wills

Trusts

Taxes

Comas and dementia

Stopping life support

Or in other words

Estate Planning

A different perspective on Estate Planning

Like flying in a helicopter over your neighborhood or work-place.

You would have a wider and broader view.

And see things and patterns you can’t see when you are on the ground.

You have three options

1

Do nothing

2

Choose a

Will

as your primary estate planning document

3

Choose a

Revocable Living Trust

as your primary document

No matter what option you choose, you need a Durable Power of Attorney

- Who can make decisions for you if you lose the ability to make them yourself?
- If no advance plan, requires guardianship
- Can avoid guardianship if sign DPA
  - Delegate decision making to someone else
- But can only sign DPA when you have capacity to make decisions
- Two Types:
  - Legal and financial
  - Health care
- Also consider Advance Directive, *i.e.*, stopping life support; or not
  - Separate document, or
  - Part of Health Care DPA

What is your “Estate”?

Everything you own!

Let’s add it up now…

Real estate	$ _____
Bank assets	$ _____
Investment assets	$ _____
Retirement assets	$ _____
Life Insurance	$ _____
Everything else	$ _____
TOTAL	$ _____

But First, Two Questions

1. Do you think you will never die?
2. When you die, do you think you can you take all your possessions with you?

That's what Estate Planning is – planning where your things should go when you are no longer living and you don't need them anymore

What if you don’t want to think about this?

I’m Dead ! Where Does It Go?

- Pretend you’re not alive at this moment, so everything is real and known to you.
- Decide where you want your assets to go
  - What if they don’t survive you?
  - If multiple people, divide equally? Or not?
- Decide HOW each person receives the assets:
  - Only 2 choices: Outright or in Trust
- Two reasons to consider a trust
  - To protect FROM the beneficiary
  - To protect FOR the beneficiary
- When done, sign documents & forget about it.
- But review at least every 5 years or so.

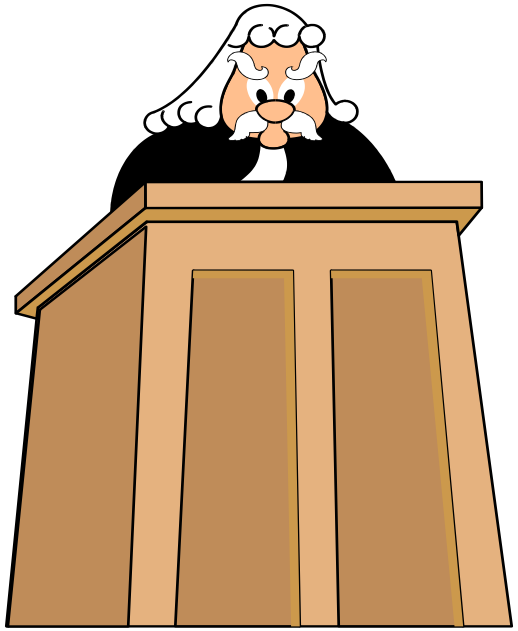
Let’s Play a Game!

This Photo by Unknown Author is licensed under CC BY-SA

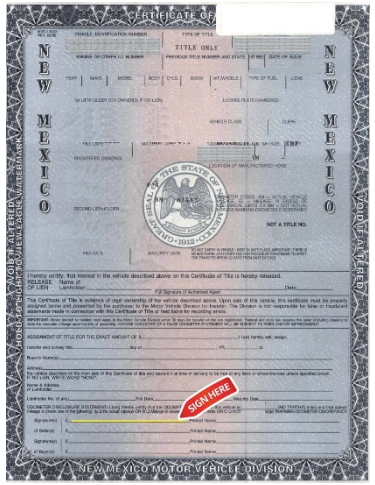
Now that we know WHERE your assets are going, the next question is HOW do your assets get from you to someone else?

To answer this, we need
to first talk about

PROBATE



Consider this – You want to buy a car



- Sam is sole owner of his car, and you want to buy it.
- Normal process to transfer ownership of the car
  - You give money to Sam
  - Sam signs back of car title and gives it to you, along with the keys

- What if Sam dies before he signs the car title?
  - How does title to the car transfer to you now?

The Situation

- The normal method of transferring ownership of property won't work – Sam isn't alive to sign the car title.
- The only entity in the U.S. that can change the way normal laws work in an individual situation is a court.
- So, someone has to go to court to ask for authority to sell Sam's car to you.
- When this happens because a person has died, the appropriate court is the Probate Court.

