Learn About Law:

Estate Planning Explained

Wills & Trusts, Elder Law, Estate Tax, Probate and Special Needs Planning

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Disclaimer: Nothing in this book is intended to create or imply an attorney-client relationship between the author and the reader. Nor is anything in this book intended as legal advice to be relied upon by the reader. Your estate planning decisions are highly dependent on your individual circumstances, while this book may educate you regarding the basic principles of estate planning, any estate planning decisions should be made only after retaining and consulting with your attorney.

Preface:

Before I began practicing law in 2007, my understanding of estate planning was basically that you should have a will to provide for the distribution of your assets to loved ones when you pass. While this is true, there is much more to estate planning than simply putting a will in place.

Having a good estate plan is every bit as important as having a financial plan or a family budget. A good estate plan can save your family thousands of dollars in probate expenses, attorney fees for guardianship proceedings if you become mentally incompetent, and estate tax.

Most people have the same understanding of estate planning as I did before I started practicing. Unless you have spoken with an attorney or a financial advisor, there is typically very little occasion to educate yourself on the topic. The purpose of this book is to allow you to be an informed consumer so that when you meet with an estate planning attorney, you can be your own advocate and will have a fundamental understanding of the goals you are trying to accomplish for your loved ones and the tools that you can use to achieve those goals.

You should be aware that estate planning law differs from state to state. This book is written from the perspective of Illinois law. If you live outside of Illinois many of the same principles will apply, and your state's laws are likely to be similar. Regardless of which state you live in, you should not make any decisions about your estate plan before consulting a local attorney.

If you speak to five different estate planning attorneys, you will likely receive five vastly different price quotes for your estate plan as well as five different approaches. Educating yourself about estate planning ahead of time will prevent you from spending more than you need to on documents that may not be appropriate for your needs.

In the past several years more and more people have been putting in place "do it yourself" estate plans by purchasing online forms. I strongly recommend meeting with an attorney rather than downloading forms online. If you have the right attorney, the costs will be similar to self-help methods, and you will be much less likely to make a serious error by failing to choose the most advantageous estate planning tools for your goals, failing to have the document reviewed for substantive and legal accuracy, or failing to follow up on the necessary steps to make the documents work as they are intended. However, for readers who are dead-set on doing an online estate plan, this book should at least provide some foundational knowledge to reduce the chance of serious strategic errors.

At the outset, I would like to dispel two common myths about estate planning. First, estate planning is not only for the wealthy. A revocable living trust is generally the most appropriate estate planning vehicle for anyone who owns their own home or condo, even if there is a mortgage on the property. Second, estate planning does not have to be expensive. Many attorneys do charge staggering rates for estate planning work, but if you shop around, you will be able to find an attorney with equal skill and expertise at rates that are surprisingly affordable.

So, before we start, a little bit about me. As I said, I have been practicing law since 2007. I have owned my own firm, O'Flaherty Law, in DuPage County, Illinois since 2011. At our firm, we have multiple attorneys practicing nearly every area of law. However, we focus on giving as many people as possible access to affordable legal services, exceptional client care, and down-to-earth advice and education. This is why we adopted the slogan "Your Community Law Firm."

If you would like a free consultation or if you simply have questions you would like answered, you can reach me at:

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I began my legal blog Learn About Law concurrently with founding my firm. For the past 5 years, I have written articles on nearly every area of law. This book is an adaptation and compilation of the many articles I have written over the years relating to estate planning, elder law, special needs planning, and estate administration.

This year we launched our Learn About Law Podcast and Videoblog. If you find this book helpful, please feel free to take advantage of our other Learn About Law Resources:

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You may also be interested in our weekly podcast and videoblog for business owners, SeizeYourBusiness.com, in which I interview entrepreneurs to learn the secrets to their success.

Thank you so much for taking the time to read this book. I truly hope you find it helpful. If so, positive reviews are a big help to us and are always appreciated. Happy reading!

Table of Contents

Introduction to Estate Planning

What is Estate Planning?

A lot of my friends either are starting to have children, or are thinking about having children. As you might expect, this means that I am fielding a lot of questions about wills and trusts. These conversations inevitably start with wills, because this is the estate planning instrument that most people are familiar with (e.g. "if you don't attend University of Iowa, I am removing you from my will"). However, wills are just one component of a healthy estate plan–and not even the most important component.

In following chapters I will explain in detail the different components of a proper estate plan. In this chapter, I will first explain the importance of having an estate plan. I will then briefly explain why I recommend a Revocable Living Trust as the primary instrument for most estate plans, as opposed to a will.

Your estate plan is an investment. A proper estate plan will ensure:

- that your assets are allocated according to your desires;
- that your heirs (and/or spouse) will have immediate access to the assets you leave for them (as opposed to having to wait as long as a year for the resolution of probate on your estate);
- that a large portion of your estate will not be expended on probate attorney fees;
- that your assets will avoid both federal and state estate taxes to the greatest extent possible;
- that if you become incapacitated, your partner (or the individual of your choice) will have the ability to immediately make financial decisions on your behalf and for your benefit without the need for a lengthy and expensive guardianship proceeding;
- that if you become incapacitated, your desires as to medical treatment will either be made clear to your doctor in advance, or placed within the authority of the individual of your choice (without the need for a guardianship proceeding);
- that the guardian(s) of your choice will be named for your children;
- that, should both you and your partner pass, a person you trust will be named to administer your assets for the benefit of your children until they reach the age of your choosing;

- that, as time passes, disbursements from your estate are made to the estate's beneficiaries according to your wishes.

When most people think of an estate plan, they think: "I have kids now–I should probably have a will." However, the estate plan system we generally recommend focuses on an instrument called a Revocable Living Trust instead of a will. A Revocable Living Trust is preferable to a will for many reasons.

First, if a will is the primary instrument of your estate plan, your estate must go through probate before your heirs have access to your estate's assets. Probate is a legal proceeding for the purpose of ensuring that an estate's assets are distributed correctly. It takes from six months to a year. In probate, the estate's executor typically hires an attorney to handle the probate case, which will cost your estate (and your heirs) thousands of dollars. Unlike a will, a proper Revocable Living Trust will avoid probate and the associated attorney fees, providing your heirs immediate access to the assets to which they are entitled.

Second, a Revocable Living Trust allows you to have greater control over how your assets are handled after your death, allowing you to ensure that your heirs are properly cared for. A Revocable Living Trust also allows you to maintain complete control over your assets during your lifetime.

Third, a Revocable Living Trust can be used to minimize taxes on your estate.

That being said, the optimal estate plan can and should vary from individual to individual, and I highly recommend meeting with an attorney to discuss your individual goals.

Wills vs. Trusts

Below is a breakdown of what you need to know about the features of wills and trusts.

- ***Consequences of Intestacy (No Estate Plan)***
  - **Probate:** Probate case must be opened
    - After opening the probate case with the court, the personal representative takes the following steps:
      - inventory and collect the decedent's property
      - pay any debts and taxes
      - distribute the remaining property to the beneficiaries
    - Estate is diminished by attorney fees
  - Heirs do not have immediate access to assets
  - **Bond:** Executor must pay surety bond to probate court
  - **Distribution:** Assets are distributed according to state intestacy laws
- ***Advantages of a Will over Intestacy***
  - **Waiver of Bond:** Although estate will still go through probate, the executor's surety bond can be waived
  - **Distribution:** Assets are distributed according to decedent's wishes
  - **Guardianship:** Ability to name a guardian for minor children
- ***Advantages of a Revocable Trust over a Will***
  - **Probate Avoidance:** Any assets transferred to a trust during your lifetime will avoid probate at death
  - Diminished attorney Fees
  - Immediate access to assets
  - No need to appear in court or obtain court approval for payment of debts, distribution, and termination of the trusts
  - **Disability Planning:** A revocable trust allows a trustee to manage a disabled client's trust assets without the need to resort to guardianship arrangements, which can be expensive

- **Confidentiality:** Unlike a will, a living trust is not filed with the probate court when the client dies. Therefore, the details of the client's estate plan do not become a part of the public record.
- **Protection from Renunciation:** Under Illinois law, a surviving spouse may renounce a will and elect to take a third of the estate (half if there is no descendant after payment of creditors). Trust assets are not included in the estate for this purposes.
- **Financial Control:** By properly drafting your trust, you can ensure that the assets in question are distributed in a financially responsible manner to your heirs.

- ***Note: Wills DO have some advantages over trusts***
  - **Ability to Select a Fiscal Year:** The estate can select a fiscal year, while the trust must be a calendar-year taxpayer.
  - **Shortened Claims Period:** Probate shortens claims period from two years to six months – For professionals who have personal exposure for their work, probating may be desirable.

What Documents are in a Typical Estate Plan?

An estate plan for a married couple with assets below $2 million dollars will typically contain the following documents:

- **Joint Revocable Trust:** Primary estate plan document, which sets forth inheritance wishes, provides for disability, and establishes successor trusts for children.
- **Pour Over Will:** Safety net document, which provides that any assets not transferred to trust during lifetime will be dealt with according to the terms of the trust; also provides for guardianship of minor children.
- **Financial Power of Attorney:** Allows your spouse (and successor agents) to execute financial transactions on your behalf.
- **Health Care Power of Attorney:** Designates an individual to make medical decisions on your behalf in the event of incapacity.
- **Living Will:** States your wishes in the event that you are incapacitated and death is imminent except for delaying procedures.

The 8 Goals of a Good Estate Plan

The purpose of this chapter is to provide you with a road map of the typical goals of a good estate plan and the tools we use to accomplish each goal.

I have broken the Eight Goals into two groups.

