Estate Planning & Planned Charitable Giving Seminar Nativity of Our Lord Parish

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Parishioner and Lector
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Greg Laux
Attorney at Law

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Quick Introduction – "Who is this guy?"

- Greg Laux
  - Attorney at Law, Wood & Lamping LLP
  - J.D. from University of Cincinnati College of Law
  - Licensed to practice in Ohio and Indiana
  - Former volunteer firefighter with the Arlington County Fire Department in Northern Virginia, where I met my wife Sunny
  - Former professional firefighter/EMT-B with 5 years of experience with two different fire departments in the central Virginia area – Chesterfield County Fire & EMS and Henrico County Division of Fire
  - Parishioner, Lector, Welcome Sunday Chairman, and new "Christmas Tree Sale Guy" at Nativity

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The Road to Cincinnati

- Sunny got accepted to medical school in North Carolina in May 2003.
- I became a full-time paid firefighter in Richmond, Virginia in December 2003.
- We moved to Cincinnati in 2007 for Sunny's residency training in emergency medicine at University Hospital, and bought a house in Pleasant Ridge.
- I started law school at NKU Chase in 2009, and then transferred to UC Law and graduated from there in May 2012.

Estate Planning and Planned Charitable Giving Seminar – Outline of Topics

- What happens to my property if I live in Ohio and die without a will?
- Who will take care of my kids if I die without a will?
- What is a will and why do I need one?
- What does “probate” mean?
- Are there ways to avoid “probate”?
- What are some easy ways I can leave a charitable gift to Nativity in my estate plan?

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Intestate Succession – Dying Without a Will

- In Ohio, when you die without a will, any property you own will be distributed by a process called ***"intestate succession,"*** which is outlined in the Ohio Statute of Descent and Distribution.
- The decedent is referred to as the ***"intestate."***
- The person entitled to the property under the statute is called the ***"heir,"*** who inherits property by ***"descent."***
- ***"Issue"*** and ***"descendants"*** are the same thing, both referring to all lineal descendants, usually biological children.
- The personal representative of the estate is called the ***"administrator."***

Testate Succession – Dying With a Will

- The decedent is referred to as the "***testator.***"
- The clause directing the disposition of land in the will is called the "***devise.***"
- The person entitled to receive the land is the ***"devisee."***
- The clause directing the disposition of personal property is a ***"legacy"*** as to money and a ***"bequest"*** as other personal property.
- The person entitled to the personal property is the ***"legatee."***
- The personal representative of the estate is called the ***"executor"*** and is a person specifically designated in the will.

Two Classes of Property
Real Property v. Personal Property

- ***Real Property*** – land and improvements attached to land. It is ***immovable*** and includes land, trees, fences, tile, buildings, furnaces, and fixtures built into or attached to a house or building.
- ***Personal Property*** – anything other than real property. It is ***movable*** and it generally consists of two types.

Two Types of Personal Property – Tangible and Intangible

- ***Tangible Personal Property*** – includes things that can be seen, felt, or touched, such as household goods, furniture, clothing, cars, and tools
- ***Intangible Personal Property*** – includes things that retain value beyond their physical nature, such as cash, bank accounts, life insurance proceeds, annuities, shares of stock, bonds, promissory notes, or a trademark

Definition of Probate

- What is "probate"?
  - Probate is the court procedure that must be followed in order to distribute certain types of property the decedent owned at the time of death.
  - Every county in Ohio has its own Probate Court with its own rules and procedures.

Probate Assets v. Non-Probate Assets

- ***Probate Assets*** – all property owned by the decedent at death that will pass either by intestate succession or by the decedent's will
- ***Nonprobate Assets*** – assets and interests that will pass at the decedent's death directly to the named beneficiary upon the decedent's death ***outside of the probate process.***

Four Categories of Non-Probate Property

1. ***Property Passing by Contract*** – life insurance proceeds, 401(k), 403(b), 457 retirement plan death benefits, IRA death benefits, payable on death ("POD") accounts
2. ***Property Passing by Right of Survivorship*** – joint checking and savings accounts, jointly owned certificates of deposit (CDs), homes owned by married couples
3. ***Property Held in Trust*** – living trusts created during the trust creator's lifetime
4. ***Property Passing by Affidavit*** – an owner of real property may designate who will receive the property at the owner's death by a transfer on death ("TOD") designation affidavit

