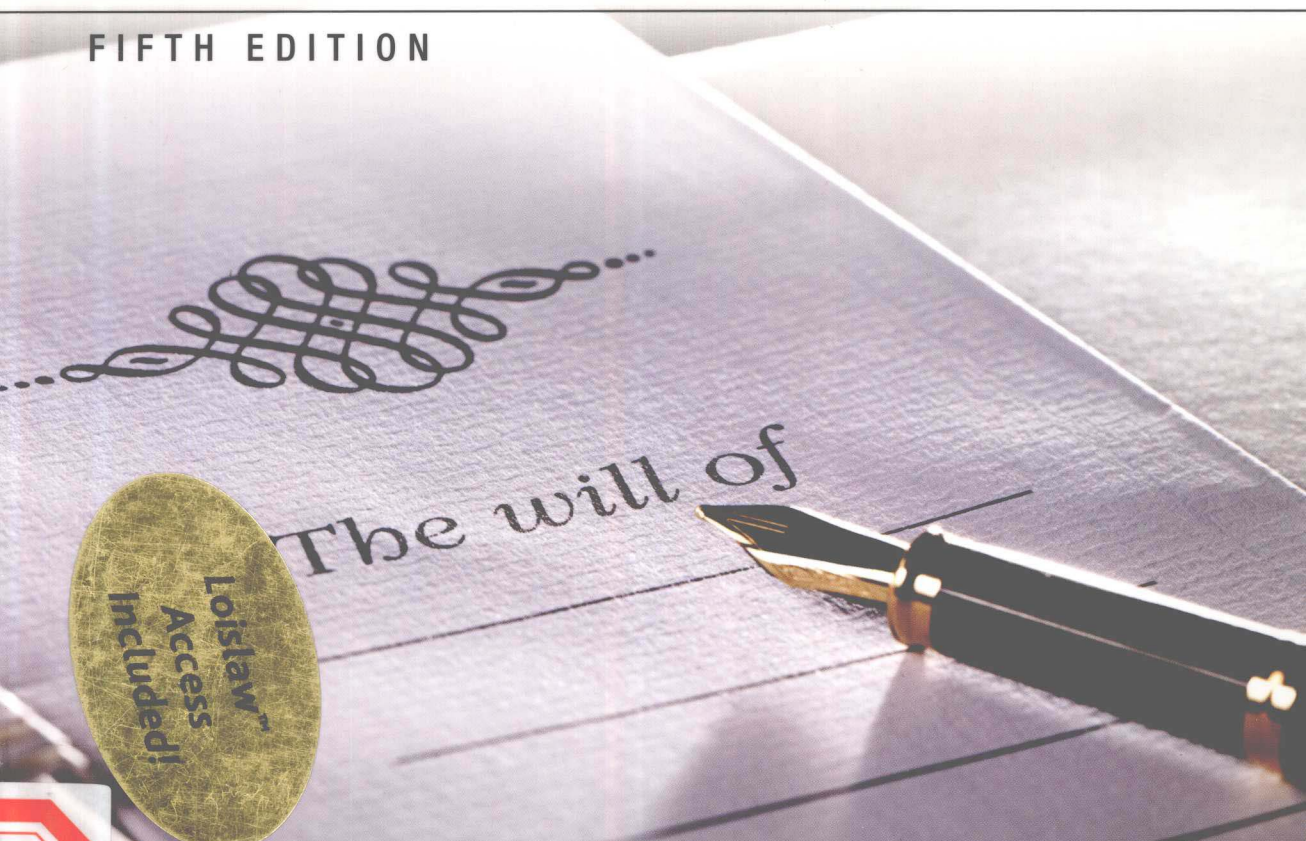


ASPEN COLLEGE SERIES

■ Jeffrey A. Helewitz

BASIC WILLS, TRUSTS, AND ESTATES FOR PARALEGALS

FIFTH EDITION



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Basic Wills, Trusts, and Estates for Paralegals

Fifth Edition

Jeffrey A. Helewitz, Esq.



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Preface

Basic Wills, Trusts, and Estates for Paralegals is designed as an introductory text for students in paralegal programs. Its purpose is to provide a basic understanding of the legal principles involved in estate work. This book will provide all the information that a legal assistant will need to know in order to assist in the preparation and completion of all documents incident to an estate practice. It is not intended to be a seminal thesis.