The first group consists of four General Goals that apply to nearly every client. The second group consists of four Specialized Goals that may be appropriate depending on a client's individual circumstances.

The four General Goals and the tools that we use to accomplish them are:

1. Appointment of fiduciaries and distribution of assets;
Tools: Revocable Living Trust, Will, Healthcare Power of Attorney & Financial Power of Attorney

2. Probate avoidance upon death;
Tools: Revocable Living Trust

3. Guardianship avoidance upon mental incompetency;
Tools: Healthcare Power of Attorney & Financial Power of Attorney

4. End of Life Instruction.
Tools: Living Will

In addition to these four primary goals, clients in special circumstances may also seek to accomplish four particular goals that are specific to their circumstances. These four Specialized Goals are:

5. Estate tax avoidance;
Tools: Revocable Living AB Trusts, Irrevocable Life Insurance Trusts, Grantor Retained Annuity Trusts, Grantor Retained Income Trusts, Grantor Retained Unitrusts & Generation Skipping Trusts

6. Ensuring that a loved one with special needs is provided for without preventing him or her from receiving social security payments;
Tools: Third-party Supplemental Needs Trusts & Self-Settled Supplemental Needs Trusts

7. Protecting assets from creditors; and
Tools: Irrevocable Trusts, Family Limited Partnerships, LLCs & Corporations

8. Preventing assets from interfering with eligibility for Medicaid and transferring assets to loved ones at death free of Medicaid liens.
Tools: Irrevocable Trusts & Life Estate Deeds

Goal 1(A): Appointing Fiduciaries

A “fiduciary relationship” is an ethical or legal relationship of trust between two parties. Fiduciaries are responsible for managing some aspect of another individual’s affairs, and are held to a high standard of responsibility and care in the management of those affairs.

An important aspect of a good estate plan is appointing the right people to manage your affairs if you are unable to do so yourself. The typical fiduciary roles created by an estate plan are:

- Trustee;
- Executor;
- Guardian of Minor Children;
- Financial Agent via Power of Attorney;
- Healthcare Agent via Power of Attorney; and
- Guardian for a Mentally Incapacitated Adult.

Fiduciary relationships require a great amount of trust on the part of the person creating the estate plan. Although other loved ones will be able to challenge the actions of your named fiduciaries, this is a difficult process, usually requiring a court proceeding. It is therefore of utmost importance to carefully plan which trusted individuals will fill these roles.

1. Naming a Trustee For Your Trust

The trustee of a trust is the individual or corporation responsible for managing the assets of a trust for the benefit of the beneficiaries, within the constraints imposed by the language of the trust. Our married clients will often create joint revocable living trusts. In this scenario, so long as both clients are alive and mentally competent they are both the trustees and the beneficiaries of their trust, meaning that the clients’ only obligation as trustees is to manage the trust assets for their own benefit.

However, the clients will usually name one or more successor trustees who are empowered to act as trustee if both of the clients are unable to do so through either death or mental incompetence. The progression of trustee responsibility in this case looks like this:

Often, my clients will place age or other constraints that will limit their children’s ability to access trust assets without the consent of the trustee. Typically, clients will direct that their children can have unfettered access to 1/3 of the assets at age 21, 2/3 at age 25, and the entire pool of trust assets at age 30. Prior to that time, the trustee will have discretion to distribute the amounts that the children do not have unfettered access to, based on the trustee’s judgment with respect to the best interest of the child. For example, if a 22 year old trust beneficiary wants to cash out the trust fund to buy a Porsche, the trustee may deny that request, but the trustee may allow the child to cash out the trust fund to pay for college.

2. Naming an Executor

One of the goals of a good estate plan is to avoid probate. If this goal is accomplished, the trustee will be the individual responsible for distributing the estate assets to the heirs. However, if for some reason the estate is required to go through probate, the executor is the individual named in a will who is responsible for managing the probate estate. The duties of an executor are similar to that of a trustee, except that the executor must retain an attorney and work through the probate court to ensure that creditors and heirs are paid properly from the estate.

3. Naming a Guardian Of Minor Children

For clients with minor children, naming a guardian is often the most important aspect of an estate plan. The guardian, who is named in the will, is the person who will have the legal authority and responsibility for care of your minor children if you pass away or become mentally incompetent. This can be a different person than the trustee of your trust. Sometimes clients will name different people as trustee and guardian in order to create a system of checks and balances: the guardian is responsible for the children's life decisions and care, while the trustee holds the power of the purse.

4. Naming a Financial Agent Through A Property Power Of Attorney

The agent named in your financial power of attorney is the person responsible for handling your financial and legal affairs (other than managing trust assets) if you become mentally incompetent.

5. Naming a Healthcare Agent Through A Healthcare Power Of Attorney

The agent named in your healthcare power of attorney is the person responsible for making healthcare decisions on your behalf if you are not mentally competent to do so.

6. Naming a Guardian For Yourself, Should You Become Mentally Incapacitated

The guardian of your person that you name in your healthcare power of attorney is the person who will be responsible for making major life decisions and arranging for your care if you are not mentally competent to do so.

Goal 1(B): Distribution of Assets

In Illinois, if an individual dies without a will or a trust, state statute determines what will be done with her assets. This is called dying intestate. When an individual dies intestate, the assets will be distributed in equal shares to the first of the following groups that contains a living member:

1. **Spouse;**
2. **Children – Note: If a child is deceased but has living children of her own, then the deceased child's share passes to her children in equal shares;**
3. **Descendants (e.g. Grandchildren, Great-grandchildren);**
4. **Parents;**
5. **Siblings;**
6. **Nieces and Nephews.**

Often, married couples with children seek to have their assets pass to their spouse and then in equal shares to their children. If these are their wishes, and they do not seek to make any specific gifts of tangible property, their property will likely pass the same way whether or not the couple executes a will or a trust.

However, even in this situation, a will or a trust may be important to ensure that the correct person will be managing the distribution of these assets; and a trust may be necessary to ensure that the assets are not reduced significantly by going through the probate process.

Wills and Trusts are important for distribution purposes, if the client:

1. **Does not wish her property to pass to the individuals described in state statute;**
2. **Wants to change the amount of property each heir will receive, or**
3. **Wants to make specific gifts of property or money to particular individuals (e.g. my car to Mary, $10,000.00 to Steve.)**

The following are the most common scenarios in which changing the state statute's distribution may be of the utmost importance to our clients:

1. **The client is divorced with minor children:** If the client dies without a will or a trust, her assets will pass to her minor children. However, since the children are minors, the property will not go to them but rather to their guardian, most-likely the client's ex-spouse. In order to avoid the divorced client's property passing to her ex-spouse, we create a trust in which the children are the ***beneficiaries*** and someone other than the client's ex-spouse is the ***trustee***. This means that the third-party trustee who the client selects, as opposed to her ex-spouse, will be responsible for managing the assets for the benefit client's children while they are minors.

2. **The client is estranged from a family member:** If the client has a sibling, parent, or child from whom they are estranged, it will be important to declare the client's wishes that the estranged family member not inherit through a will or a trust.
3. **The client wants to give some of her assets to a church or charity.**
4. **The client wants someone outside of her family to inherit some or all of her assets:** This scenario is common when the client is living with a partner, but not married.
5. **The client wants to maintain control over how the assets are used after her lifetime:** Trusts can be used to set preconditions for distributions of assets to the beneficiaries. Clients will sometimes specify that the assets will not be distributed unless and until the beneficiary graduates from college, marries, or reaches a certain age.

Trusts are also commonly used to allow the spouse in a second marriage to live in the family home without the right to sell it or convey it to her heirs, thus preserving the home for the client's descendants from her first marriage.

Clients have the ability to be as creative as they would like in directing the distribution of their assets. Almost any scenario that a client can envision can be effectuated through either a trust or a will.

Goal 2: Avoiding Probate

In this chapter we will discuss using a trust to ensure that your estate avoids probate when you pass.

What Is Probate?

A probate case consists of court oversight of the distribution of the assets of an estate to creditors and heirs. If probate is required for a particular estate, the executor of the estate cannot simply sell the real estate owned by the deceased individual or distribute the deceased individual's bank accounts to the estate's heirs.

Rather, the executor must hire an attorney to prepare a petition for issuance of letters of office along with several accompanying documents. This is a petition requesting that the probate court enter an order, called letters of office, appointing the person who would be executor to the position of executor. Notice of the petition must be served on all potential heirs. Often, the executor will be required to pay a bond to the court to ensure proper administration of the estate.

After the court issues letters of office the executor, the executor will be able to use the letters of office to liquidate the assets of the estate (e.g. close out bank accounts and sell real estate). However, the executor will not be able to immediately distribute those assets to the heirs.

First, the executor must mail notice of the probate estate to known creditors and publish notice to unknown creditors in a local newspaper for three consecutive weeks. Creditors will then have 6 months to file claims.

After the 6 month claims period has expired, the executor must present a final accounting of the estate's assets and liabilities to creditors and prepare a final report for the court. Notice of the hearing on the final report must be sent to all interested parties, after which a hearing on the final report will be held by the court. Once the final report is approved by the court, the assets can be distributed by the executor to creditors and heirs, and the probate estate can be closed. This usually takes place approximately a year after the probate estate is opened.

Why Is Probate Bad?

Probate is bad for three reasons:

(1) Your loved ones cannot have access to your assets for approximately a year—until the probate case is completed;

(2) Your estate will be significantly reduced by attorney fees and court costs. Your estate will typically spend 5% to 10% of the value of the estate on attorney fees alone; and

(3) The administration of your estate will be significantly more difficult for your executor. He or she will spend a lot of time dealing with an attorney, preparing reports, and gathering information.

When Is Probate Necessary?