Property Passing By Contract – Life Insurance

- Life Insurance is one of the most common forms of non-probate property.
- Ohio courts have ruled that a life insurance policy is ***a contract***, and the disposition of property in it is governed ***by the terms of the contract.***
- Most life insurance policies provide that a change of beneficiaries can be made by the policy owner only by notification to the company during the owner's life. ***Thus, a will <u>cannot</u> override the beneficiary designation in a life insurance policy unless the terms of the life insurance contract specifically allow this.***

Property Passing By Contract – Retirement Plan Death Benefits

- 401(k), 403(b), and 457 "qualified plan" death benefits pass to the beneficiary named on the plan's beneficiary designation form
- The named beneficiary in the retirement plan ***trumps the recipient named in a decedent's will.***
- The named beneficiary – ***even if an ex-spouse*** – will receive the retirement benefits of a qualified plan, so it is critical to ***update your beneficiary designation forms every year!***

Property Passing by Contract – IRA Retirement Benefits

- IRA (traditional, nontraditional, or Roth) death benefits pass to the beneficiary named on the plan's beneficiary designation form
- The named beneficiary in the IRA plan ***trumps the recipient named in a decedent's will.***
- The named beneficiary – ***even if an ex-spouse*** – will receive the retirement benefits of an IRA plan, so ***it is critical to update your beneficiary designation forms every year!***

Property Passing by Right of Survivorship – Joint Bank Accounts, CDs, and Homes Owned by Married Couples

- ***Joint checking and savings accounts*** – ownership automatically passes to the joint account holder at the time of the decedent's death by operation of law
- ***Joint Certificates of Deposit (CDs)*** – ownership automatically passes to the joint account holder at the time of the decedent's death by operation of law
- ***Homes owned by married couples*** – title to the home automatically passes to the surviving spouse at the time of the other spouse's death

Property Held in a Living Trust

- ***Living Trust*** – an "inter vivos" (among the living) trust is an instrument through which the trust owner (settlor) transfers property to a third-party custodian (the trustee) who manages the property for the benefit of an individual(s) or entity named in the instrument as the recipient (the beneficiary).
- Very flexible and practical estate planning tool

Property Passing By Transfer on Death ("TOD") Affidavit

- What is an affidavit?
  - ***A sworn written statement confirmed by oath or affirmation for use as evidence in a court proceeding.***
- Ohio law allows a property owner to sign an affidavit that will transfer the owner's interest in the property at the time of death to a beneficiary outside of the probate process.

Advantages of Non-Probate Assets

- Avoidance of the lengthy, expensive, and bureaucratic probate process
- Transfers to beneficiaries are private matters instead of being matters of public record
- No fees needed for executors or administrators when decedent passes away (but there are trustee's fees)
- No court costs or attorney's fees

So what happens if I die without a will in Ohio?

Ohio Statute of Descent and Distribution – R.C. 2105.06

- All of your real and personal probate property will be distributed according to Ohio's Statute of Descent and Distribution
- The legislative statutory scheme becomes your estate plan, regardless of where you actually wanted your assets to go
- "Estate Planning by Default"

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If a married person without a will dies with a spouse and no children, ***the surviving spouse receives everything.***

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If a person without a will dies with no surviving spouse but surviving children, ***the children receive everything in equal shares of the estate.***

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is survived by a spouse ***and*** by children, the amount received by the surviving spouse depends on:
  1. Whether the spouse is the parent, either natural or adoptive, of any surviving children of the decedent, ***and***
  2. Whether the decedent was survived by one child or more than one child

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is survived by a spouse and ***one child***, and the spouse is the natural or adoptive parent of the child, ***the surviving spouse receives everything.***

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is survived by one child and the spouse is ***not*** the natural or adoptive parent of the child (i.e., foster/step-parent), the surviving spouse takes the first $20,000 of the estate plus ½ of the balance.
- The other ½ of the estate passes to the child.

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is survived by ***more than one child***, and the surviving spouse is the natural or adoptive parent of all of the decedent's children, the surviving spouse receives everything.

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is survived by ***more than one child***, and the spouse is the natural or adoptive parent of ***at least one*** – ***but not all*** – of the children, the spouse takes the first $60,000 of the estate plus one-third of the balance.
- The remaining two-thirds of the balance passes to the children.

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is survived by ***more than one child***, and the spouse is ***not*** the natural or adoptive parent (i.e., foster/step-parent) of ***any*** of the children, the spouse takes the first $20,000 of the estate plus one-third of the balance.
- The remaining two-thirds of the balance passes to the children.