Because estate law is primarily state statute oriented, a comparison study of all the state statutes has been included as the final chapter of this book. Throughout the work specific reference is made to particular jurisdictions to highlight important or interesting aspects of particular state law. However, reference should always be made to the law of the jurisdiction in which the parties reside or own property.

Jeffrey A. Helewitz

February 2011

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One final thank you goes to the reviewers. Their careful efforts in reviewing the manuscript, and the many thoughtful comments and suggestions that resulted, are greatly appreciated.

Introduction or A Fable of Four Families

Once upon a time in the not too distant past there lived four families of diverse ethnic, cultural, racial, and economic backgrounds who, by circumstances too strange to tell, all wound up at the same law firm for advice with respect to their estates. This book relates the odyssey of these four families as they tread the rocky path of estate planning and administration.

Who are these families?

First, there is the **Jones** family. Loretta Jones is a 23-year-old single mother who lives in the city in a one-bedroom apartment that she shares with Evan, her five-year-old son. Ms. Jones is a secretary who is going to school part-time in the evenings, studying to become a paralegal to make a better life for herself and her son. Evan is in kindergarten every weekday morning, and after school Ms. Jones' mother, Aida, looks after him until Loretta comes home from work or school. Evan's father, Jason Leroy, lives in another city and occasionally sends Loretta some money for his son. Loretta's main concern is that, should anything happen to her, Evan would be looked after and his education would be provided for.

The **Bush** family lives in the same city as Loretta and Evan, but their circumstances are entirely different. Oscar and Hyacinth Bush have been married for almost 24 years and have one child, Byron, who is away at the state university. Oscar works for the city government, and Hyacinth takes care of their two-bedroom apartment. Oscar's parents are deceased and he has no siblings. Hyacinth has two sisters: Fern, married to Barney Potts, and Fleur Laplante, who is single. Hyacinth's aged and slightly senile father, David, lives with Fern and Barney in a nearby city. Fern and Barney have one child, a married daughter Rose, and one grandchild, Rose's daughter Davida. Oscar and Hyacinth want to make sure that there is

enough money to see that Byron can complete his education and that they can enjoy a comfortable retirement.

The **Lears** are an elderly couple living in the suburbs. Dr. Kingston Lear is a partner in a small medical practice in the city. Donna Lear is a homemaker, active in several charities. The Lears have three grown daughters. Regina was divorced and has two children from her first marriage, Matthew and Mark Hahn. She also has two children from her current marriage to Leonard Dodger, named Mary and Margaret. The Lears' second daughter, Grace, is unmarried and works overseas with the U.S. State Department. Her legal residence is still with her parents. Cornelia, the third daughter, is married to a doctor in partnership with her father and has one son, Anthony. Cornelia also has custody of Regina's two sons. Their father, Joseph Hahn, will have nothing to do with them and rarely pays the child support he is supposed to pay pursuant to the divorce decree between him and Regina. Regina's second husband, Leonard, doesn't like Matthew and Mark and physically abused them. Cornelia went to court and was awarded guardianship of the two boys. At the present time Regina and Leonard are suing Kingston and Donna for title to the house in which Regina and Leonard live. The house was originally purchased by Kingston and Donna as an investment, but after her divorce the Lears let Regina live in the house. When Regina remarried she and Leonard stayed in the house, claiming that the house was theirs, and the family is now involved in a bitter lawsuit over title.

The Lears have a much more complicated situation than the Joneses or the Bushes. The Lears have many valuable assets, have children and grandchildren to look after, and are in the middle of litigation with one of their children. They want to make sure that their grandchildren, Matthew and Mark, are protected and cared for, that Regina and Leonard do not wind up with the house, and that the other children and grandchildren are treated fairly when the Lears die.

Finally, there is **Tom Poole**. Tom is in his mid-thirties, is unmarried, and owns a cooperative apartment in the city. Tom, like Oscar, works for the city, and has managed, by extreme frugality, to acquire a sizable amount of cash and blue chip stocks. Both of Tom's parents, Lottie and Simon, are living, and Tom has an older brother, Ken, who is also unmarried. Tom's brother makes a good living, and his parents, although retired, are fairly affluent. Tom wants to increase the size of his assets so that he will have a comfortable retirement and also wants to see that, in case of death, his estate goes to his friends rather than to his family who does not need his money.