According to Illinois law, an individual's estate must go through Probate if either:

(1) the deceased individual's estate owns real estate (meaning land, a home, a townhouse, or a condominium); OR

(2) the deceased individual's estate owns more than $100,000.00 of non-real estate assets.

A common misconception is that a simple will will allow your estate to avoid probate. This is not the case. A will can ensure that your assets are distributed appropriately in the probate case, but your case will have to go through probate with or without a will. A better estate planning option for individuals who own real estate or have a savings account is to use a revocable living trust either in place of or in conjunction with a will.

How Can I Avoid Probate?

Probate can be avoided by executed a revocable living trust and transferring your real estate and savings accounts into it during your lifetime. A revocable living trust is a legal entity that can own property. It typically provides that the creator of the trust has complete control over the property owned by the trust during his or her lifetime, and describes how the trust assets will be distributed after the creator's death.

During your lifetime, there is no practical difference between property owned by you as an individual and property owned by your trust. However, when you pass away, property that is owned by your trust at the time of your death is not considered part of your estate.

So, we can avoid probate by taking the following steps:

(1) Create and execute a revocable living trust;
(2) Deed any real estate owned by the client into the trust;
(3) Transfer any savings accounts that are not qualified retirement accounts into the trust; and
(4) Ensure that proper beneficiaries and successor beneficiaries are named on qualified retirement accounts and life insurance policies.

Following These Steps Allows Your Estate To Avoid Probate:

• Because your life insurance policies and qualified retirement accounts will pass directly to the beneficiaries named in the account so long as there is a living beneficiary when you pass away. Therefore, as long as you have properly titled your beneficiaries, these accounts will bypass your estate for the purposes of probate; and

• Because property held by your trust does not count as part of your estate for the purposes of probate. As you recall, probate is only necessary if your estate owns real estate or more than $100,000.00 of non-real estate assets. By transferring your assets to a trust, we are able to take them out of your estate thereby reducing the amount of property owned by your estate so as to make probate unnecessary.

What Happens If Probate Is Avoided?

If, when you pass away, you own no real estate outside of a trust and less than $100,000.00 in non-real estate assets outside of a trust, then the trustee of your trust can simply download a one-page form called a Small Estate Affidavit from the probate court's website. This form can be completed without an attorney. The affidavit simply states that there is a trust in place, that the person filling out the affidavit is the trustee of that trust, and that there is no real estate and less than $100,000.00 in non-real estate assets outside of the trust.

Once your trustee signs this affidavit before a notary, the trustee can then use this affidavit to immediately liquidate accounts and distribute assets to creditors and heirs. The time delay and cost of probate, as well as the headaches associated with it, will be avoided.

Goal 3: Avoiding a Guardianship Proceeding if You Become Mentally Incompetent

In this chapter we will discuss using Powers of Attorney to avoid the necessity of lengthy and costly guardianship proceedings if you become mentally incompetent.

What is a guardianship proceeding?

If you become mentally incompetent, whether through injury, disease, or simply old age, your spouse or next of kin cannot simply take over the management of your financial affairs and major life decisions. If your loved one would like to sell your house or access your accounts for your benefit, or check you into a long-term care facility, he or she will not be able to do so unless either:

(1) you have appointed your loved one as your agent through a power of attorney; OR

(2) your loved one has been appointed as your guardian by court order after a guardianship proceeding.

If you do not have powers of attorney in place when you become mentally incompetent, a guardianship proceeding is the only method by which your loved ones will be able to take the actions necessary for your care. A guardianship proceeding is a court case by which the court decides who will be appointed as your legal guardian. After your prospective guardian submits a petition to be named guardian, along with several accompanying documents prepared by an attorney, the court will hold a formal hearing (often after several court dates) to determine who will be your legal guardian. The end result of this hearing is a court order appointing your guardian.

Why do we want to avoid a guardianship proceeding?

We want to avoid guardianship for three reasons:

(1) If a guardianship proceeding is necessary, your loved ones will not have the ability to manage your assets or make decisions on your behalf until the guardianship case is completed, which takes approximately six months;

(2) Guardianship proceedings are expensive and require a significant number of attorney hours to complete–your loved ones will be required to spend a significant amount of money on attorney fees and court costs that could have otherwise been spent for your benefit; and

(3) Guardianship proceedings are a major headache for the potential guardian. He or she will spend a lot of time dealing with an attorney, preparing reports, and gathering information.

How can guardianship proceedings be avoided?

Guardianship proceedings can be avoided by executing a Power of Attorney for Property and a Health Care Power of Attorney prior to becoming mentally incompetent. ***Note:*** Once you have become mentally incompetent, it is too late to execute these documents.

Power of Attorney for Property

A Power of Attorney for Property names an ***agent*** and a ***successor agent*** to make legal and financial transactions on your behalf if you are no longer mentally competent to do so. Upon receiving a doctor's certification that you are mentally incompetent. The agent named in your Power of Attorney for Property will be able to undertake these transactions and sign on your behalf by showing the certification and a copy of the Power of Attorney. Your successor agent will be able to act for you if your initial agent is unwilling or unable to do so, either because he or she too is mentally incompetent, or because he or she predeceased you. Therefore, because your agent and successor agent have been granted authority to act by your Power of Attorney, they will not be required to institute a guardianship proceeding in order to undertake these financial and legal transactions.

Health Care Power of Attorney

A Health Care Power of Attorney names (1) an agent and a successor agent to make healthcare decisions on your behalf ; and (2) a ***guardian of your person*** to make major life decisions for you should you not be mentally capable to do so. If you are unconscious or mentally incompetent, your healthcare agent will make decisions such as whether to undertake a risky surgery or whether to terminate life sustaining treatment in the event of a coma. The guardian of your person named in your Healthcare Power of Attorney will make decisions such as where you will live and whether you will be checked into a long-term care facility, as well as any other life decisions that do not fall within the financial sphere. In the absence of a Health Care Power of Attorney, a guardianship proceeding would be necessary in order to allow your spouse or next of kin to make such life decisions on your behalf.

In addition to guardianship avoidance, the Healthcare Power of Attorney is beneficial because having a decision-maker named in advance avoids the possibility of costly and painful litigation between family members over your medical and life decisions.

Guardianship Avoidance as an Ancillary Benefit of Revocable Living Trusts

In a previous article, we discussed the use of revocable living trusts to avoid probate. An ancillary benefit of revocable living trusts is that, if you become mentally incompetent, the successor trustee that you name in your trust will be able to manage trust assets for your benefit without the necessity of a guardianship proceeding. The distinction between the powers granted to the agent in your Power of Attorney for Property and the powers granted to the trustee of your trust is that the trustee can only transact business with respect to trust assets, while the agent named in your Power of Attorney can make all financial and legal decisions and transactions on your behalf.

Conclusion

Healthcare and Property Powers of Attorney tend to be extremely affordable. I consider these documents to have the most "bang for your buck" relative to other estate planning documents. Spending a small amount of time and money to plan ahead of time for your mental incompetency can save your loved ones massive amounts of time and money when and if such mental incompetency occurs.

Goal 4: End-of-Life Decision-Making

In this chapter we will discuss using a Living Will to provide for end of life instruction. In the previous chapter, we discussed using a Healthcare Power of Attorney to appoint an agent to make healthcare decisions on your behalf if you are mentally incompetent. A ***Living Will*** is a tool used to make the decision, while you are still mentally competent, to terminate life-sustaining treatment in the event that you are in an irreversible vegetative state. The Living Will takes this decision out of the hands of your healthcare agent.

If you have a Living Will in your medical file, your physician is instructed to terminate life-sustaining treatment if you are in a vegetative state and the doctor does not believe that there is any continued purpose to life-sustaining treatment other than keeping you perpetually in that vegetative state. Essentially, the doctor will terminate life support if he or she does not believe there is a realistic chance of bringing you out of a coma. In the absence of a Living Will, your healthcare agent or next of kin (in the absence of a Healthcare Power of Attorney) would be charged with making the decision of whether to continue life-sustaining treatment.

Whether to include a Living Will in your estate plan is a purely personal choice. It is not something that I advise either for or against.

The reasons that my clients typically choose to execute a Living Will are:

- to avoid saddling their loved ones with the emotional burden of terminating life sustaining treatment;
- they are strongly opposed to be kept in a vegetative state for an extended period of time due to their loved ones' unwillingness to let go; and
- they wish to avoid saddling their loved ones with the cost of extended life-sustaining treatment.

As an alternative to a living will, many clients will simply leave either verbal or written instruction as to their wishes with their healthcare agents. There is even a portion of the Healthcare Power of Attorney that allows you to provide this instruction, while leaving the ultimate legal decision-making power in your loved ones' hands.

Goal 5: Minimizing Estate Tax

In this chapter we will explain estate tax and discuss some tools used to avoid it or minimize it.

What is Estate Tax?

In addition to the taxes that you pay during your lifetime, both the federal and the Illinois state governments require your estate to pay a tax before passing to your heirs. The good news is that both the federal and state estate taxes are subject to ***exemptions.*** If the value of your estate is less than the applicable exemption the estate tax in question will not apply. Only amounts over and above the applicable exemption are taxable.

In 2015, the federal estate tax exemption is $5.45 million. This means that if the value of your estate is less than $5.45 million, federal estate tax will not apply to you. If the value of your estate is $6.45 million, only $1 million will be taxable on the federal level (I use the word "only" loosely). The Illinois estate tax exemption for 2015 is $4 million.

How to Avoid Estate Tax

Luckily, we have several relatively inexpensive tools that we can use to legally avoid much or all of the estate tax that would otherwise be imposed on your estate.

