

# Estate Planning Workshop

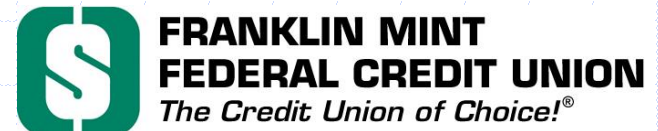
**Presented By**

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*Assistant Professor of Law*

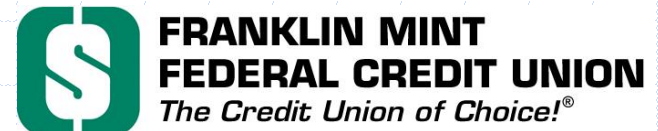
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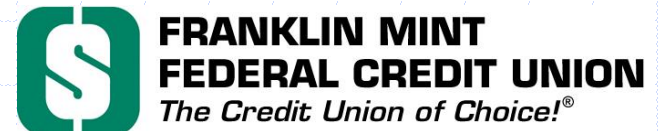
# Some of Our Topics:

- ◆ The legal terminology and default rules associated with inheritance
- ◆ Some general concepts governing wills and trusts
- ◆ Identifying probate and non-probate assets and distribution
- ◆ Advance directives, including living wills, health care powers of attorney, and financial powers of attorney

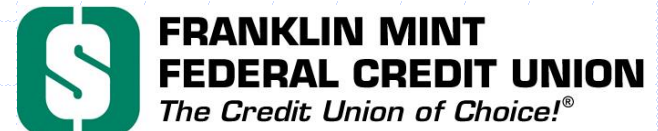


# Basic Estate Planning Documents:

- ◆ Wills
- ◆ (Trusts, both revocable and irrevocable)
- ◆ Financial powers of attorney
- ◆ Health care powers of attorney
- ◆ Living wills



# Planning in contemplation of death?



# Some Questions:

- ◆ Who should receive your property?
- ◆ In what form?
  - Outright
  - In trust (over time)
- ◆ Who should be responsible for collecting, administering, and distributing the property?
- ◆ What if you become incapacitated?

# What property does a will cover?

## Probate Property

In Decedent's Name  
(sole or as TIC)



Passes through Probate  
by Will or Intestacy

## Non-Probate Property

Life Insurance

Joint Property (JT or TIE)

Retirement Benefits  
(IRAs or Pensions)

Property in Trusts

P.O.D. Accounts



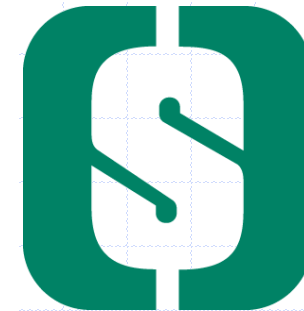
A coordinate grid with x and y axes ranging from -6 to 6. A circle is drawn with its center at the point  $(-1, 0)$ . The circle has a radius of 1 unit, passing through the points  $(0, 0)$ ,  $(-2, 0)$ ,  $(-1, 1)$ , and  $(-1, -1)$ .



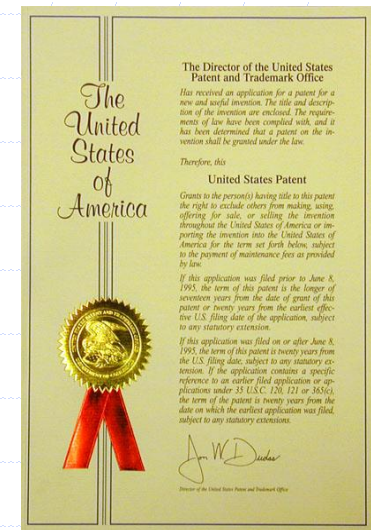
# Probate Property: Cash, stocks, bonds and other intangibles



WACHOVIA



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# Non-probate transfers

**Individual Retirement Account (IRA) Beneficiary Designation Form**

*John Hancock*  
JOHN HANCOCK FINANCIAL

These forms are for use in connection with the IRA plan described in the accompanying documents.

The beneficiary designated on this form is subject to the plan's terms and conditions, including the plan's distribution rules.

Each of the individuals named in this form is a beneficiary of the IRA plan. The plan's terms and conditions apply to each of them. The plan's terms and conditions may require that the beneficiary designated on this form be a natural person who is a resident of the United States.

