



Presented by Jay Garrett
Attorney at Law
Professor of Legal Studies
Texas A & M University - Commerce



PROBATE AND ASSET DISPOSITION ALTERNATIVES

GETTING STARTED

- ✘ Know the Terminology
- ✘ Become Familiar with the Tools
- ✘ Develop a Plan



TERMINOLOGY

- ✘ Will provides for a Testamentary disposition of property by the Testator (one making the will).
 - + A will is the final declaration of how a person desires to have his or her property disposed of after death.
- ✘ Die *testate* (One who dies after having made a valid will) or *intestate* (without a will).
- ✘ Executor is a personal representative named in the will.
- ✘ Administrator appointed by court.



WHY DO ANY PLANNING?

- ☞ Choose your Personal Representative
- ☞ Eliminate Probate
- ☞ Eliminate or reduce Estate Tax
- ☞ Maintain Privacy
- ☞ Determine your choice of beneficiaries
- ☞ Choose your agents/Executor/Trustee
- ☞ Avoid conservatorship
- ☞ Protect your Assets
- ☞ Pay Minimum legal fees

WILLS - ADMINISTRATION

- ◆ Holographic = PROBATE
- ◆ Typed = PROBATE
- ◆ Form = PROBATE
- ◆ Professionally Drafted = PROBATE
- ◆ No Will (Intestate) = Administration



PROBATE - *DISADVANTAGES?*

- ▶ *Privacy* - public records
- ▶ *Legal Process*
- ▶ *Length of Time*
- ▶ Beneficiaries wait for *distribution*
- ▶ *Expenses \$*

PROBATE - WHO NEEDS IT?

- *Business Owners*
- *Sole Proprietors*
- *High liabilities or debts*
- *Anticipated problems with beneficiaries*
- *Court supervised (Judge's decision is final)*
- *Limited Creditors Claim period*

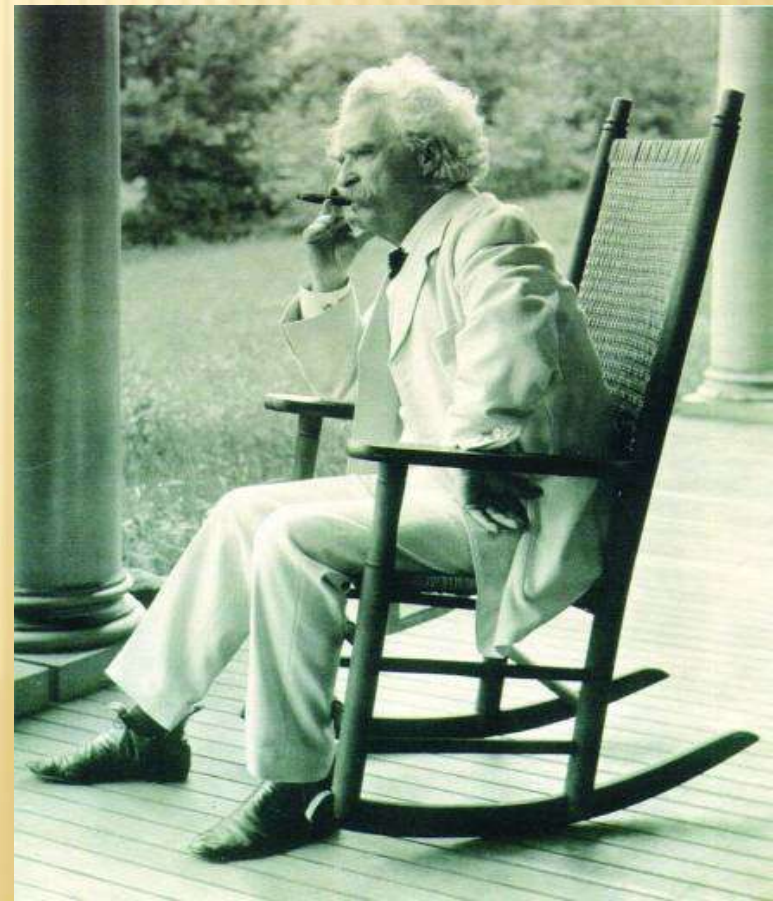
PROBATE ALTERNATIVES

- ✓ *Spend* the kid's inheritance
- ✓ *Gift*ing
- ✓ *Will* Substitutes
- ✓ *Living* Trust



“I’m not as concerned about the return on my money as the return of my money!”

--Mark Twain



PROBATE PROCEDURES

- ✘ Informal Probate Proceedings.
 - + Family Settlement Agreements.
 - + Small Estates.
- ✘ Formal Probate Proceedings.
 - + Larger Estates.
 - + Guardianship appointment to a minor or incompetent person and trust has been created to protect that minor or incompetent person.