AB Trusts

For married clients that are not worried about estate tax avoidance we often suggest one joint revocable living trust as the primary vehicle for their estate. The first line of defense against estate tax is to draft a trust for each client rather than use the joint trust strategy. These trusts are called ***AB Trusts*** and their purpose is to allow the unused estate tax exemption of the first spouse to pass away to transfer to the surviving spouse. This essentially doubles the estate tax exemption for a married couple.

The federal estate tax exemption is already "portable," meaning that a surviving spouse can take advantage of the unused estate tax exemption of the first spouse to pass without the use of AB Trusts. The Illinois estate tax exemption requires the AB Trust planning technique to become portable.

So how do AB Trusts wok? Let's say that Clark Kent and Lois Lane are married, and Lois, through years of work as an intrepid reporter, has accumulated an estate with a value of $8 million. When Lois passes away, the value of Clark and Louis' assets is $8 million. For the sake of simplicity, we will assume that the assets are all jointly held. All of the assets will pass to Clark free and clear of estate tax due to the Unlimited Marital Deduction, which allows a surviving spouse to inherit an unlimited amount of assets from the other spouse without paying estate tax. Louis' estate tax exemption will not have to be used to transfer the assets from Lois to Clark. If Lois and Clark have an AB Trust in place, Lois' unused Illinois estate tax exemption of $4 million will be transferred to Clark. When Clark passes, his $8 million estate will pass to his children or loved ones free and clear of estate tax, because his AB Trust strategy allows for an $8 million exemption upon Clark's death, rather than the $4 million exemption that would have been available to Clark in the absence of an AB Trust.

Again, while the federal estate tax is automatically portable, Illinois estate tax is not. With the use of the AB Trust technique we can achieve a similar effect, essentially raising the Illinois estate tax exemption from $4 million to $8 million for a married couple.

Irrevocable Life Insurance Trusts

Using Irrevocable Life Insurance Trusts, known as ILITs, we have the ability to take the death benefits of your life insurance policies out of your taxable estate. If you have a life insurance policy with a $2 million death benefit, this benefit will use up $2 million of your estate tax exemption in the absence of an ILIT. However, if the insurance policy is owned by an ILIT, the death benefit will not count as part of your estate for estate tax purposes.

You will not be able to change the beneficiaries of any policies that you place in an ILIT, thus the word "irrevocable." This is usually not a problem for people who want their spouse and/or children to be the beneficiaries of the policies. It is this irrevocable nature of the ILIT that functions to take the insurance policy out of your taxable estate.

GRITs, GRATs, and GRUTs

Grantor Retained Income Trusts (GRITs), Grantor Retained Annuity Trusts (GRATs), and Grantor Retained Unitrusts (GRUTs) are used to allow an asset to appreciate in value while removing such appreciation in value from your taxable estate.
These are often used for family businesses or real estate. If you transfer a home worth $100,000.00 to a GRIT, GRAT, or GRUT, and that home appreciates in value to $500,000.00. Then, at the time of your death, only the value of the home at the time that you transferred it into the trust ($100,000.00) will be taxable. The appreciation ($400,000.00) will not be taxable.

The tradeoff is that, by transferring property to a GRIT, GRAT, or GRUT, you are giving up the ability to sell the property in the trust. Instead, for a fixed number of years you will receive annual payments from the trust either of income generated from the principal asset (GRIT), a fixed dollar amount (GRAT), or a percentage calculated annually based on the value of the trust (GRUT).

Upon the termination of the term of the trust, the trustee will transfer the assets in the trust to the trust's beneficiaries.

Gifting Strategies

Another way to reduce your taxable estate is to give it away to your intended beneficiaries during your lifetime. In 2015 you can give $14,000.00 annually to each individual without paying gift tax. An advanced discussion of gifting strategies is outside the scope of this article, and will be addressed in a future article.

Generation Skipping Trusts

Generation Skipping Trusts, known as Dynasty Trusts, are used to pass as much generational wealth as possible to your grandchildren or great-grandchildren. The trusts direct that a certain portion of your assets will not pass to the next generation of your family, but will skip that generation, passing instead directly to that generation's descendants. This allows those assets to pass to the third generation of the family without being taxed in the estates of the second generation.

Goal 6: Special Needs Planning

In this chapter we will explain how to use special needs trusts in order to maximize social security benefits for individuals with disabilities. In Illinois, a disabled individual is entitled to receive up to $733.00 per month in***Supplemental Security Income ("SSI")*** if two things are true:

(1) the individual has less than $2,000.00 in assets; and

(2) the individual makes less than $733.00 per month in income.

Even if the individual makes less than $733.00 per month in income, income below this level will reduce the amount of SSI income for which he or she is eligible.

We use Special Needs Trusts, also known as Supplemental Needs Trusts, in order to allow disabled individuals to accumulate assets and income in excess of these amounts without reducing the amount of SSI benefits that they are eligible to receive.
Typically a loved one will create the trust and serve as trustee, with the disabled individual being the beneficiary. A bank account will then be opened in the name of the trust.

The disabled individual's assets, or gifts from loved ones, will be transferred to the trust bank account. If the disabled individual is receiving income outside of SSI, the income will be deposited directly into the trust bank account.

The trustee will have the obligation to use the funds only for the benefit of the disabled individual. The trustee can use the funds to pay for most of the individual's needs with the exception of rent and groceries. Habitation and food are excluded, because this is theoretically the purpose of the individual's SSI payments. The idea behind Special Needs Trust is to allow the disabled individual to have a good quality of life, including entertainment, vacations, and amenities, without reducing their eligibility for SSI income.

Special Needs Trusts are also useful tools in the estate plans of the parents of disabled children. Typically we recommend that the parents' wills and trusts provide that the inheritance that would normally go to the disabled child be disbursed instead to that child's pre-established Special Needs Trust. This avoids having a child who is reliant on SSI income lose that income because his or her assets have increased above $2,000.00 as the result of inheritance. If the inheritance instead goes directly into the child's pre-established Special Needs Trust, the child's SSI income will not be reduced based on the receipt of the inheritance. It is important to note that in order for this strategy to work, the Special Needs Trust must be created BEFORE the parent passes away.

Any disabled individual receiving SSI, or a loved one of such individual, should consider Special Needs Trusts as a way to allow him or her to accumulate assets or enter the workforce without losing SSI benefits.

Assets held by a Special Needs Trust cannot be used on "shelter" or groceries without reducing the amount of SSI benefits that the beneficiary of the trust is entitled to receive.

I was recently asked by a client whether a home owned by a Special Needs Trust would qualify as shelter. In fact, if title to real estate is transferred to a Special Needs Trust, this does not count as "shelter" for the purposes of reducing SSI benefits. Mortgage and utility payments associated with shelter (such as heat, electricity, and water), do however, qualify as payments toward "shelter," and would serve to reduce the amount of SSI benefits to which the beneficiary is entitled. However, if there is no mortgage on the home, transferring real estate to a Special Needs Trust is an effective way to provide for the housing of the beneficiary without having the value of the home reduce the amount of that individuals SSI benefits.

Goal 7: Protecting Assets from Creditors

In this chapter we will explain how to use ***Family Limited Partnerships*** and ***Irrevocable Trusts*** to protect assets from creditors in Illinois.

Tenancy By the Entirety

In Illinois, a married couple can own their primary residence in a manner called ***"Tenancy by the Entirety."*** Creditors of only one spouse cannot place a lien on property held in Tenancy by the Entirety. This method of ownership is reflected on the deed to the property. It is restricted to married couples' primary residences. Ensuring that your residence is held as tenants by the entirety, rather than joint tenancy or tenancy in common is a good first step in protecting your assets from creditors.

Family Limited Partnerships and Family LLCs

For married couples with joint debt, or with multiple properties, Family Limited Partnerships ("FLPs") and Family LLCs can protect assets that Tenancy by the Entirety cannot. In order to implement the Family Limited Partnership strategy, you must transfer an asset from ownership by you as an individual to ownership by a Limited Partnership entity registered with the Illinois Secretary of State.

The drawback to a limited partnership is that, in order to make it effective, you must name your children, or some family member other than your spouse as partners in the partnership, and therefore partial owners of the property owned by the partnership.

Typically, the parents (the true owners of the property) will be the only general partners, who have the right to control the property, and both the parents and children will be limited partners, with rights to payment of profits upon the sale of the property. Typically, the children will have a very small percentage ownership interest with no rights of control.
If a Family Limited Partnership is properly established, creditors of the parents cannot place a lien on any real estate held by the partnership. Instead, they will only be entitled to a ***charging order,*** which entitles them to payment of profits from the partnership assets until their debt is satisfied.

A Family LLC operates in a similar way, except that instead of general partners and limited partners, we have ***managers*** and ***members***.

Irrevocable Trusts

Irrevocable Trusts can be used to permanently give up some of your ownership rights in the property in order to protect the property from your creditors, while retaining *some* control over the property. The rule of thumb is that the more rights of ownership that you transfer to a third party (like your children), the more likely the trust will be to protect the assets it owns from your creditors. Unlike ***Revocable Trusts,*** which are a typical vehicle for an estate plan used to keep your assets out of probate, the terms of Irrevocable Trusts are difficult, if not impossible, to amend after they have been drafted.