What if I die unmarried and without any kids who survive me?

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Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is not survived by a spouse or any children, the estate passes to the decedent's parents by ½ each
- If there is only ***one*** surviving parent, he or she receives the entire estate

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is not survived by a spouse, any children, or parents, the estate passes to the decedent's brothers and sisters (including any stepbrothers/stepsisters) and any nephews and nieces by representation

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent had no spouse, no children, no parents, and no brothers or sisters, then ½ of the estate passes to decedent's maternal grandparents, and the other ½ passes to the paternal grandparents.

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If one of the maternal or paternal grandparents is deceased, then the ½ interest passes to the surviving maternal or paternal grandparent.
- If both maternal or both paternal grandparents are deceased, the ½ interest passes to their descendants.

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If both grandparents on the maternal or paternal side are deceased, and no descendants of that grandparents' side are living, the ½ interest passes to the other side's grandparents

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If the decedent is not survived by a spouse, children, parents, or grandparents, then the estate passes to the decedent's next of kin (i.e., closest blood relatives).
- **Note:** Ohio law does ***not*** permit inheritance through next of kin (i.e., your nephews/nieces cannot inherit a share of your estate if you die without a will).

Ohio Statute of Descent and Distribution – R.C. 2105.06

- If there are no next of kin (i.e., brothers or sisters), the estate is divided up among the decedent's stepchildren or their descendants, who inherit the estate in equal shares by representation.

Ohio Statute of Descent and Distribution – R.C. 2105.06

- ***Finally***, if the decedent does not leave any relative capable of inheriting the estate, the estate passes to the State of Ohio by a process called ***escheat.***

Well, that doesn't sound so bad. Why is it so important for me to have a will?

Definition of a Will

- A ***will*** is a legal instrument executed with certain formalities that usually directs the disposition of a person's property at death.
- A will is revocable during the lifetime of the testator and only becomes effective at the testator's death.

Legal Requirements of a Valid Will

- Testator must be ***at least 18 years old***
- Must be ***in writing***
- Must be ***signed at the end by the testator***
- Must be ***signed in the presence of at least two competent, disinterested witnesses (not beneficiaries)***
- Witnesses must ***sign the will in the presence of each other***

Advantages of Having a Will

- You can ***take control*** of the distribution of your property and assets according to ***your own preferences***, not the State of Ohio's preferences.
- You can name an executor ***of your choice*** instead of having the court name an administrator on it own.
- You can appoint an executor ***and*** a successor executor.
- You can appoint guardians ***and*** successor guardians for your minor children.

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Advantages of Having a Will

- You can ***plan in advance*** for the payment of debts.
- You can ***designate the order of death*** in the event of the simultaneous death of you and your spouse.
- You can ***provide for the distribution of property*** in the event of a potential disclaimer by a beneficiary under your will.
- You can provide specific provisions in your will to ***reduce the risk of will contests*** among beneficiaries.

Disadvantages of Having a Will

- It costs money to get one drafted and in place.
- It may be uncomfortable to contemplate your own death.
- Your life or job circumstances may change over time, and the original will you get drafted may not reflect your current wishes of where you want your property to go when you die.
- Having a will in place does not avoid the probate process (although it does shorten it).

Advantages of Not Having a Will

- No upfront cost.
- No time or energy required.
- Any property you own will be distributed to your heirs living at the time of your death by the Ohio Statute of Descent and Distribution.

Disadvantages of Not Having a Will

- The probate process for an intestate estate is lengthy, expensive, and bureaucratic.
- You cannot provide for distribution of your property and assets according to your own preferences and wishes.
- You cannot appoint a guardian for your minor children.
- You cannot appoint an executor to sell property on your behalf, pay debts, and settle your affairs.

