

# Wills vs Trusts

PRESENTED BY DAVID KUBIKIAN

ESTATE PLANNING & ELDER LAW ATTORNEY

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7 Southwoods Boulevard, Albany, NY 12211 | 518-465-7581  
47 West Harrison St, Saratoga Springs, NY 12866 | 518-581-8131  
855 Route 146, Suite 220, Clifton Park, NY 12065 | 518-952-4010  
1151 Flatbush Road, Kingston, NY 12401 | 845-338-6405

[www.herzoglaw.com](http://www.herzoglaw.com)

# What is an Estate Plan?

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- Everyone over age 18 should have an “Estate Plan”
  - Incapacity
  - Disability
  - Death
- Avoid Guardianship (Costly & Invasive)
- Can start out simple
- Planning needs grow over time

# Basic Estate Planning Documents

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- Power of Attorney
- Health Care Proxy
- Will



# Power of Attorney

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- Principal (you) appoints an Agent (spouse, child, friend) to manage your financial and legal affairs if you become incapacitated
- If there is no Power of Attorney and you become incapacitated, then you must petition the court to have a Guardian appointed

# Health Care Proxy

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- **A Health Care Proxy** allows you to appoint an agent (family or friend) to make health care decisions for you if you become incapacitated
- **Living Will** – this is a separate document that can be signed separately or with your Health Care Proxy that gives your agent your wishes as to end of life care

# Last Will & Testament

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A ***Last Will and Testament***, or “Will” as it is commonly referred to, is the foundation of every good estate plan

- Simple Will
- By-pass Will
- Pour-over Will

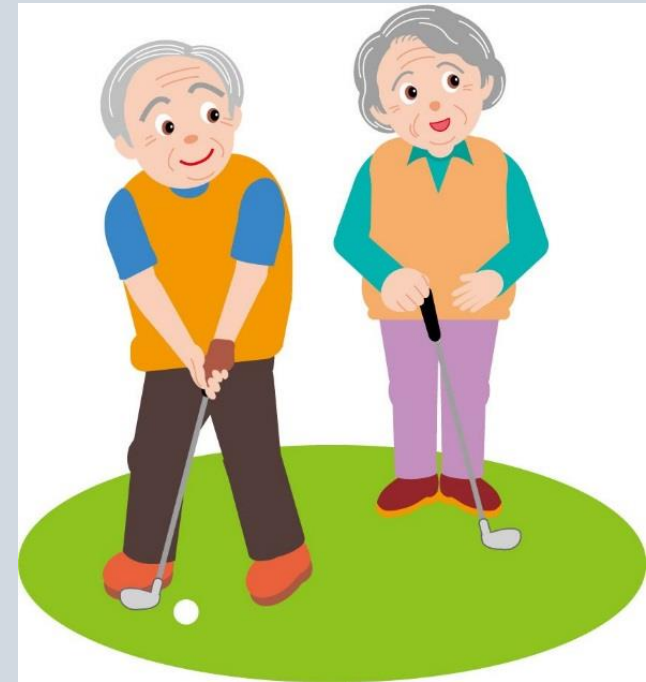


# Wills

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**Approximately 55% of American adults do not have a Will**

- 57% said they “just haven’t gotten around to making one”
- 22% felt that making a will wasn’t urgent
- 17% didn’t think they needed a will
- 14% don’t have a will because they don’t want to think about death



# Last Will and Testament

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- **Beneficiary**

who receives your property after your death

- **Executor**

person who oversees everything, gathers assets, pays debts and then distributes balance to beneficiaries

- **Probate Process**

your will must be submitted to court, appropriate people notified of the existence of the will, and if no objections the court appoints an Executor



# Execution Requirements

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- Capacity to Sign
  - POA cannot sign for you
- Two adult disinterested witnesses
  - Witnesses cannot be anyone that you have named as a beneficiary in the Will
- Affidavit of subscribing witnesses
- No handwritten changes/ additions



# Intestacy Law

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## What if you die without a Will?