A common example of the use of an Irrevocable Trust for asset protection is to provide that you have the right to continue to possess the property for the rest of your life, while giving your children (or some other family member) the present right to inherit the property when you pass away. This is called a ***life estate.***

A life estate created by an Irrevocable Trust is different from an ***inheritance*** created by a Revocable Trust or a Will. A Revocable Trust or a Will gives your children a*potential* future right to inherit the property. This potential future right does not materialize until you actually pass away. It is only a potential right, not an actual present right, because between today and that time you pass away, you can change your Revocable Trust or Will freely, preventing the potential right from ever materializing. An Irrevocable Trust, on the other hand, gives your children a present actual right to receive the property when you pass away. That right cannot be taken away without your children's consent. Importantly, this means that if you give yourself a life estate in your property, you will no longer be able to sell it or encumber it with loans without your children's consent. It is this division of the interest in the property that protects the asset from creditors' liens. The property is no longer fully yours, so it cannot be sold for the benefit of your creditors.

Goal 8: Long-Term Care Planning

In this Article we will explain how to use ***Life Estates*** and ***Irrevocable Trusts*** to make yourself eligible for Medicaid assistance for long-term care without losing your assets and to prevent Medicaid from seizing your assets upon your death.

Assisted living care can be extremely expensive. Fortunately, if you qualify for Medicaid, the government will foot the bill for this care. Unfortunately, in order to qualify for Medicaid, you must show that you have already expended most or all of your assets. You cannot qualify for Medicaid unless you have less than $14,400.00 in countable resources.

In addition, if your estate has remaining assets at the time of your death, the government has the right to seize those assets to pay for you end-of-life care, preventing them from transferring to your loved ones.

5 Year Look-Back Period

Gifts made within five years prior to applying for Medicaid nursing home assistance will disqualify you for Medicaid benefits for a certain period of time depending on the size of the gift. In addition, any such gifts may be reversed after you pass, allowing the government to seize the assets despite the gift.

Life Estate Deeds and Irrevocable Living Trusts

Life Estate Deeds and Irrevocable Living Trusts can be used to (1) qualify for Medicaid assistance while still preserving your assets; and (2) pass your remaining assets to your loved ones without them being subject to a Medicaid Lien.

Life Estates

As we discussed in last week's article, 8 Estate Planning Goals: How to Protect Assets from Creditors, in order to create a Life Estate in a piece of real estate, you must change the deed to your property in order to give someone else (usually a family member), called a ***Remainderman,*** the right to possess the property after you pass away, while you retain the right to possess the property during your lifetime.

Unlike a Revocable Living Trust, once you transfer your property to a Life Estate you will no longer have the right to change this arrangement without the consent of the Remainderman. This includes selling the property, encumbering the property with loans, or selecting a different person to inherit the property.

So long as the Life Estate Deed is executed more than five years prior to applying for nursing home Medicaid benefits, the real estate will not qualify as an asset for the purpose of calculating your Medicaid eligibility. Nor will the asset be subject to a Medicaid Lien after you pass. Life Estate Deeds are a great way to keep the family home in the family, while retaining your right to live there for the remainder of your life.

Irrevocable Trusts

Using ***Irrevocable Trusts***, also known as ***Medicaid Trusts***, you can transfer assets out of your estate for Medicaid purposes while still retaining some benefit of the assets. In order to be effective, you must name someone other than yourself as trustee. You will be able to continue to receive income from the trust, but you will no longer have access to the principal. So long as the trust is created and funded prior to the five-year look-back period, the assets in the trust will not count against you when determining your Medicaid eligibility, and will not be subject to Medicaid liens upon your death.

Life Estate Deeds vs. Irrevocable Trusts

- A Life Estate Deed is less expensive to establish than an Irrevocable Trust;
- If property held by a Life Estate Deed is sold during your lifetime, the proceeds of the sale must be used to satisfy your medicaid debt. The proceeds of the sale of property held in an Irrevocable Trust may be kept in the trust and will not be subject to Medicaid.
- If the property held by a Life Estate Deed is rented during your lifetime, the net profit from the rental must be paid to Medicaid. This is not the case for an Irrevocable Trust.
- Life Estate Deeds only apply to real estate. Irrevocable Trusts can house nearly any sort of asset.

How to Fund Your Trust

How to Transfer Assets to Your Trust

In this chapter, we will explain the trust funding process. Hopefully, we will be able to help you determine which parts of the process you can accomplish without an attorney, with the aim of reducing your legal fees.

As we explained in the above articles, trusts are legal instruments that direct how certain property will be distributed and maintained. However, your property must generally be transferred to a trust before it will be subject to the trust's provisions. In this respect, trusts differ from wills, which must merely describe the property in question and indicate how you wish the property to be distributed.
Before we dive into how to fund your trust, a few notes:

- **You Retain Control:** If you are worried about transferring title to your property to your revocable living trust, never fear. In most cases the creator of a revocable living trust is also both the trustee and beneficiary of the trust during his or her lifetime. This means that if you transfer your assets into a revocable living trust, you will retain the same amount of control over those assets during your lifetime that you had prior to the transfer. You will always have the ability to revoke or amend the trust.

- **You Don't Have to Transfer All of Your Assets:** If certain assets totaling less than $100,000 have not been transferred into your trust at the time of your death, the executor can file a *small estate affidavit*. This affidavit will act to sweep up to $100,000 of *personal property* (i.e. property that is not real estate) into your trust, allowing this property to avoid probate. For this reason, we generally do not recommend transferring your primary checking account into your trust. The small estate affidavit can also cover your cars and furniture so long as the total amount of personal property that you leave out of your trust totals less than $100,000.

- **You Must Transfer SOME Property to Your Trust:** Trusts are not legally effective until they have been funded with at least SOME property. This means that you cannot rely on the small estate affidavit to sweep ALL of your property into the trust upon your death. If your trust is drafted, but does not possess title to any property at your death, your estate will be treated as if no trust was in place at all.

So, once your trust is drafted, how do you go about transferring your property to the trust, and how much of this process can you accomplish on your own? The answer to this question depends on the type of property you are trying to transfer, the amount of time you are willing to personally allocate to trust funding, and your comfort level in dealing personally with financial institutions and forms. Your attorney should provide you with an outline of the steps necessary to fund your trust, based on your particular asset structure, at which point you will be able to decide which steps you would prefer to handle on your own.

Below is a list of the steps necessary to transfer particular types of assets to your trust:

- **Retirement Accounts:** The institution that manages your accounts can provide you with forms to change the beneficiary designation for your account. We generally recommend that if you are married, you name your spouse as the primary beneficiary and the trust as successor beneficiary.
- **Stocks and Mutual Funds:** In order to transfer stocks or mutual funds, you should fill out a ***stock assignment*** form supplied by your brokerage company.
- **Bonds:** Savings bonds can be transferred to your account by filling out form PD F 1851 E, which can be obtained from www.savingsbonds.gov.
- **Life Insurance:** Your insurance provider will be able to provide you with change of beneficiary forms. Like your retirement account, you should generally name your spouse as the primary beneficiary and the trust as the successor beneficiary. Check out this article for a more in-depth conversation about life insurance policies and revocable living trusts.
- **Business Interests:** If you are the owner or part owner of a closely held corporation or LLC, you should either transfer your shares of the company to the trust or amend the company's bylaws or operating agreement to deal with succession of shares upon your death. The most effective way to accomplish your goals with respect to your company will depend on your individual circumstances. This process should be handled by your attorney.
- **Real Estate:** Generally, you should execute a deed transferring your real estate to the trust. Again, the best way to handle this process will depend on your individual circumstances and goals. This is another step that should always be handled by your attorney. Once drafted, you or your attorney must record the deed with your county's Recorder of Deeds.
- **Bank Accounts:** Depending on the amount of personal property you possess, it may be advisable to transfer your savings accounts, and possibly even your checking accounts, to the trust. This can be accomplished by delivering a letter of instruction to the bank retitling such accounts so that they are held by the trust.
- **Remaining Personal Property:** Again, depending on the amount of personal property you own, it may be advisable to transfer all of your personal property (e.g. furniture, art, heirlooms, etc.) *en masse*, to the trust. To accomplish this, your attorney should draft a ***quitclaim bill of sale***.

Even the most savvy individuals should leave real estate transfers, business asset transfers, and quitclaim bills of sale to their attorneys. However, depending on your tolerance for dealing with financial institutions, you may be able to save on legal fees by personally handling, after consultation with your attorney, the transfer of your retirement accounts, life insurance policies, stocks, mutual funds, bonds, and bank accounts.

Although the trust funding process may seem like a lot of effort, the time and attorney fees that you spend properly funding your trust will pale in comparison to the time and money that you will ultimately be saving your loved ones.

Should my Trust be the Beneficiary of My Life Insurance Policy?

I received the following question from a reader of our Learn About Law Blog regarding naming trusts as the beneficiaries of life insurance policies.

Q: Hi I read your blog about funding a revocable trust. My husband and I are talking about getting them, but all we have of significant value (besides house, and a money market ($500,000), is life insurance on his life ($2M). Your article says you should keep the beneficiary of a life insurance policy first to a wife then to a trust. Why?

A: Whether to make your revocable living trust the beneficiary of your life insurance policy depends on your personal situation and what your goals are. There is no one-size-fits-all answer to this question, so it is important to have your attorney educate you and assist you in making an informed decision.

Estate Tax Considerations

The first issue to consider is whether your estate is likely to be subject to estate tax. As we discussed in our previous article, How to Avoid Estate Tax, the Illinois estate tax exemption is $4 million. If your estate is worth over $4 million when you pass away, everything over $4 million will be taxable.

Unlike the federal estate tax exemption, the Illinois Estate Tax exemption is not portable, meaning that spouses cannot automatically take advantage of one another's estate tax exemptions. However, by creating a separate revocable living trust for each spouse, we can essentially make the estate tax exemption portable. This would give you an $8 million exemption as a couple, rather than leaving you each with a $4 million exemption. This is called an AB Trust strategy, and it is usually the first line of defense against estate tax.