Probate

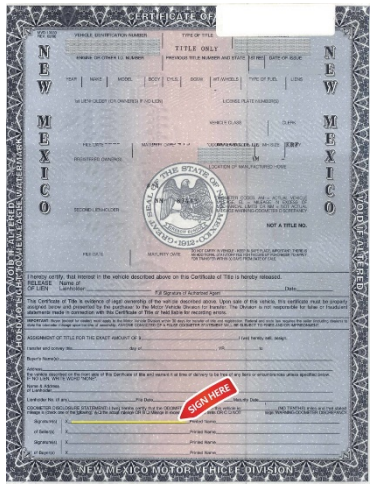
1. Process of going to court for legal authority to collect the property of a deceased person, sell their assets, pay bills, file tax returns, pay taxes, and distribute the remaining property.
2. Title of person in charge of process:

   Executor, Executrix, Administrator, Administratrix; or Personal Representative
3. Disadvantages
   - Formal and legal process, statutory steps must be followed, many deadlines
   - Costs – typically between 5% and 10% of property passing through probate
   - Public records; others can access information
   - Delay – generally will take 1 to 1½ years

Probate

4. Advantages
   - Court oversight; audit at the end
   - Very difficult to steal assets from a probate estate
   - Job will be completed; Judge will remove Executor if needed
   - When family disagreements are anticipated
   - When debts exceed value of assets (bankrupt estate)
   - Terminates all potential claims not filed in “claims period”
     - Claims period is 4 months in Kansas, 6 months in Missouri

Back to the car you want to buy



- What happens if Sam owned the car jointly with his wife and she survives him?
- Does she still need to go to the probate court for authority to transfer the car?
  - NO! She owns the car, so she can sell it to Sam without going to court
- Moral of Sam's Story - Probate is a choice – a person can choose to utilize the probate process to transfer assets after the person's death, or can plan to avoid the probate process

How to avoid Probate

It depends on how property is owned (titled)

1. Sole name – No beneficiary → Probate → Will or Statutes

---

2. Joint with right of survivorship
3. Beneficiary designations (Life Ins, Retirement Accounts, POD, TOD, etc.)
4. Owned by a Living Trust

→ No Probate

Wills

1. What is a Will?

- A written list of instructions directing the probate court what to do with property passing through probate
- Does not have any effect on property not passing through probate

2. What happens if don’t have a Will?

- Look to Intestacy Laws of the State where the decedent was a resident when died
- Heirs at law – Ex: half to spouse; half = to children

Let's now turn to Trusts

Only two options for distributing property at death

(this is a review of prior slide)

1. **Give outright** – beneficiary receives property in one lump sum with no restrictions, or
2. **Put in trust** – give to someone other than the beneficiary to hold in trust for the benefit of the beneficiary

How to decide between outright or trust:

1. Is there a need to protect the assets FROM the beneficiary?
2. Is there a need to protect the assets FOR the beneficiary?

No one establishes a trust for someone else unless there is a reason

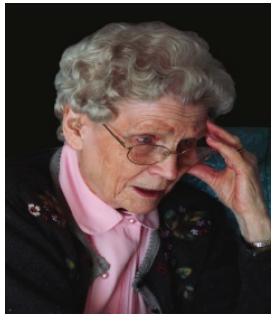
There are many types of trusts

Like a motor vehicle, there are many options

Choose one based on why it is needed

But all have 2 things in common: motor, and it moves

Trusts – The Basics



Five Requirements of Every Trust

1. **Settlor** – (Grantor/Trustor)
2. **Trustee**
3. **Beneficiary**
4. **Written Instrument**
5. **Principal / Corpus / Res**

Only Two Types of Trusts –
Or said differently,
Only Two Times a Trust Can be Established

1. **At Settlor's Death** – Testamentary Trust (last will and testament)

   or

2. **During Settlor's Lifetime** – Living Trust

Or said differently (again),
Only Two Written Documents that are
- Enforceable after Death and
- Can Establish a Trust

1. **A Will** – Testamentary Trust (last will and testament)

   or

2. **A Living Trust**
   A. Revocable
   B. Irrevocable

Revocable Living Trust –

Common Design

- Established by Settlor, who is also the Trustee & Beneficiary
- Settlor reserves right to amend or revoke the trust
- Upon death of Settlor, trust becomes irrevocable

Advantages

- Avoids probate upon Settlor's death
- Avoids conservatorship if Settlor is incapacitated
- Receptacle for all assets upon death of Settlor