These four families—Loretta Jones and her son Evan, Oscar and Hyacinth Bush, Dr. and Mrs. Lear, and Tom Poole—will be the ships we will guide through the murky waters of estate planning and administration to the golden shore of property distribution.

Contents

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxi</i>
<i>Introduction</i>	<i>xxiii</i>

CHAPTER 1: GENERAL OVERVIEW OF ESTATE PLANNING AND ESTATE ADMINISTRATION **1**

Learning Objectives	1
Chapter Overview	2
Estate Planning	2
Estate Planning Strategies	5
Gifts	5
Title Transfers	6
Trusts	6
Life Insurance	7
Wills	8
How to Make an Effective Estate Plan	9
Situational Analysis	10
Estate Administration	12
Situational Analysis	16
Chapter Summary	17
Key Terms	17
Case Studies	19
Exercises	21
Analytical Problem	21
ABA Model Rules of Professional Conduct	21

CHAPTER 2: SOURCES OF PROPERTY	23
Learning Objectives	23
Chapter Overview	23
Types of Property	24
Real Property	26
Concurrent Ownership	27
Tenancy in Common	27
Joint Tenancy	27
Tenancy by the Entirety	29
Community Property	30
Tenancy in Partnership	31
Life Estates	31
Leaseholds	33
Other Interests in Real Property	34
Mortgage	34
Easements	35
Liens	35
Elective Share	36
Personal Property	37
General Tangibles	38
Intangibles	38
General Intangibles	38
Intellectual Property	41
Claims and Benefits	43
Situational Analysis	44
Chapter Summary	46
Key Terms	46
Case Studies	48
Exercises	50
Analytical Problem	50
ABA Model Rules of Professional Conduct	50
CHAPTER 3: THE LAWS OF SUCCESSION	51
Learning Objectives	51
Chapter Overview	51
Intestate Succession Defined	52
How Intestate Succession Works	53
Situational Analysis	56
Intestate Administration	57
The Effect of the Laws of Succession	59
Situational Analysis	60
Chapter Summary	61
Key Terms	62

Contents	xiii
Case Studies	63
Exercises	64
Analytical Problem	65
ABA Model Rules of Professional Conduct	65
CHAPTER 4: TRUSTS	67
Learning Objectives	67
Chapter Overview	67
Trust Requirements	70
A Trustor	70
Trust Property	71
A Valid Trust Purpose	73
A Trustee	74
A Beneficiary	80
Types of Trusts	83
Express Trusts	83
Implied Trusts	85
Special Situation Trusts	87
Spendthrift Trusts	87
Short-Term Trusts	87
Supplemental Needs Trusts	88
Totten Trusts	88
Marital Deduction Trusts	89
Life Insurance Trusts	90
Creation of the Trust	90
Inter Vivos Trusts	90
Testamentary Trusts	91
Restrictions on Trusts	92
Statute of Uses	92
Rule Against Perpetuities	93
Investments and Roles of the Parties	95
Restrictions on Trust Purpose	95
Termination of Trusts	97
Tax Considerations	99
General	99
Short-Term Trusts	100
Generation Skipping Transfers	101
Drafting a Trust	102
Situational Analysis	107
Chapter Summary	108
Key Terms	109
Case Studies	111
Exercises	113
Analytical Problem	113
ABA Model Rules of Professional Conduct	114

CHAPTER 5: WILLS	115
Learning Objectives	115
Chapter Overview	115
Testamentary Capacity	116
Age	116
Mental Ability	117
Intent	118
Fraud	118
Menace	119
Undue Influence	119
Temporary Incapacity	120
Will Provisions	121
Surviving Spouse	121
Antenuptial Agreements	121
Omitted Children	122
Advancements	122
Charitable Gifts	123
Ademption	123
Lapsed Gifts	123
Abatement	124
Drafting a Will	124
Preparation	124
Clauses	126
Executing a Will	135
Witnesses	135
Execution	136
Self-Proving Wills	138
Miscellaneous Instruments	138
Nuncupative Wills	138
Holographic Wills	139
Statutory Wills	139
Living Wills	140
Power of Attorney	140
Changing the Will	141
Amendment Through Codicils	141
Amendment Through Operation of Law	141
Revocation	143
Will Contests	143
Sample Will and Accompanying Documents	146
Situational Analysis	153
Chapter Summary	154
Key Terms	155
Case Studies	156
Exercises	158
Analytical Problem	158
ABA Model Rules of Professional Conduct	158