The bottom line is that if you are using revocable living trusts as an estate tax planning vehicle, the trust should be listed as the primary beneficiary of your life insurance policy as opposed to your spouse. Unless the trust is the beneficiary of the policy, you will not be able to take full advantage of the portability benefits of the AB Trust strategy.

You should be aware that death benefit of your husband's life insurance policy would count as part of the estate for estate tax purposes. When we add the $2 million death benefit, your $500,000.00 money market account, and the value of your house, you are likely getting close enough to $4 million in assets that you may want to consider an AB Trust strategy to raise your estate tax exemption as a couple from $4 million to $8 million. Again, if you choose to pursue this strategy, then one or both of the trusts should be the beneficiary of the life insurance policy.

Other Considerations

If you have comfortably less than $4 million in assets when you include the death benefit of your insurance policy, then estate tax will not be a consideration for you. Whether to list your trust as a beneficiary of your life insurance policy is a much more personal decision.

- **Probate**

One of the primary benefits of a revocable living trust is to keep your estate out of a costly and time-consuming probate case when you pass away. The rule in Illinois is that probate is required if you own any real estate outside of a trust or more than $100,000.00 of non-real estate assets outside of a trust or outside of accounts that are directly payable to a beneficiary upon death. We typically recommend transferring your major savings accounts and real estate into your revocable living trust in order to make probate unnecessary. However, so long as you have a living beneficiary named on your life insurance policy at the time that you pass, the life insurance policy will be paid directly to that beneficiary and not be counted as part of your estate for the purposes of determining whether probate is necessary.

Unlike some other types of assets, your life insurance policy does not have to be transferred to your trust to avoid probate. However, if you are not going to transfer the policy to your trust, we always recommend making sure that you have successor beneficiaries listed after your spouse to ensure that there is a living beneficiary able to inherit the death benefit of the policy when you pass so the death benefit will not be dumped into a probate estate.

So, if the life insurance policy won't affect estate tax or probate if it is left out of the trust, why should you make the trust the beneficiary of a life insurance policy?

- **Control over how the policy proceeds are managed after your death**

If an individual inherits the death benefit of your life insurance policy, the death benefit will simply be paid out to that individual or their legal guardian. However, if the trust inherits the death benefit of your life insurance policy, the trustee will be able to control how the money is being handled, according to the terms that you lay out in your trust.

If you have minor children when you pass away, you may not want your life insurance proceeds simply paid out to their guardian. Check out our article about what happens when minors inherit property in Illinois. In the absence of a trust there are fewer controls on the guardian misusing the child's inheritance. The inheritance may also be subject to the guardian's creditors.

If your children are young adults when you pass away, you may not want your children to receive the entire death benefit of the insurance policy all at once. Our clients will typically choose to have to have their revocable living trusts provide that their children can access 1/3 of the assets in their trust at age 21, 2/3 at age 25, and the rest at age 30. During this period the trustee will have discretion to pay more than these amounts if he or she believes it is in the child's best interests. This prevents the children from spending the money irresponsibly. If the trust is the beneficiary, rather than the child directly, restrictions in your trust such as these will be able to control the use of your life insurance death benefit.

- **Complex plans for distribution**

If you want your life insurance death benefit to go first to your spouse and then to your children in equal shares, this is easy enough to accomplish directly through your life insurance policy. However, if you have a more complex plan for distribution, such as specific gifts to other friends and family, or distribution of unequal percentages to many of your favorite nieces and nephews, you will likely not be able to accomplish this through naming direct beneficiaries on your life insurance policy. However, if you make the trust the beneficiary of your life insurance policy, the policy will be distributed according to the terms of your trust, which can be as complex and specific as you like.

- **Ease of Payment**

There is one downside to making a trust the beneficiary of your life insurance policy, and that is that there is more red tape involved in receiving the pay out of the death benefit. If an individual is named as the beneficiary, he or she will typically receive a check from the life insurance company within a week, without having to jump through many hoops. If a trust is named as the beneficiary, the trustee will have to provide certain paperwork to the life insurance company and the process can take longer, typically a few weeks to a month.

For this reason, a married person will typically name their spouse as the direct beneficiary of the life insurance policy and name the trust as the successor beneficiary. We want the payout to the spouse to be as quick and painless as possible. However, when the pay out is going to other heirs, we are often willing to sacrifice speed to ensure that your wishes are executed properly.

Conclusion

To sum up:

- If estate tax avoidance is part of your strategy, the trust should be the primary beneficiary of your life insurance policy.
- You may not want to make the trust the successor beneficiary on your life insurance policy if you have very simple wishes, such as the death benefit being paid directly to your spouse and, if your spouse is not then living, divided equally among adult children in their 30s.
- If you have young children, or more complex wishes, it typically makes sense to make your spouse the direct beneficiary of the life insurance policy and the trust the successor beneficiary.

Elder Law & Medicaid Planning

The Medicaid 5-Year Look Back Period

Medicaid is a government program intended to pay for long-term care once an individual's assets have been depleted. Elderly individuals who anticipate the need for institutional or in-home long term care may seek to transfer their assets to loved ones prior to applying to Medicaid in order to qualify for Medicaid and avoid having those assets depleted in the course of their long-term care.

However, there is a five-year "look back" period that allows the state to review transfers made 5 years prior to the date that you apply for Medicaid benefits. If an improper transfer of assets was made during this period, a "penalty period" is imposed during which your eligibility for Medicaid will be delayed. The length of the "penalty period" depends on the amount of the transfer. Certain types of transfers are exempt from the "look back" period, and will not delay your eligibility from Medicaid.

If you fail to disclose non-exempt transfers when you apply for Medicaid, you may be subject to criminal and civil penalties for Medicaid fraud. In addition, the person to whom you transferred the assets may be required to pay a penalty equal to the amount of Medicaid benefits received by the transferor, not to exceed the amount of the transfer.

If you foresee the need for long-term care, meeting with an attorney for Medicaid Planning may allow you to transfer assets to your loved ones without incurring a "penalty period." This planning can be effective within the 5 year "look back" period. However, it is advisable to begin your planning at least 5 years prior to the need for long-term care, because your options will be significantly limited once that 5 year window begins.

If you believe that you have made or received a fraudulent transfer, you should consult with an attorney immediately in order to help you "cure" or undo the transfer in order to avoid civil and criminal penalties.

Allowable Transfers Within the Medicaid 5-Year Look Back Period

If you or a loved one is likely to need long term care within the next few years, you should begin your planning as soon as possible. Because of the high cost of long term care, many individuals rely on Medicaid to pay for this service. As discussed in our previous article, Transferring Assets to Qualify For Medicaid, in order to be eligible to receive Medicaid benefits for long-term care, you must be able to show that you have already "spent down" the majority of your own assets.

We also discussed the 5-year look back period. Generally, if you transfer your assets for less than fair market value within 5 years prior to applying to Medicaid, your eligibility will be delayed by a penalty period. The length of the penalty period will depend on the amount of assets you transferred during the 5 years prior to applying for Medicaid.

In previous articles, we discussed how to use Irrevocable Trusts and Life Estate Deeds 5 years prior to applying for Medicaid to remove certain assets from your estate for the purposes of Medicaid while retaining some benefit from the asset for the remainder of your lifetime, and how to plan for Medicaid when you have a healthy spouse. In this article, we will discuss transfers of your assets that are allowable even if you are within the 5 year look back window.

You are allowed to make certain types of gifts, or transfers for less than market value, which will allow you to reduce your assets for Medicaid purposes. These types of transfers allow you to become eligible for Medicaid benefits by gifting your assets to your loved ones without imposing a penalty waiting period.

You may transfer any type of asset to:

- A spouse who is not seeking Medicaid benefits;
- A child who is permanently disabled or blind, or a trust for that child's benefit; or
- A trust for the exclusive benefit of anyone who is permanently disabled or under the age of 65.

You may transfer your home to any of the following individuals:

- A child who is under the age of 21;
- A "caretaker child" who has lived in the home and provided care for you for at least 2 years prior to your moving to a nursing home; or
- A sibling who has an ownership interest in the house and who has lived with you for 1 year prior to your moving to a nursing home.

Unfortunately, unless the transfer falls into one of these categories, a gift to a loved one or charity will likely delay your Medicaid eligibility if it is not made at least 5 years prior to applying for Medicaid.

Protecting a Healthy Spouse's Assets & the Community Spouse Resource Allowance

Most people are aware that in order to apply for Medicaid for long-term care you are required to spend down the majority of your own assets. In Illinois, in order to be eligible for Medicaid assistance, the recipient must have less than $2,000.00 in non-exempt assets. But what happens when the Medicaid recipient has a healthy spouse? States have recognized that, due to the financial burden of long-term care, there should be a mechanism for one spouse to receive Medicaid benefits while the other spouse (called a "community spouse") retains enough income and assets to live on. This is the purpose for the "community spouse resource allowance" in Illinois.

Assets held in your spouse's name generally count as your assets for the purpose of applying for Medicaid. However, In 2016 in Illinois, while the Medicaid applicant or recipient must have less than $2,000.00 in assets, the Medicaid recipient's spouse is allowed to keep $119,220.00 in countable (or non-exempt) assets. This is called the "community spouse resource allowance." The Medicaid recipient and community spouse are permitted to retain certain exempt assets in addition to the community spouse resource allowance. Exempt assets include:

- Up to $525,000.00 of equity in the home;
- Household goods including furniture and appliances;
- The Medicaid applicant and his or her spouse can each designate $10,000.00 for burial expenses;
- Burial plots for the Medicaid applicant and immediate family.
- One Automobile (up to $4,500.00 in equity);
- Life estate interests in real estate;
- Personal items such as clothing or jewelry; and
- Assets that are not able to be sold despite a good faith effort by the applicant.