PROBATE PROCESS

- File Will and petition to obtain “*Letters*”
- Obtain *Tax ID number* for estate
- Determine assets in and outside of estate
- Submit *Inventory* of assets for appraisal
- Handle *Creditor’s Claims*
- File final personal *tax return*; determine if *estate tax return* will be required; file estate returns

DUTIES OF EXECUTOR OR ADMINISTRATOR

- ✓ Gather & Inventory assets
- ✓ Advise *Creditors* & Pay debts and expenses
- ✓ *Wind up* affairs
- ✓ Notify *governmental* agencies
- ✓ File *insurance* claims
- ✓ Detailed Accounting of estate
- ✓ File *Tax Returns* & Pay Taxes
- ✓ *Manage, Invest and Distribute*



PROBATE PROCESS

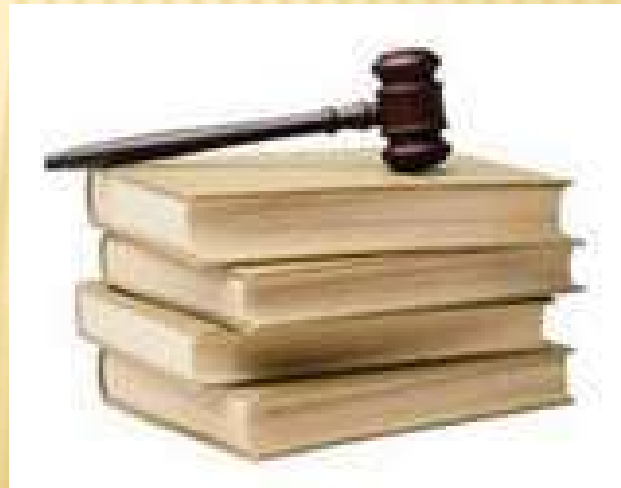
- ▶ If real property, file necessary documents with *County Clerk*
- ▶ Handle *investments/debts*
- ▶ Submit detailed *accountings* of income and expenses with the Court
- ▶ File tax returns for estate and decedent
- ▶ Prepare *final accounting* and *Petition* to get court approval for distribution

ADMINISTRATION PROCESS

- *Distribute assets as ordered by Court Order and obtain receipts from all Distributees*
- *File Receipts with Court*
- *After final tax return filed, all assets distributed and receipts filed with Court, obtain discharge as Executor*

MUNIMENT OF TITLE PROBATE

- ✘ “Muniment” means “Proof”
- ✘ All Debts Must be Paid; except Mortgages
- ✘ No Executor Appointed
- ✘ Court Enters Order Admitting Will to Probate as Muniment of Title



ESTATE TAXES

\$ *History*

- \$ - 1797 *Stamp tax* - for transfers of estates
- \$ - 1862 - *Revenue Act* = *direct tax on estates*
- \$ - 1898 *War Revenue Act* = *legacy tax on estates*
- \$ - *Historically, average of 2% of population affected*

\$ *Current Law*

\$ *Future Law ?*

\$ *Ways to reduce or eliminate*

ESTATE TAX EXEMPTION

Total Estate / Per Person

Year of Death	Exemption
2009	\$3,500,000
2010	No Tax
2012 (Tax Rate: 35%) • (Indexed for inflation after 2011)	\$5,120,000*
2022 (Tax Rate: 40%)	\$12,060,000
2026 (Tax Rate: 40%)	\$7,000,000 ?

ESTATE TAXES

Ways to Minimize

- ◆ Planned giving to *private beneficiaries*
- ◆ Planned giving to *charitable beneficiaries*
- ◆ *Life Insurance* (life insurance trusts)
- ◆ Utilize “*A/B Trust*” (if married)

TRUSTS

- ✦ Trust -- A right of property (real or personal) held by one party for the benefit of another.



WHAT KIND OF TRUST?

(A few of the trusts available)

- ? Single Probate Avoidance
- ? Joint Probate Avoidance (if married)
- ? Disclaimer (if married)
- ? A/B (if married)
- ? A/B/C (if married)
- ? QDOT (if married and spouse is non-citizen)
- ? Charitable Remainder
- ? Irrevocable Insurance

FUNDING THE TRUST

- WHAT goes into trust?
 - ◆ Real Estate
 - ◆ Everyday savings/checking accounts
 - ◆ Tangible assets (Assignment)
 - ◆ Non-tangible assets
 - ◆ Stocks and Bonds
- WHY fund?