Laws of New York govern who inherits your property

- If survived by spouse and kids, \$50,000 and ½ of estate to spouse, balance to kids
- If survived by spouse and no children, all to spouse
- If survived by children and no spouse, all to kids
- If no spouse or children, then to parents, then to siblings, then to nieces and nephews

# Probate and Non-Probate Property

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## **Your will is only effective over probate property**

- Property that is in your individual name, and that does not have a designated beneficiary

## **Non-probate Property – not governed by will**

- Joint bank accounts
- Real Estate owned jointly
- Retirement accounts with named beneficiaries
- Life Insurance with named beneficiaries
- Trusts

# What is a Trust?

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- A Trust is a contract or agreement between a Grantor and Trustee to hold assets (money, real property, objects, etc.) for the benefit of a beneficiary
  - **Testamentary Trusts**, which are inside your will and go into effect when you die
  - **Living Trusts**, which take effect during your lifetime
- Many different types of Trusts depending on your needs and goals
- Privacy

# Revocable Trusts

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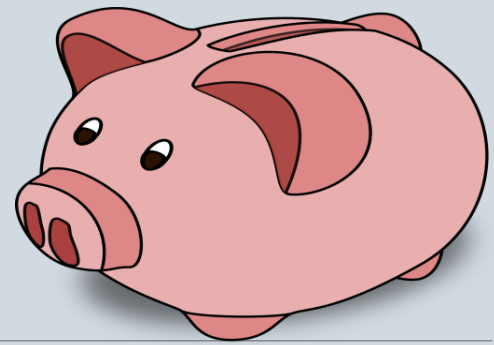
## What is an Revocable Trust?

- Grantor – one who creates and funds the trust
- Trustee – person in charge of the trust
- Beneficiary – person who received the assets in the trust

# Revocable Living Trusts

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- Revocable Living Trusts are created by you (Grantor) and are managed by you as Trustee until you become incapacitated
- You appoint a Successor Trustee to take over management of the trust when you can no longer do so
- Upon your death, the trust avoids probate
- The Successor Trustee (appointed by you) takes over management of the trust and distributes your assets to your beneficiaries



# Irrevocable Trusts

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- An Irrevocable Trust can be used to protect your assets and pass them to your children, if you plan far enough in advance.
- The trust must be created and funded **5 years** before you need to apply for Medicaid to avoid the lookback period.

# Irrevocable Trust

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For the trust to qualify to protect your assets:

- You cannot be the trustee (but your children can)
- You can receive income from the trust
- You can place your house in the trust and still live there
- You cannot receive principal distributions from the trust
- You can reserve the right to change the trustee
- You can decide who gets the trust assets after your death



# Irrevocable Trust

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- If the trust is properly structured, then after 5 years have passed, the assets in the trust are exempt for Medicaid purposes
- You can apply for Medicaid and the assets in the trust will not be counted or have to be spent down for Medicaid



# Trust vs. Will Highlights

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## TRUST

- No Probate
- Manages Assets During Life
- Provides for Successor Trustee upon death or incapacity
- Financial affairs remain private
- Harder to contest

## WILL

- Probate: cost & delays
- Takes effect after death
- No provision for incapacity
  - may need a guardian
- No privacy
  - court papers filed in probate are public record
- Invites potential conflict

# Will vs. Trust – *Which is Right for Your Family?*

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## **Use our Estate Planning Questionnaire**

- Total Estate Assets
- Non-Probate Assets

## **Determine Beneficiaries**

- Family Members, Non-Family Members, Charities, Pets, Minors, Persons with Special Needs
- Any Substance Abuse Problems, Gambling, Debt

## **Plan for Incapacity**

- Determine Fiduciaries

# When to Consider a Trust?

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- Real Estate
- Property in Multiple States
- Business Assets
- Want to Avoid Probate
- Asset Protection – Lawsuits, Creditors, Medicaid
- Want to Avoid Family Conflict/ Litigation
- Privacy

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- Help you choose the Estate & Tax Plan that's right for YOU
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