In addition, the community spouse is permitted to maintain an income of up to $2,739.00 per month without negatively affecting Medicaid benefits. If the community spouse is making less than this amount in income, then the Medicaid applicant may count some or all of his or her income (such as Social Security payments) as that of the community spouse.

Unlike transfers to other family members or loved ones which are limited by the 5 year look-back period, transfers can be made from the Medicaid applicant to the community spouse at any time without negatively impacting Medicaid benefits.

After the Medicaid recipient passes, the state government can seek seek to be repaid Medicaid's expenses for his or her long-term care from the Medicaid recipient's estate. However, collection on this debt cannot move forward while the community spouse is living. In the case where the community spouse outlives the Medicaid recipient, collection of Medicaid expenditures will be sought from the estate of the community spouse to the extent that the estate contains assets that were owned by the Medicaid recipient at his or her death (like a jointly owned home).

Although the state may place a lien on the home of the community spouse if it falls into this category, the community spouse can freely transfer, sell, or give away any of her property during her lifetime. Good Medicaid planning will ensure that all assets are transferred to the community spouse prior to the death of the Medicaid recipient in order to allow those assets to pass from the community spouse to the community spouse's heirs without the interference of state Medicaid recovery.

Trust and Estate Administration

The Probate Process Explained

The purpose of this chapter is to explain the probate process. Probate is a court case wherein the probate court oversees the administration of an estate in order to ensure proper payment to heirs and creditors. If probate is necessary, your attorney will follow these steps to administer the estate through the probate court. The probate process is slightly different depending on whether the decedent had a will in place at the time of death. If there is a will in place, the estate is called a **Testate Estate.** If the decedent died without a will, the estate is called an **Intestate Estate**. This article will deal with probate administration of a Testate Estate.

In order to open a probate estate, the executor's attorney will file several documents with the probate court:

- **Petition to Admit Will to Probate and for Letters of Office** - This document requests that the court open the probate estate, allow the will to control the estate, and issue letters of office - the court order giving the executor the power to administer the estate.
- **Affidavit of Heirship** - A sworn statement by the executor listing the heirs of the estate.
- Affidavit as to Copy of Will - A sworn statement by the executor that the will being offered to the probate court is true and accurate.
- **Oath of Office** - A written oath by the executor to uphold his or her fiduciary duty associated with being the executor of the estate.
- **Surety Bond or Non-Surety Bond** - An insurance bond posted with the court, to ensure that the estate is administered properly.
- **Notice to Heirs and Legatees** - This is a notice that must be sent to all heirs (people entitled to inherit in the absence of a will) and legatees (people named as beneficiaries of the will) informing them of the opening of the probate estate.
- **Publication Notice -** A notice to all unknown creditors of the estate that the estate has been opened, which must be published in a newspaper.

Once the above documentation is filed with the court, an initial hearing date will be set. At the hearing, the court will issue Letters of Office giving the executor the power to administer the estate, and also issue an order admitting the will to Probate.

Within 14 days of the will being admitted to probate, the executor's attorney must mail to the heirs and legatees: (1) the petition for probate; (2) the order admitting the will to probate and appointing the executor; (3) a notice regarding the rights of the heirs and legatees.

If the address of an heir or legatee is unknown, the executor is required to publish notice to the heirs and legatees in a local newspaper once a week for three weeks, beginning within 14 days of the entry of the order admitting the will to probate.

The executor must also publish notice to any unknown creditors. This can be combined with the notice to heirs and legatees. After the notice to unknown creditors is published, creditors will have 6 months to file claims with the probate court. The case cannot be closed until this 6 month period has elapsed.

The next step is for the executor to prepare an inventory, which lists the decedent's assets. If the probate case is a supervised administration, as opposed to independent administration, the inventory must be filed with the clerk of court within 60 days after issuance of letters of office. Estates are typically independent administration (which requires less court oversight), unless an interested party requests supervised administration.

In the case of an independent administration, the executor must mail the inventory to each heir, legatee, creditor, or other interested party at least 30 days prior to filing a verified report with the court, which I will describe below. The inventory must also be mailed to any surety that issued a bond to the executor within 90 days of the letters of office being issued.

When the executor has performed all of his or her duties and is prepared to close the estate, his or her attorney will prepare a final accounting showing all of the assets and income that the executor collected on behalf of the estate as well as a proposed plan for distribution to creditors, heirs, and legatees. The account must be mailed to any creditors, heirs, or legatees that have not been paid in full. Along with the final account, the executor will mail receipts of distribution to everyone entitled to a distribution. Anyone receiving a distribution will sign and the receipt showing that they received the distribution indicated in the final account. In a supervised administration estate, the final account and receipts must be filed with and approved by the court. The executor should also obtain written approval of the final account from each interested party.

Finally, a verified final report must be filed with the court, wherein the executor asserts that all of his or her duties as executor have been completed. If the executor is unable to obtain executed receipts of distribution from all required parties, the executor must send notice of the filing of the final report to each such party within 14 days of filing the report. The notice will inform the interested parties that if no objection is filed within 42 days of the date that the report was filed, the estate will be closed and the executor will be discharged.

Once the verified report has been filed and the notice period has passed, a final hearing on the closing of the estate will be held. This final hearing date is typically scheduled at the date of the initial hearing to open the estate, and will typically be approximately one year after the initial hearing date. If the executor has obtained and filed all of the proper reports, notices, and receipts, the court will discharge the executor and close the estate.

What is the Difference Between Supervised Administration and Independent Administration of Probate Estates?

Probate cases can be handled in one of two ways: Supervised Administration and Independent Administration. Supervised Administration requires the executor or administrator of the estate to seek court approval for most decisions that he or she makes. Independent Administration, on the other hand allows the executor to potentially appear in court only twice: once at the opening of the probate estate, in order to be appointed executor; and a second time at the closing of the estate in order to file his or her final report with the court, close the case, and be discharged as executor.

Supervised administration may be necessary in one of two situations: (1) if it is ordered by the court; or (2) if it is requested by an interested party. Supervised administration of an estate may be ordered by the court in order to protect the interest of minors or disabled individuals. In the absence of the judge deciding independently to order supervised administration, estates will typically be administered independently unless supervised administration is requested by an interested party, such as an heir or creditor.

If supervised administration is requested by an heir or creditor, whether it is granted will depend largely upon whether there is a will in place, and what the will directs. If there is a will that states that the estate shall be administered independently, then the party seeking supervised administration will have to show good cause before supervised administration will be ordered. If there is no will, or if the will is silent as to independent administration, then supervised administration will be ordered automatically upon request, without the necessity of the requesting party showing good cause.

In an independently administered estate, the executor is not required to file the accounting or inventory with the court, but instead need only provide these documents to interested parties. The executor can also sell assets, pay debts, and distribute real estate to heirs without court approval.

If the estate is subject to supervised administration, the executor is required to file the accounting and inventory with the court and must seek court approval before making any major decision, such as paying creditors and distributing or liquidating assets. Minor tasks, such as paying utility bills and mortgages may still be performed without court approval.

Supervised administration can be beneficial if there is a lack of trust between the executor and other interested parties. It allows interested parties to be assured that their interests will be protected by the court. However, there are major drawbacks to supervised administration: (1) it delays the executors actions and creates more work for the executor; and (2) it increases the amount of attorney time that must be expended in administering the estate, thus making the estate administration more costly and giving the heirs a smaller piece of the pie.

The best way to ensure that supervised administration is not required for your estate is to meet with an attorney to draft a will that explicitly directs that the estate be administered independently.

What Happens When Minors Inherit Property?

When a minor inherits property in Illinois, how that property will be dealt with depends on whether the ***decedent*** (the person from whom the property is inherited) dies with a will, with a trust, or without either (intestate). In this article, we will explain the results of the different potential scenarios.

1. Decedent dies *intestate* (without a will or trust)

In the absence of a will or trust, the decedent's estate will go through probate. The probate court will appoint a guardian of the minor child's estate. This person will be responsible for managing the inherited assets of the minor until the minor reaches age 18, at which point the remaining assets will be paid out to the child. The ***guardian of the estate*** will have the duty to preserve as much of the inheritance as possible for distribution to the child when the child reaches the age of majority. He or she will be required to report periodically to the probate court until the assets are finally distributed and seek court approval for certain types of transfers. The guardian of the estate may be a different individual than the ***guardian of the person*** (the individual with custody over the guardian). However, in the absence of a will or trust naming a specific person as the guardian of the estate, the guardian of the person will often be named the guardian of the estate. This is undesirable for divorcees who do not necessarily want their ex-spouse, who will likely be the custodial parent and guardian of the person, to have control of their property.

2. Decedent has a will in place, but not a trust

A will allows you to have some control over how the assets inherited by minor beneficiaries are managed after your death, although not as much control as a trust. In a will, you have the ability to name both a guardian of the person and a guardian of the estate for your minor children. If you are a divorcee, your wishes with respect to guardianship of the person will likely be overridden if there is a surviving parent available to take custody. However, you can provide that someone other than the surviving parent will be guardian of the estate, with the responsibility of managing the inherited assets. Alternatively, a will allows you to appoint a ***custodian*** for the assets under the Illinois Uniform Transfer to Minors Act. Like a guardian of the estate, a custodian has the duty to manage the assets for the benefit of the beneficiary child. However, unlike a guardian of the estate, the custodian is not required to report periodically to the court or to seek court approval over certain types of transfers. In addition, while guardianships are terminated at age 18, custodianships are terminated at age 21. Unlike the trustee of a trust (discussed below), a custodian's discretion in managing the assets is not constrained by the wishes of the decedent.