Profile of an Estate

Probate Assets

- Assets Held in Decedent's Name Only
- Tenancy in Common
- Assets Distributed in Decedent's Will
- Assets in Decedent's Estate if Decedent Died Without a Will

Non-Probate Assets

- Living Trust
- Joint Checking and Savings Accounts and CDs
- "Qualified Plan" with a Designated Beneficiary
- "Payable on Death" Accounts
- "Transfer on Death" Property (Affidavit)

Profile of an Estate

	Decedent Dies Intestate (No Will)	Decedent Dies Testate (Will)	Non-Probate Assets
Time to Administer	12 months	6 – 9 months	2 – 4 months
Attorney's Fees	4½% of estate	2 – 4½% of estate	1 – 1½% of trust corpus
Administrator's/ Executor's Fees	4% of estate	2-4% of estate	$0
Court Costs	$300	$200	$0

Profile of an Estate

Asset	Title	Value
House	Mom Only	$150,000
Joint Checking Account	Mom and Daughter	$20,000
Joint Certificate of Deposit	Mom and Daughter	$80,000
Roth IRA	Mom (Payable to Son and Daughter)	$50,000
TOTAL ESTATE		$300,000

Assume that Mom has a will in place that leaves all of her assets equally to Son and Daughter. Who takes what? Why?

Profile of an Estate

Asset	Daughter	Son
House (Probate Asset)	$75,000	$75,000
Checking Account (Non-Probate Asset)	$20,000	$0
Certificate of Deposit (Non-Probate Asset)	$80,000	$0
Roth IRA (Non-Probate Asset)	$25,000	$25,000
TOTAL DISTRIBUTION	$200,000	$100,000

Is this distribution fair? What if Mom and Daughter were estranged from each other? What if Son lived with Mom and took care of her every day the last five years of her life? Does that make a difference? Should it?

Financial Power of Attorney

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What is a Financial Power of Attorney?

- A ***financial power of attorney*** is where you designate an attorney-in-fact of your choosing to enter into financial transactions on your behalf. Often, this is a spouse or other family member.
- The attorney-in-fact may then sign checks, tax returns, deeds, or other financial transactions that you have authorized.

Types of Financial Powers of Attorney

- Durable v. Non-Durable Power of Attorney
- General v. Special or Limited Power of Attorney
- Current v. Springing Power of Attorney

Durable Power of Attorney

- A ***durable power of attorney*** is one that specifically states that it remains valid even after the person granting the power becomes incapacitated.
- This is what most people want because it helps them avoid the necessity of having their family request the appointment of a guardian by the probate court.
- If the power of attorney does not include this language, the authority of the attorney-in-fact terminates upon your incapacity.

General v. Special or Limited Power of Attorney

- A ***general power of attorney*** is granted to someone to conduct any and all business for you. As a practical matter, it is generally beneficial to include an all-encompassing listing of powers granted to the attorney-in-fact due to certain court decisions.
- A ***special or limited power of attorney*** relates to powers granted to someone to transact specific and identified business for you, such dealing with the IRS or participating in a real estate closing.

Current v. Springing Powers of Attorney

- A ***current power of attorney*** becomes effective as soon as the document authorizing the power is signed.
- A ***springing power of attorney*** becomes effective at some later time, usually upon the happening of some triggering event in the future when it "springs" into effect. Typically, it occurs when you are no longer able to make decisions for yourself.

Health Care Power of Attorney

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What is a Health Care Power of Attorney?

- A ***health care power of attorney*** – or "durable power of attorney for health care" or "health care proxy" – designates another person to make health care decisions for you when you are unable to communicate your own preferences due to incompetency.
- The power can relate to ***life termination*** and ***life-time health care decisions***, such as having access to and releasing medical records, employing and terminating health care personnel, and selecting appropriate medical facilities for the person.

What are the characteristics of a Health Care Power of Attorney?

- It names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal.
- It becomes effective only when you cannot make your own decisions regarding treatment.
- It requires the person you appoint to make decisions that are consistent with your wishes.
- It will not overrule a living will if you have both documents.

Living Wills

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What is a Living Will Declaration?

- A ***living will*** is a legal document that allows you to express your intentions in advance – sometimes called "advance directives" – regarding the withholding or withdrawal of life-sustaining treatment if you should become terminally ill or permanently unconscious.
- A living will becomes effective when you are no longer capable of making informed decisions about life-sustaining treatment on your own.
- It becomes your voice when it is communicated to the attending physician.

A Living Will Declaration Is NOT a Will

- **DO NOT** confuse a "Last Will and Testament" with a "Living Will Declaration." They are different.
- A "Last Will and Testament" is a legal document you sign that directs how your property and assets will be disposed of when you pass away.
- A "Living Will Declaration" is a legal document that operates as an "advance directive" to your physicians if you become terminally ill or permanently unconscious.
- A "Living Will" is misnamed because it has nothing to do with "living" and it is not a "will" at all.