AFTER A DEATH

Depending on Type of Documents you Choose

- *A/B Trust* - division of assets; tax return
- *Disclaimer Trust* - possible division; similar to A/B Trust; meet with attorney & accountant
- *Probate Avoidance Trust* - take decedent's name off title; valuation for step-up basis
- *Will* - probate of Will
- *No Will or Trust* - Intestate succession; probate required if more than \$100,000

LIVING TRUSTS

- *Separate legal entity*
- *Holds title* to all types of assets
- *Provides detailed instructions* to Trustee
- *Benefits* the Settlor and Beneficiaries
- *Privately administered* (independent of court)
- *Revocable or Irrevocable*

LIVING TRUST SUMMARY

- ◆ Avoids *Probate* at death
- ◆ Helps Prevent Court Control of Assets at *Incapacity*
- ◆ Provides Maximum *Privacy*
- ◆ Quick *Distribution* of Assets to Beneficiaries
- ◆ Assets Can Stay in Trust
- ◆ Reduces or Eliminates *Estate Tax*

Wealth Transfers Through Life Insurance

Liquidity

Tax-Free Inheritance

Probate-Free

Creates an Immediate Estate

Final Expenses



AFFIDAVITS OF HEIRSHIP

× CONTENT:

- + Decedent has passed away
- + Date and Place of Death
- + Place of Residence
- + Marital History
- + Identity of Descendants or Collateral Heirs
- + Died Testate or Intestate
- + All Debts and Taxes Paid



AFFIDAVITS OF HEIRSHIP

- ✘ Signed by Disinterested Third Parties Familiar with Family History
- ✘ Evidences Transfer of Title to Heirs
 - + Real Estate
 - + Personal Property
- ✘ Not Favored or Universally Accepted by Banks

SMALL ESTATE AFFIDAVIT

- ✘ For Persons Passing Intestate
- ✘ Value of Estate Excluding Homestead is Less than \$50,000.00
- ✘ Identifies Heirs, Assets, Debts
- ✘ Requires Court Order Approving Affidavit

COMMUNITY ADMINISTRATION

- ✘ No Administration Required when Community Property Passes to Surviving Spouse



JOINT TENANTS WITH RIGHT OF SURVIVORSHIP

- ✘ Title Passes without Action by Court
- ✘ Prevails over Conflict in Will
- ✘ Creation Requires Strict Adherence to Statute
- ✘ Available for Real Estate, Bank Accounts, Stocks and Investments
- ✘ Non-Probate Asset

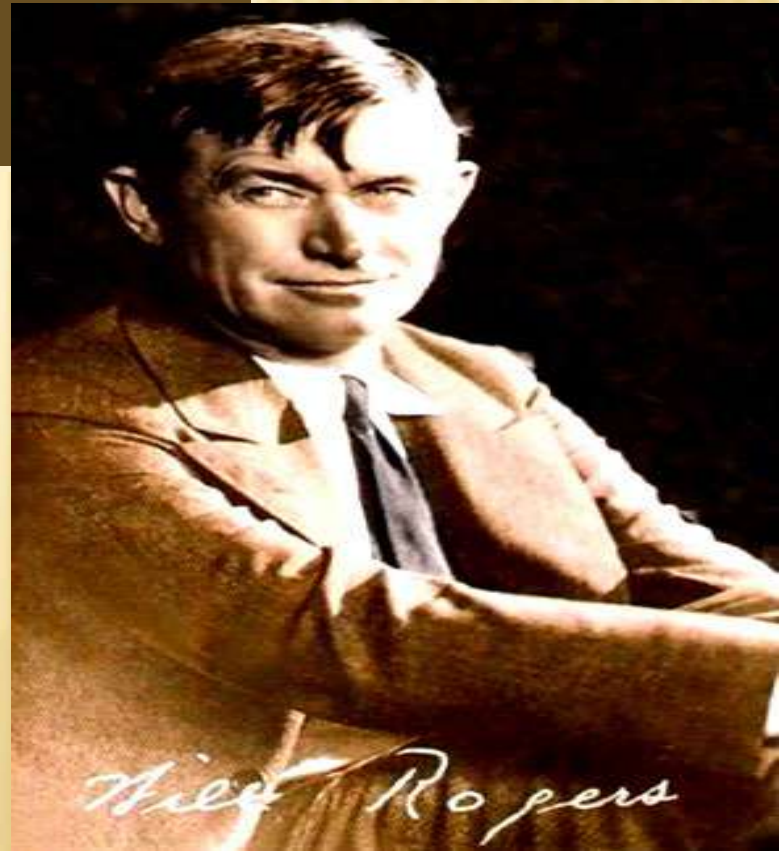
ANCILLARY DOCUMENTS

- ✘ Powers of Attorney
- ✘ Directive to Physician
- ✘ HIPAA Release
- ✘ Declaration of Guardian
- ✘ Final Instructions
- ✘ Do Not Resuscitate (DNR)
- ✘ Burial

