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Estate Planning

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Presented by Gary B. Wells
for the
Robson Ranch Happy Tails Dog Club

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Topics Covered

- Prerequisite
- Objectives
- Documents
- Using Estate Planning Documents to Achieve Objectives Regarding Your Pets

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Prerequisite

- Estate Planning documents must be completed while mentally competent (otherwise a guardianship of the person and estate is required)

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Estate Planning Objectives

- Who will make critical financial and health care decisions on incapacity
- Guidance for health care decisions
- How will my property be managed on incapacity
- How will your property be used upon your death (own, benefit, and manage)
- Avoid Probate
- Avoid Estate Taxes
- Keep It Simple

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Estate Planning Objectives: Avoiding Probate

Only your “estate” is probated.

Goal: keep assets out of your “estate”

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Estate Planning Objectives: Avoiding Probate

- Use of beneficiary and pay-on-death designations (bypass estate on death)
- Revocable Living Trusts (removed from estate prior to death)

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Estate Planning Objectives: Avoiding Probate

Beneficiary and pay-on-death designations:

- Retirement Plans
- Bank Accounts
- Real Property
- Automobiles

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Estate Planning Documents

- Will
- Revocable Living Trust
- Powers of Attorney (Financial/Medical Decisions)
- Directive to Physicians and Family
- HIPAA Release
- Out-of-Hospital Do Not Resuscitate Order
- Declaration of Guardian
- Deeds

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Wills

- Only applicable upon your death
- Intestate: If you die without a Will, your property will be distributed according to the intestate laws of your state.

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Wills

- Designate beneficiaries of your property
- Designate guardianship for your children
- Disadvantages:
 - Must be probated (time consuming; expensive)
 - Multiple probate actions if property in another state
 - Wills become public record when probated

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Revocable Living Trust

Revocable Living Trusts apply:

- While you are alive and have mental capacity
- During the time you may lose mental capacity
- After your death

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Trust Advantages

- Assets in trust avoid probate
- Allows for property management on incapacity, not just death (helps avoid need for a guardianship)
- Allows for controlled distributions for children beyond the age of 18
- Does not become a public record, but remains private
- Handles real estate or other property in another state if transferred into the trust
- Business ownership with LLC
- Mixed-Family Situations (children from previous relationship)
- May provide estate tax advantages

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Trust Disadvantages

- Increased attorney fees to create
- Because it only provides management of assets held in the trust, the assets must be held in the trust
- Does not protect assets from creditors (need an irrevocable trust for that)

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Revocable Living Trusts: Parties Involved

Settlors create a trust to be managed by the trustees for the benefit of the beneficiaries

- Settlers/Grantors: provide assets
- Trustees: manage assets
- Beneficiaries: persons who ultimately benefits from the trust assets

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Power of Attorney for Financial Decisions

- Name a person (“agent”) to manage your financial affairs
- Can take effect immediately or only on incapacity

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Power of Attorney for Financial Decisions

Incapacity: physician certifies in writing that, based on the physician’s medical examination, you are physically or mentally incapable of managing your financial affairs.

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Power of Attorney for Financial Decisions

- Real property
- Tangible personal property
Stocks and bonds
- Commodities and options
- Banking and other financial institutions
- Business operations
- Insurance and annuities
- Estate, trust, and other beneficiary transactions
- Claims and litigation
- Personal and family maintenance
- Government Benefits
- Retirement plans
- Tax matters
- Digital assets & electronic communications

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Power of Attorney for Medical Decisions

Appoints a person (“agent”) to make health care decisions for you if you become unable to make them for yourself

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Directive to Physicians and Family

- Sometimes referred to as a “Living Will”
- Applies only if suffering from a “Terminable” or “Irreversible Condition”

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Directive to Physicians and Family

“Terminable Condition: incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life–sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced.

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Directive to Physicians and Family

“Irreversible Condition” means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person’s own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer’s dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die.

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Directive to Physicians and Family

- Withhold cardiopulmonary resuscitation?
- Withhold mechanical respiration?
- Withhold tube feeding?
- Withhold saline solutions (used to prevent death from dehydration)?
- Treat with pain management medication even though this medication may lead to permanent damage, addiction, or even hasten the moment of, but not intentionally cause, death?
- Maintain in what is known as a vegetative state?
- Live out last days at home rather than in a hospital (if it does not jeopardize the chance of recovery to a meaningful and sentient life and does not impose an undue burden on family)

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HIPAA Release

Allows medical providers to share your medical records and discuss medical issues with those you list in the release, who are generally those on your medical power of attorney. The medical power of attorney is governed by Texas law and the HIPAA release is governed under federal privacy laws.

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Out-of-Hospital Do Not Resuscitate Order

Instructions not to perform emergency procedures to restart heart or breathing

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Declaration of Guardian

Specify preferences of a guardian should the court need to appoint one

May be guardian of the person,
of the estate, or
of the person and the estate

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Deeds

- Joint Tenancy with Survivorship Rights
- Transfer on Death Deed: transfers interest in real property to one or more designated beneficiaries on death
- Lady Bird Deed: transfers interest in property, but retain a life estate with the ability to occupy and use the property for lifetime

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Benefits of Transfer on Death and Lady Bird Deeds

- Avoid need for probate
- Help prevent Medicaid estate recovery
- Neither triggers 5-year look-back period penalty for Medicaid benefits

However, not protected from creditors

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Pets: Initial Decisions

Most complicated decisions are not legal ones:

- Who will take care of my pets?
- How will the person be able to afford caring for my pets?
- How do I ensure the person will take care of my pets?

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Pets: Wills?

- Pets are considered property and may be bequeathed to another person by a Will
- Money or other assets may be left with the person/entity caring for your pets
- May name person/entity, or allow your executor to select
- Will require time for probate court proceedings
- Once probate concludes, neither executor nor court has any responsibility to follow up. Caretaker may give away pets and is not obligated to use any money received for your pets.
- Alt.: A testamentary trust may be established to manage the assets for the pets, but probate still required

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Pets: Revocable Living Trust

- Creates a legal duty to carry out your instructions.
- You are the trustee of the trust until your death or incapacity.
- You will need to fund the trust;
 - if minimal, your Will, regular trust, or asset with a beneficiary/pay-on-death must fund your pet trust on your death
- Trust should name persons responsible on your death or incapacity:
 - Trustee: Person/Entity managing the trust money and providing for the beneficiary
 - Caregiver: Person/Entity physically caring for your pets (may be the trustee, but creates conflicts, or left to discretion of the trustee)
 - Trust enforcer: Trust provisions “may be enforced by a person appointed in the terms of the trust” (Pets, as beneficiaries, cannot sue the trustee.)

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Pets: Trusts

- Provisions taking place after your death are not delayed by probate.
- Trustee can be compensated for managing the trust and ensure that the person caring for your pets is also compensated and doing their job.
- Trust can provide instructions and preferences for the care of you pet (food, how often walked, inspections, etc.)
 - However, if too onerous, trustee and/or beneficiary may refuse to serve
- Trust property must be used for stated purpose unless court determines the value of the property exceeds the amount required for the intended use

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Humane Society or Rescue Group

Responsible to place animals in a suitable home with appropriate caregivers; Executor or trustee should be authorized to inspect the home or facility before any funds are distributed

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Wallet Alert Card

- I have ____ pets in my home.
- Name and type of each pet
- Name and contact information of emergency pet caregiver
- Secondary person if first contact not available