What Are The Characteristics of a Living Will?

- It becomes effective only when you cannot communicate your wishes in advance and become permanently unconscious or terminally ill.
- It informs your doctor as to whether you wish to have life-support technology used or not used, and it gives doctors direction about the extent of medical treatment you want under these conditions.
- It specifies under what conditions you would want artificial feeding and fluids to be withheld.
- It can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else.
- It will be followed for a pregnant woman only if certain conditions apply.

The Legal Requirements of a Living Will Declaration

- Must be a ***competent adult at least 18 years old***
- The living will must be ***dated and voluntarily signed***
- The living will must be either ***properly witnessed or properly notarized***
- The living will must ***specifically authorize the withdrawal or withholding of hydration (water) and nutrition (food)*** in the event that they are unnecessary for comfort

How Does a Living Will Get Activated?

- A living will activates when the attending physician and at least one other physician determine that the patient is ***in a terminal condition*** and is ***incapable of making informed decisions***, or the patient is ***permanently unconscious.***
- The physician then has a duty to either (1) implement the wishes of the patient as conveyed in the living will, or (2) inform the patient if the facility or the physician cannot or will not comply with the patient's choices in the living will.

How Does a Living Will Get Activated?

- If the patient's wishes cannot be carried out by the physician or hospital, the physician or hospital ***must allow*** the transfer of the patient to a physician or hospital that will comply.
- The physician or hospital cannot interfere with transferring the patient to another facility that will comply with the patient's wishes.
- The attending physician must note in the patient's medical record that there is a living will on file.

What if the Patient Has *both* a Health Care Power of Attorney *and* a Living Will?

- It depends on the specific wording of the Health Care Power of Attorney.
- A Health Care Power of Attorney can allow an attorney-in-fact to make both lifetime ***and*** life termination health care decisions.
- The provisions regarding withdrawal or withholding of life support systems are the same as a Living Will.
- ***But***, a Living Will takes precedence over a health care power of attorney for life termination decisions.

Is it really necessary to have *both* a Health Care Power of Attorney *and* a Living Will?

- It depends on the specific wording of the Health Care Power of Attorney, but in general, the answer is **YES**.
- If there is any potential for internal family conflict (i.e., Karen Ann Quinlan, Nancy Cruzan, and Terry Schiavo cases) over what you would have wanted as far as life termination decisions are concerned, it is best to clearly spell out your wishes in a Living Will ***even if*** you have a Health Care Power of Attorney in place.
- Remove any and all doubt about your wishes in advance.

Five Easy Ways You Incorporate Nativity Into Your Estate Plan

- Designate Nativity as a primary or contingent beneficiary of your 401(k), 403(b), or 457 retirement plan
- Designate Nativity as a primary or contingent beneficiary of your traditional, nontraditional, or Roth IRA
- Leave a specific bequest to Nativity in your will
- Designate Nativity as a beneficiary of the residuary clause in your will
- Donate the value of appreciated stock to Nativity and receive a charitable tax deduction on your income taxes

Estate Planning and Planned Charitable Giving Seminar – Review of Topics

- What happens to my property if I live in Ohio and die without a will?
- Who will take care of my kids if I die without a will?
- What is a will and why do I need one?
- What does “probate” mean?
- Are there ways to avoid “probate”?
- What are some easy ways I can leave a charitable gift to Nativity in my estate plan?

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What happens to your property if you live in Ohio and die without a will?

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It will be distributed according to the method outlined in the Ohio Statute of Descent and Distribution.

Who will take care of your kids if you die without a will in Ohio?

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A guardian will be appointed by the probate court after a special proceeding.

What is a will and why do you need one?

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A legal instrument executed with certain formalities that directs the disposition of your property at death. A will allows you to take control of the distribution of your assets according to your own preferences.

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What does “probate” mean?

The court procedure that must be followed in order to distribute certain types of property the deceased person owned at the time of death.

Are there ways to avoid "probate"?

Yes, by holding your property and interests in one of the four categories of non-probate assets.

What are some easy ways I can incorporate a charitable gift to Nativity in my estate plan?

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1. Designate Nativity as a percentage beneficiary of your retirement plan.
2. Leave a specific amount of money to Nativity in your will.
3. Designate Nativity as a beneficiary of the residuary clause in your will.
4. Donate the value of appreciated stock to Nativity.

"In estate planning, an ounce of prevention is worth a pound of cure."

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