CHAPTER 6: ESTATE PLANNING FOR THE ELDERLY	159
Learning Objectives	159
Chapter Overview	159
Health Care and the Elderly	160
Medicare	160
Medicaid	163
Related Health Care Documents	164
Guardianship	166
Income Maintenance	169
Social Security	169
Supplemental Security Income	170
Veterans' Benefits	171
Private Pension Plans	171
Plans Funded by the Individual	172
Plans Funded by the Individual's Employer	172
Ethical Concerns	172
Situational Analysis	173
Chapter Summary	174
Key Terms	175
Case Studies	177
Exercises	178
Analytical Problem	178
ABA Model Rules of Professional Conduct	178
Social Security Form	179
 CHAPTER 7: ESTATE ADMINISTRATION	 189
Learning Objectives	189
Chapter Overview	189
The Pre-probate Process	190
Death Certificate	191
Exhibit 1. Death Certificate	192
Petition to Open Safe Deposit Box	193
Exhibit 2. Petition to Open Safe Deposit Box	194
Petition to Search	195
Exhibit 3. Petition to Search	196
Petition for Guardian ad Litem	197
Petition for Family Allowance	197
Petition for Interim (Preliminary, Temporary) Letters	197
Probate Administration	198
Exhibit 4. Informal Proceeding Forms	199
Petition for Letters of Administration	206
Exhibit 5. Petition for Letters of Administration	207
Petition for Letters Testamentary	208
Exhibit 6. Petition for Letters Testamentary	209

Notice and Waivers of Notice	211
Exhibit 7. Notice and Waivers	212
Probate Hearing	218
Letters	218
Exhibit 8. Orders and Letters	220
Estate Administration	222
Exhibit 9. Final Accounting	225
Chapter Summary	228
Key Terms	229
Case Studies	230
Exercises	231
Analytical Problem	232
ABA Model Rules of Professional Conduct	232

CHAPTER 8: TAXATION 233

Learning Objectives	233
Chapter Overview	233
Federal Tax Law	235
Federal Tax Forms	236
SS-4: Application for Employer I.D. Number	237
Form 706—United States Estate and Generation Skipping Transfer Tax Return	237
Form 706 Schedules Relating to Assets	238
Schedule A: Real Estate	238
Schedule B: Stocks and Bonds	240
Schedule C: Mortgages, Notes, and Cash	242
Schedule D: Insurance on Decedent's Life	242
Schedule E: Jointly Held Property	243
Schedule F: Other Miscellaneous Property	244
Schedule G: Transfers During Decedent's Life	244
Schedule H: Powers of Appointment	245
Schedule I: Annuities	245
Form 706 Schedules Relating to Deductions	246
Schedule J: Funeral and Administrative Expenses	246
Schedule K: Debts of the Decedent	246
Schedule L: Net Losses During Administration	246
Schedule M: Bequests to Surviving Spouse	246
Schedule N: Qualified ESOP Sales	247
Schedule O: Charitable, Public, and Similar Gifts and Bequests	247
Form 706 Schedules Relating to Credits	247
Schedule P: Credit for Foreign Taxes Paid	247
Schedule Q: Credit for Tax on Prior Transfer	248
Schedule R: Generation Skipping Transfer	248
Schedule S: Excess Retirement Accumulations	249
Schedule U: Qualified Conservation Easement Exclusion	249

Contents	xvii
Form 1041 — Fiduciary Income Tax Return	249
Form 1040 — U.S. Individual Income Tax Return	249
Situational Analysis	250
Chapter Summary	250
Key Terms	252
Case Studies	252
Exercises	254
Analytical Problem	256
ABA Model Rules of Professional Conduct	256
CHAPTER 9: COMPARISON OF ESTATE LAW IN THE DIFFERENT JURISDICTIONS	257
Chapter Overview	257
State-by-State Analysis	258
Chapter Summary	308
Exercises	308
APPENDIX: FORMS	309
<i>Glossary</i>	435
<i>Index</i>	477

1

General Overview of Estate Planning and Estate Administration

LEARNING OBJECTIVES

After studying this chapter you will be able to:

- Differentiate between estate planning and estate administration
- Distinguish between short-term, mid-term, and long-term financial goals
- Discuss various types of estate planning strategies
- Analyze different types of life insurance policies
- Create an effective estate plan
- Discuss the functions of a personal representative
- Explain the standard of care required of a fiduciary
- Understand the role of a legal assistant in the estate administration process
- Differentiate between letters of administration and letters testamentary
- Create a family tree ticker

CHAPTER OVERVIEW

The purpose of this chapter is to provide a general overview and introduction to the concepts of estate planning and estate administration. For most people the word "estate" conjures up visions of mourners in black, bleak cemeteries, and sometimes, wicked stepparents who have control over all the family money. Few, if any, of these visions are true or accurate.

Estate planning is essentially a branch of financial planning. Its purpose is to help the individual acquire and accumulate assets so that all of his or her financial needs and desires during life can be met. The appropriate distribution of these assets on the person's death is merely one aspect of overall estate planning. Rather than being concerned with a person's demise, the estate planner is actually involved with a person's life. If a person has no assets, there is nothing to distribute after death. The estate planner attempts to help the client to have assets sufficiently substantial so that there is a need to plan the distribution of these assets on death.

Estate administration, on the other hand, concerns the distribution of a person's assets after death. One who administers an estate will be involved with passing title to property from the deceased to his or her heirs, according to the wishes of the decedent or the provisions of the state statutes; seeing that all taxes are paid; and insuring the orderly conclusion to the person's legal life. In other words, estate planning helps a person acquire assets during life, and estate administration helps distribute those assets upon the person's death.

This chapter will discuss the various approaches that can be used for the proper planning and administration of an estate, the courts and statutes that are involved in both the planning and administration of the estate, and the role of the legal assistant with respect to the foregoing.

Estate Planning

Estate planning can be defined as the method whereby a person accumulates, manages, and disposes of real and personal property during his life and after his death. The primary function of effective estate planning is to meet the short- and long-term financial needs of the client and to see that the client's particular concerns can be met after his death. Although all estate planning is concerned with the acquisition of property with the least possible negative tax consequences, each person's financial plan will of necessity be different because of each person's unique financial needs.

Lawyers and financial planners are involved in creating an estate. The financial planner, usually certified, is conversant with all types of potential investments that can provide either capital growth or income. In order to see that the investment objectives designed by the financial planner are

met, the attorney is involved in the preparation of all legal documents pertaining to these investments. In each case, the legal assistant aids in gathering the information necessary to create the estate plan.

The first questions to be answered with respect to estate planning are: What are the client's current assets? Family situation? Financial goals? In order to be effective and appropriate, the estate plan must take into consideration all of these factors.

If a client has few assets, the first objective is to devise a method whereby he or she can accumulate some property. This requires a detailed analysis of all of his or her income and expenses and a determination of how much of that income is disposable. **Disposable income** is that income a person has after paying all taxes and expenses for a given period (a week, a month, etc.). It is only this money that can be used to acquire assets; the rest of the income is being used to support his or her current life. If a person has no disposable income, it becomes necessary to create a budget so that some income, however little, can be saved. Conversely, if a person has a great deal of disposable income, it is necessary to see that the income is appropriately invested so as to meet the future financial needs of the client.



EXAMPLES:

1. Loretta Jones has a very modest salary. At the end of the month, after paying rent, utilities, food, tuition, and so forth, she has very little left as disposable income. Loretta needs to find out whether there is some way she could better manage her money so as to accumulate some savings.
2. Tom Poole spends very little of his actual income. At the end of the month he has several thousand dollars left. Tom needs to find appropriate investments for his disposable income to make it productive, that is, to produce more income or growth.

Each person's family situation helps determine his or her financial needs. The financial needs of a couple who is retired with grown children are entirely different from those of a single mother with a young child. Estate and financial planning is concerned with assuring that the financial needs of the client's family can be met: providing for the education of a young child, purchasing a first home for a young couple, and assuring a worry-free retirement.

Finally, the financial wishes of the client must be taken into consideration. It may be well to provide for needs, but most people would like to see their hard work result in more than just basic necessities. Vacations, buying a first or second home, purchasing a car or boat, and so on, are all worthwhile and psychologically necessary ingredients of each person's estate plan.