

Wills *vs.* *Trusts*

May 28, 2020

Mercy Health Foundation Northwest Arkansas



WELCOME

CLARK ELLISON – VICE PRESIDENT, MERCY HEALTH FOUNDATION

Mercy⁺
Health Foundation



- All participants are muted
- With questions, please utilize live chat or email the Foundation at nwa_mercy_foundation@mercy.net.

Note: this session is being recorded.

Planned Giving Committee Members:

Mark Chambers, Craig Cockrell, Luke Davis, Jennifer Gray, Bert Kell, Jodie Kelley, Loriane Pickell, Dave Proffitt, Shelley Smart, Vicki Vasser-Jenkins



PANEL OF EXPERTS:

- Bert Kell
Arvest Trust Company
- Craig Cockrell
Mitchell, Williams, Selig, Gates & Woodyard, PLLC

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COMMON ESTATE PLANNING TOOLS

CRAIG COCKRELL

- Last Will and Testament
- Trusts
- Joint ownership
- Beneficiary designations
- Durable Powers of Attorney
- Health Care Powers of Attorney
- Living Wills

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WHAT IS A WILL?

CRAIG COCKRELL

- A Last Will and Testament (Will) is a legal document stating to whom you wish to leave your assets at death.
- Also nominates an “executor” or “personal representative” – the person who will be in charge of your estate upon death
- May also nominate a guardian for minor children
- Wills must be admitted to probate to be effective

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WHAT IS A WILL?

CRAIG COCKRELL

- Wills provide a relatively inexpensive option for leaving assets to children, but require probate at death
- Typically, Wills include trust language for minor children or other incapacitated beneficiaries (“Testamentary Trust”)
- Avoids the need for a court-appointed guardian or custodian to manage assets for minor children
- Jointly owned property or assets with beneficiary designations are not transferred by a Will

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WHAT IS PROBATE...AND SHOULD I AVOID IT?

CRAIG COCKRELL

- Legal proceeding to transfer assets to beneficiaries
- Conducted through local court
- Public record
- Time consuming (minimum of 6 months in Ark.)
- Can be expensive (legal fees, executor fees)
- Wills must be admitted to probate to be effective

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WHAT IS A TRUST?

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- Agreement between the creator (“grantor” or “settlor”) and a “trustee” to hold, manage and distribute the creator’s assets
- Grantor may transfer assets to the trustee “in trust” during the grantor’s life or upon death, by way of beneficiary designations
- **Any assets held in trust are not required to go through probate**

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WHAT IS A TRUST?

CRAIG COCKRELL

- Trusts are a very common estate planning tool
- Most common type of trust for estate planning is called a “Revocable Trust” or “Living Trust”
- Advantages over Wills:
 - Probate avoidance
 - Better for tax planning
 - Better for managing and protecting assets if one or more spouses become incapacitated
 - More detailed management and distribution provisions for spouses, children or other beneficiaries

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- Revocable Trust (a.k.a. “Living Trust”)
 - Most common for typical probate-avoidance estate planning
 - Can be amended or revoked during the grantor’s life – usually becomes irrevocable upon death
 - Does not provide any tax advantages or creditor protection during the grantor’s life
 - Married couple can create one “joint trust” or separate trusts – joint trusts are much more common

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- Irrevocable Trust (a.k.a “Gift Trust”)
 - Typically used in high-net worth estate planning for making lifetime gifts to children or other beneficiaries
 - Mostly used for estate tax planning
 - Cannot be amended or revoked once created (with some exceptions)
 - Grantor no longer owns the assets placed into the Trust
 - Generally does not provide any creditor protection during the grantor’s life

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- Asset Protection Trust
 - Not allowed under Arkansas law, but common in many other states
 - Grantor gives up control and ownership of the assets added to the trust, but if done correctly, the assets are protected from the grantor's future liabilities and creditors
 - May be useful for high-net worth individuals in high risk professions (physicians, for example).

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HOW TO AVOID PROBATE (WITHOUT A TRUST): CRAIG COCKRELL

- Jointly owned property (“joint tenants with right of survivorship”)
 - Typical ownership for married couples of real estate, bank accounts, and investment accounts
- Beneficiary designations
 - 401(k)s, IRAs, life insurance, investment accounts, business ownership interests, bank accounts, etc.
- Beneficiary deeds for real estate

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DO I NEED A TRUST?

CRAIG COCKRELL

Estate Planning Life Stage Examples:

- “Young professionals”
 - Single or married, no children
 - House with a mortgage, 401(k), life insurance through work
- “Young family”
 - Same as above, but minor children
 - May own business, investment property, more life insurance
- “Empty Nesters and Retirees”
 - Adult or college-aged children
 - Estate and gift tax planning concerns
 - Planning for incapacity

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DO I NEED A TRUST?

CRAIG COCKRELL

- “Young Professionals”
 - probably not yet, unless you want to name a minor beneficiary of your assets
 - For now, joint ownership with spouse, beneficiary designations on financial assets, and a beneficiary deed for real estate can provide a cost-effective probate-avoidance plan
 - Recommend a Will to “catch” any assets that must go through probate – May not need one.

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DO I NEED A TRUST?

CRAIG COCKRELL

- “Young Family”
 - Yes, if you want to avoid probate
 - A revocable trust is the only way to leave assets to minor children and avoid probate or court-monitored guardianship of certain assets
 - Will need to name someone as “trustee” for children until they are old enough to manage the assets themselves
 - However, Trust planning is more costly on the front end than Wills.

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DO I NEED A TRUST?

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- “Empty Nesters and Retirees”
 - May be able to avoid probate without a trust by naming adult children as beneficiaries
 - However, if a child passes away before you do, his or her share would pass to their children, who may be minors
 - Other benefits:
 - Estate and income tax planning
 - Planning for incapacity
 - Lifetime trusts for children

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Thank You for Joining Us!

Look forward to seeing you at a future seminar.

Planned Giving is a Charitable Giving opportunity and Mercy would be glad to discuss avenues in which to support healthcare initiatives.

Mercy Health Foundation Northwest Arkansas
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Mercy Health Foundation
invites you to join us for a
virtual Speaker Series:

Estate Planning *for all stages of life*

Thursday, May 21, 2020 | Noon
Why do I need an Estate Plan?

Thursday, May 28, 2020 | Noon
Wills vs. Trusts

Thursday, June 4, 2020 | Noon
Advance Directives/Powers of Attorney

Thursday, June 11, 2020 | Noon
The Rest of the Story

We're Virtual!
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479-338-2990. Upon registration, participants will
receive virtual event details.



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