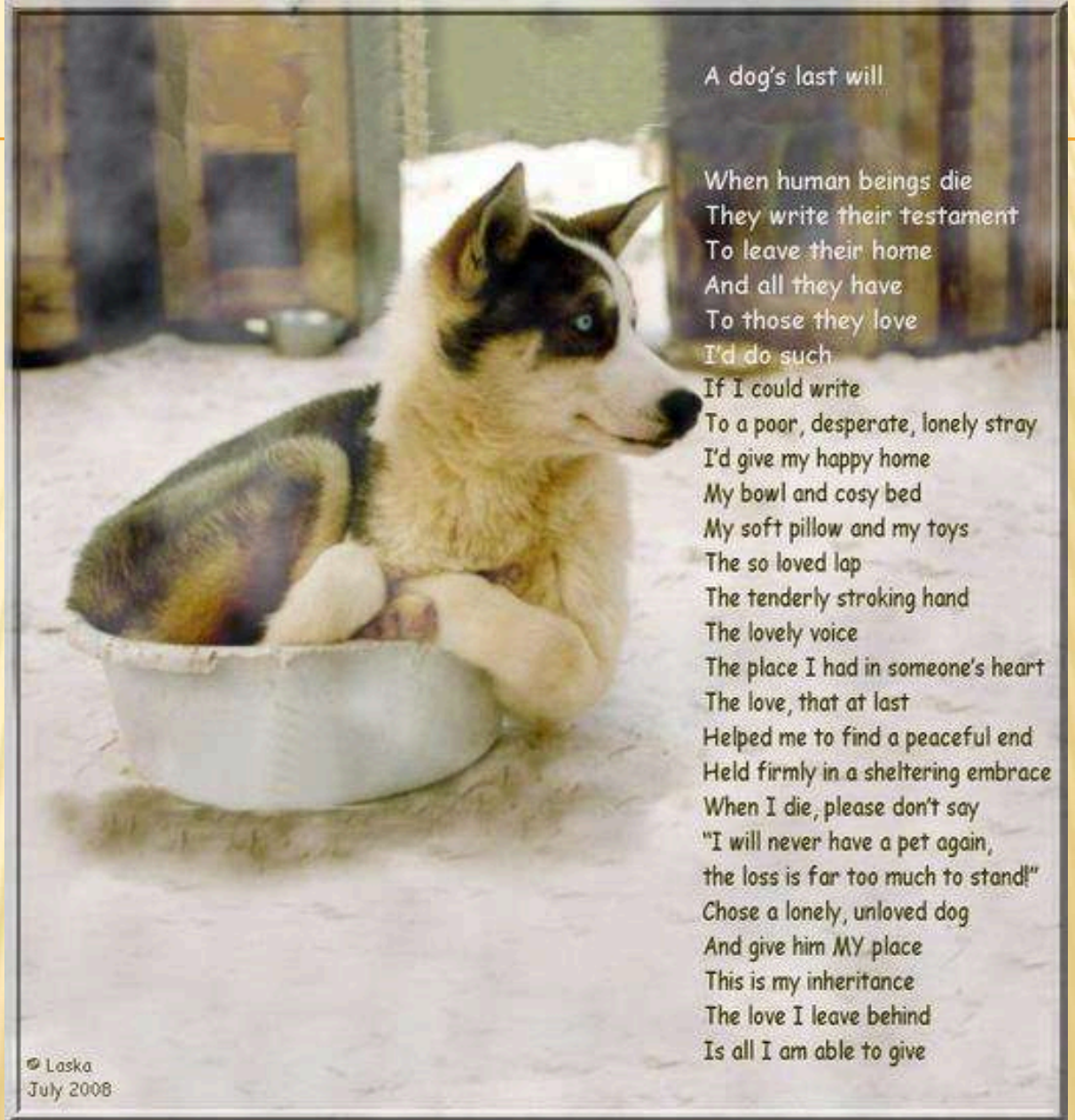


“If I have a nickel in my pocket when I die, I miscalculated.”

--Will Rogers



THANK YOU!



A dog's last will

When human beings die
They write their testament
To leave their home
And all they have
To those they love
I'd do such
If I could write
To a poor, desperate, lonely stray
I'd give my happy home
My bowl and cosy bed
My soft pillow and my toys
The so loved lap
The tenderly stroking hand
The lovely voice
The place I had in someone's heart
The love, that at last
Helped me to find a peaceful end
Held firmly in a sheltering embrace
When I die, please don't say
"I will never have a pet again,
the loss is far too much to stand!"
Chose a lonely, unloved dog
And give him MY place
This is my inheritance
The love I leave behind
Is all I am able to give