Disadvantages

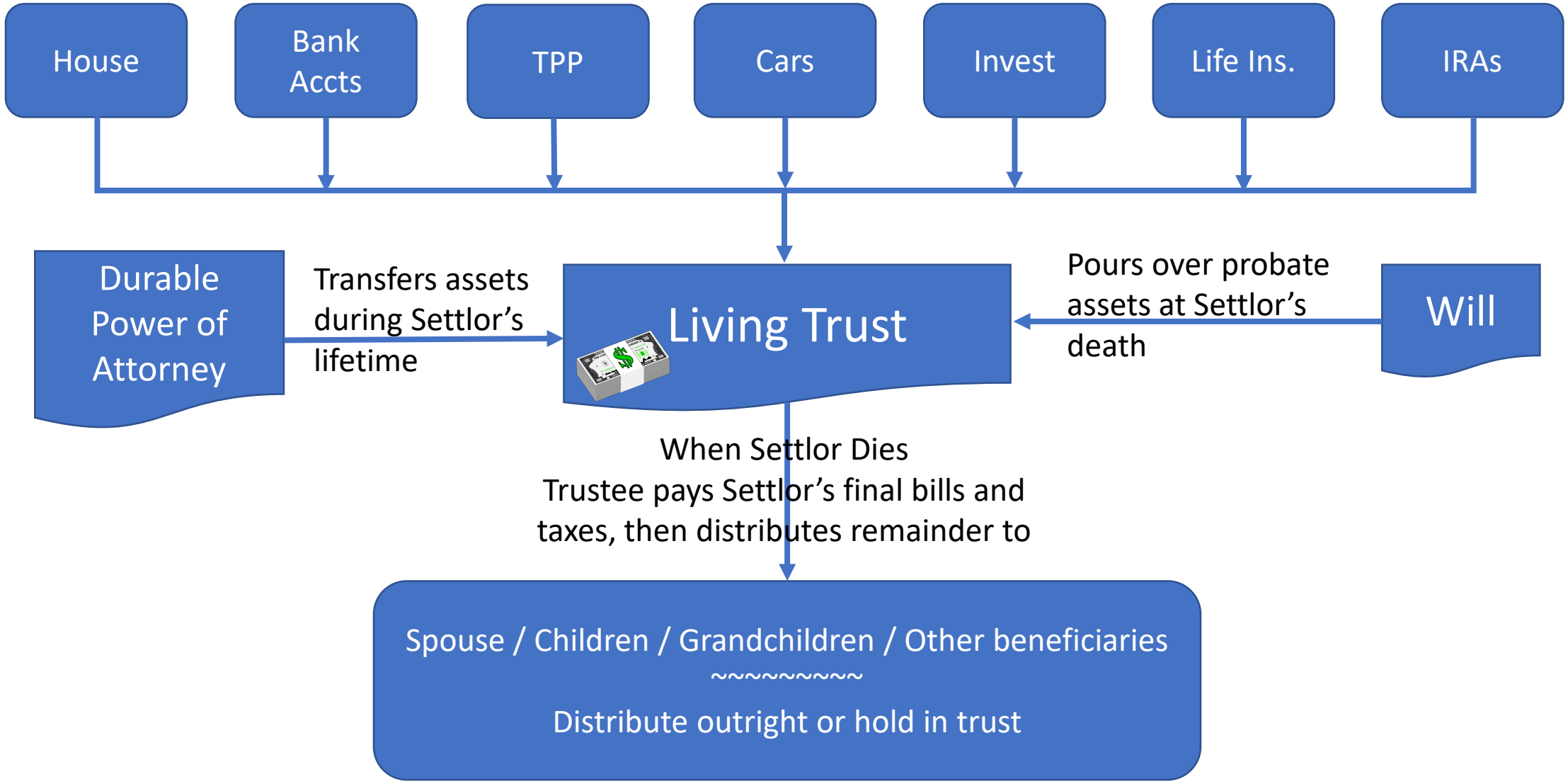
- Costs more to establish than a Will
- Must retitle all assets and change beneficiary designation to the Living Trust

Revocable Living Trust –

Other Thoughts

- Settlor still needs a Will. Plan is not to use; it is in case any assets are left in the Settlor's sole name and get caught in probate. Referred to as a "pour over Will."
- Settlor's assets should be retitled in Trust's name or made payable to the Trust at death. Pay on Death = bank accounts; Transfer on Death = all other assets; beneficiary designations for life insurance and retirement account.
- No impact on taxes
  - Because can revoke, use Settlor's SSN during life; use personal 1040
  - Need new tax ID number upon Settlor's death; file 1041
  - All trust assets included in Settlor's estate for estate tax purposes

Revocable Trust Estate Plan Looks Like This



What about Estate Taxes?

For most of us, Estate Taxes are not an issue

Currently no State estate tax in Kansas or Missouri

Federal Estate Federal Tax is $11,580,000 per PERSON (Double for a married couple)
And growing by inflation.

Scheduled to cut in half in 2025.
But Keep in mind, Congress can always change this

What we have learned–

A Will or Living Trust are the only 2 ways to leave a written document that controls where assets go after death, can plan for contingent beneficiaries, and to establish a trust for a beneficiary.

- Both work fine. Which one is chosen depends on whether a person wants to use the probate system or avoid it.
- If using Living Trust – all Settlor's assets must be either transferred to or made payable upon death to the Living Trust.
- If using a Will – all assets must be left in Testator's name or payable upon death to estate.

What we have learned–

- Only 2 ways to establish a trust:
  - Upon death – use a Will (Testamentary Trust)
  - During life – use Living Trust. Can be Revocable or Irrevocable
- A Will can be used to back up any non-probate plan, whether utilizing Living Trust or Joint ownership and/or beneficiary designations

What we have learned–

Don’t Forget -

- Durable Powers of Attorney
  - Without them, if you become incapacitated, someone must go to court and have guardian and conservator appointed for you
  - Financial and Health Care
- Advance Directive
  - When to stop life support,
  - Or not

Estate Planning 101

What You Need to Know About Estate Planning in Kansas and Missouri

Greater Kansas City Federal Executive Board Pre-Retirement Planning Seminar

Written and Presented by

Craig C. Reaves

Reaves Law Firm, P.C.

Kansas City, Missouri

Copyright 2020 - Craig C. Reaves