3. Decedent has a trust in place

Using a ***revocable living trust***, the trustee can name a ***trustee*** to manage the assets of the child. Like a custodian or a guardian of the estate, the trustee has a fiduciary duty and the discretion to manage the assets of the beneficiary. Like a custodianship, a trust does not require court oversight. However, a trust allows its creator greater control over the management of the assets after he or she has passed. The creator of a trust can be very creative in instructing the trustee how he or she wants assets invested or paid out to the beneficiaries. Unlike a custodianship or guardianship, trust assets need not be paid out to the beneficiaries at age 18 or 21 respectively. Often, my clients will choose to have 1/3 of trust assets payable to the beneficiary at age 21, 1/3 at age 25, and the remainder at age 30, with the trustee retaining discretion to pay more if necessary for the benefit of the child.

Avoiding Liability When Transferring Real Estate from a Trust

If you are a trustee responsible for the administration of a trust after the passing of a loved one, you have a fiduciary duty to act in the best interest of the beneficiaries of the trust, within the limitations and instructions laid out by the trust document.

If a trust is in place and estate planning has been done properly prior to the death of the grantor of the trust, it should not be necessary to open a probate estate. However, if the beneficiaries disagree with the actions of the trustee, the beneficiaries may open a probate case and seek to make the trustee personally liable for mismanaged assets of the estate.

Trustee responsibility is fairly cut and dry when dealing with liquid assets like a checking account. However, the trustee's responsibility becomes more complicated when dealing with non-liquid assets like real estate.

When real estate is present in an estate, the trustee must first decide whether to transfer the real estate to one of the beneficiaries. This will usually result in a reduction of the share that the beneficiary is due from the remainder of the estate's assets or a payment from the beneficiary to the estate for the value of the home. An alternative to an insider transfer is to sell the real estate on the open market and distribute the proceeds among the beneficiaries.

Regardless of what is to become of the real estate, I recommend that the trustee seek written approval from all of the beneficiaries of the trust prior to the transaction. In the absence of this written approval, one or more of the beneficiaries may later claim that the real estate was sold to a third party or transferred to one of the beneficiaries for less than market value. The beneficiary could then open a probate case and seek to hold the trustee personally liable for breach of fiduciary duty.

For example, if the market value of a home is $400,000.00 and the Trustee sells it for $300,000.00, whether to a third party or to an insider, the trustee may be personally liable for the $100,000.00 difference between market value and sale price. However, if the trustee has received written agreement from the beneficiaries prior to the sale, the trustee will be able to rest easy knowing that she is protected from any future liability.

Other Issues Relating To Estate Planning

Adult Guardianship Proceedings Explained

In Illinois, in order to become the legal guardian for an adult, you must be appointed by the court through a guardianship proceeding. A guardian may be appointed for anyone who is unable to make or communicate responsible personal or financial decisions due to mental illness, deterioration or disability; physical incapacity; or "gambling, idleness, debauchery, or excessive use of intoxicants or drugs."

The first step in becoming a guardian is to obtain a report certifying that the individual for whom guardianship is sought suffers from one of these conditions. The report must be filled out and executed by an expert, such as a physician. Form versions of this report can be downloaded from most probate court websites.

Once you have received the expert report, you should review it to ensure that it accurately reflects the situation of the individual for whom guardianship is sought. It is possible to seek a limited guardianship for particular aspects of he individual's life or a plenary guardianship (total guardianship) covering all aspects of the individual's affairs. The person seeking to be named guardian must make sure that the expert has accurately reflected the level of need for guardianship.

Once the guardianship petition and accompanying documents have been filed, a summons must be served upon the person for whom guardianship is sought, informing them of the case. Notice of the proceeding must also be sent to all close relatives and anyone with whom the individual in question is living.

Typically, a Guardian Ad Litem will be appointed by the court. This is a professional (often an attorney) responsible for protecting the best interest of the individual for whom guardianship is sought. The Guardian Ad Litem will meet with the individual from whom guardianship is sought before the guardianship hearing, and will typically also discuss the case with the attorney for the person seeking to be named guardian.

A guardianship hearing will typically be held within 30 days of filing the guardianship petition. Although an expert or lay witness is not always required, it is good practice to have a witness on hand should the judge decide that one is needed. If the guardianship is contested multiple court appearances may be necessary.

With the proper planning, guardianship proceedings can be avoided. If the person in need of assistance signs Healthcare and Financial Powers of Attorney while still mentally competent, these can convey most of the powers that would otherwise be granted by the court in a guardianship case.

Pet Trusts

Pet trust law, including the validity of such trusts, varies from state to state. Fortunately, Illinois recently enacted a statute that explicitly provides for the creation of pet trusts.

When you create a pet trust, your attorney will draft a trust document naming your pet as the beneficiary of the trust after you pass away and also naming a trustee, who will be responsible at that time for managing the assets of the trust for the benefit of your pet. You and your attorney can then transfer assets into the trust.

Such assets will remain in your control during your lifetime, but will not be included in your estate at your death. Instead such assets will be legally held by the trust until they are distributed for the care of your pet according to the terms of the trust.

For more information on trusts in general, please visit our estate planning page, where you can watch a short video of our recent estate planning seminar.

If you are considering a pet trust, you should keep the following information in mind:

- **Trustee:** It is advisable for the trustee to be someone other than the caretaker of the pet. You should also name at least one successor trustee in case the original trustee should be unwilling or unable to perform his or her duties. The Illinois statute provides that no portion of the trust assets can be used for the trustee's own purposes, unless specifically provided for in the trust document. Your trust document can provide for compensation to your pet's caretaker or to the trustee, should you so choose.
- **Beneficiary:** You may identify each beneficiary pet by simply stating your pet's name. However, you can also reference your pet's microchip, if you have had one inserted. In addition, you may include any descendants of your pet as beneficiaries.
- **Management:** In the trust document, you may provide a detailed description of how your pet should be cared for, including naming specific veterinarians that are authorized to care for your pet.
- **Termination:** The trust will terminate when no beneficiary pet is living. The trust document should describe how you want the remaining trust assets to be distributed at this point. If the document does not contain such a description, the remaining assets will be distributed to your heirs, according to statute.
- **Funding:** The trust may be funded by transferring your assets to the trust during your lifetime. However, it may also be funded by a life insurance policy, of which the trust is the beneficiary. If the assets in the trust are substantially more than reasonably necessary to accomplish the trust's purpose, the court has the power to reduce the amount of assets held by the trust.

More Resources

Thank you so much for taking the time to read this book. I truly hope you find it helpful. If so, positive reviews are a big help to us and are always appreciated.

Contact Us

If you would like a free consultation regarding estate planning or nearly any other area of law, or if you simply have questions you would like answered, you can reach me at:

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You may also be interested in our weekly podcast and videoblog for business owners, SeizeYourBusiness.com, in which I interview entrepreneurs to learn the secrets to their success.

About the Author

Kevin O’Flaherty is a graduate of the University of Iowa and Chicago-Kent College of Law. He has experience in litigation, estate planning, bankruptcy, real estate, and comprehensive business representation. He regularly teaches seminars on Estate Planning and Business Law.

Kevin grew up in Downers Grove, Illinois, and is committed to giving back to the community both through his work as an attorney and through personal service activities. Last year he served as the Vice President of the Rotary Club of Downers Grove. For the past several years, he has chaired the Business Expo committee for Rotary GroveFest, Downers Grove’s annual summer festival. Kevin was recently appointed to the Board of Directors for Chamber 630, the Chamber of Commerce for the Downers Grove and Woodridge area. This year, he is honored to be a recipient of Suburban Life's "Best Under 40" Award. In 2016, Kevin received an award from the American Institute of Family Law Attorneys as one of the 10 Best Attorneys for Client Satisfaction for 2016.

Kevin is also active in the Willowbrook/Burr Ridge Chamber of Commerce., the Lemont Chamber of Commerce, and the Tinley Park Chamber of Commerce. Kevin is licensed in Illinois, as well as the Northern District of Illinois Federal Court. He is a member of the DuPage County Bar Association and the Illinois State Bar Association.

In his spare time, he used to play guitar, bass, and keys in local bands, but now his evenings are spent with his three year old daughter, Paige; his one year old son, Owen; his smelly black lab, Leah; and his patient wife, Lauren.

About O’Flaherty Law

At O’Flaherty Law, we are your community law firm. We are committed to providing personalized, efficient, and quality legal service. We pride ourselves on our “above-and-beyond” approach to client care, affordable fees, and communication. We were honored to recently be named as one of 2016's Ten Best Attorneys for Client Satisfaction by the American Institute of Family Law Attorneys, and to be the recipient of the Avvo Client's Choice Award for Divorce and Estate Planning.

Please call us today at (630)324-6666 or e-mail us at info@oflaherty-law.com to schedule a free in-person or phone consultation.

We have offices in Downers Grove, Naperville, and Elmhurst, Illinois. Our attorneys are happy to meet with you at our office or any other location convenient to you in order to work to accomplish your legal goals.

Our team has expertise in many areas of law including but not limited to:

- Divorce and Family Law;
- Civil Litigation & Dispute Resolution;
- Estate Planning (Wills & Trusts);
- Probate & Estate Administration;
- Business, Corporate & Contract Representation;
- Real Estate Law;
- Immigration;
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- DUI, traffic and criminal defense.

We strongly believe in the importance of being engaged with and giving back to the community. We are active in several community organizations including the Rotary Club of Downers Grove, The Lions Club, and the Downers Grove, Willowbrook/Burr Ridge, Lisle, Lemont, and Tinley Park Chambers of Commerce.