**I. Designate Beneficiary or Beneficiaries**

Designate the beneficiary or beneficiaries of the IRA plan by filling in the following information:

Beneficiary's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Beneficiary's Address: \_\_\_\_\_

**II. Beneficiary's Address**

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Employer's Name: \_\_\_\_\_

**III. Primary Beneficiary or Beneficiaries (Designate one or more beneficiaries to receive the IRA plan's assets in the event of the participant's death)**

Each beneficiary must be a natural person who is a resident of the United States.

Each beneficiary must be designated by name, and the designation must be specific. Do not use "I, \_\_\_\_\_, my heirs, assigns, and assigns of my heirs."

Beneficiaries are not allowed to be designated as the beneficiary of the IRA plan's assets.

| Name  | Date of Birth | % Share | Date of Death/Event | Designated by Owner |
|-------|---------------|---------|---------------------|---------------------|
| _____ | _____         | _____   | _____               | _____               |
| _____ | _____         | _____   | _____               | _____               |

**IV. Contingent Beneficiary or Beneficiaries**

| Name  | Date of Birth | % Share | Date of Death/Event | Designated by Owner |
|-------|---------------|---------|---------------------|---------------------|
| _____ | _____         | _____   | _____               | _____               |
| _____ | _____         | _____   | _____               | _____               |

**This Conveyance**

is made the thirty first day of December

One thousand nine hundred and sixty BETWEEN ROBERT STEPHEN HIGGINS, formerly of 48 Queens Court Clifton in the City and County of Bristol and now of 123 Bromley Heath Road Dornand in the County of Gloucester (hereinafter called "the Vendor") of the first part THE VENDOR and ELIZABETH GRACE HIGGINS, formerly of 48 Queens Court Clifton Bristol aforesaid and now of 7 Saint Margaret Street Bradford-on-Avon in the County of Wilts (hereinafter called "the Purchaser") of the second part and THE PURCHASER of the third part

**WHEREAS:**

(1) By an Assent dated the Thirtieth day of July One thousand nine hundred and forty eight and made by the Vendor and the Purchaser the property described in the Schedule hereto was vested in themselves the Vendor and the Purchaser in fee simple as joint tenants upon trust for sale in trust for themselves as tenants in common in equal shares

(2) The Vendor has agreed with the Purchaser for the sale to her of all his share and interest in the said property in equity and in the proceeds of sale thereof at the price of ONE THOUSAND FIVE HUNDRED POUNDS and it has been agreed that the entirety of the said property shall be vested in the Purchaser in manner hereinafter appearing

**NOW THIS DEED WITNESSETH** as follows:

1. **IN** consideration of the sum of ONE THOUSAND FIVE HUNDRED POUNDS paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner in respect of his one half share in the proceeds of sale of the property described in the Schedule hereto hereby assigns and the Vendor and the Purchaser as trustees in respect of the legal estate therein hereby convey unto the Purchaser ALL THAT the property described in the Schedule hereto TO HOLD the same unto the Purchaser in fee simple discharged from the said trust for sale and from all estate right or interest of the Vendor therein

2. **IT IS HEREBY CERTIFIED** that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or

Five minute writing exercise:

# **YOUR LEGACY**

**(LAST PAGE OF HANDOUT)**



# What does it mean to die “testate”?



- ◆ What is a will: P.A. C.S.A. § 102
  - “Will.” Means a written will, codicil or other testamentary writing.
  - Executed with certain formalities.



**Death = The last taboo**

# What if you do not have a will?

## ◆ “Intestate”

## ◆ Why no will?

- Did not get around to it
- Did not want to face mortality
- Did not want to spend \$ or time
- Could not decide

Howard Hughes – draft will donating wealth to medical research





# What happens to your probate property?

- ◆ Default rules apply – look at what **average** decedent would want.
- ◆ Priority:
  - Spouse
  - “descendants”
  - other relatives (collaterals, cut off at great grandparent level)
  - “laughing” heirs

# Some issues when you die intestate:

- ◆ Who is a spouse?
- ◆ Who are descendants?
- ◆ Who “survives” you?
- ◆ Family wipe-out rules?
- ◆ Charities?
- ◆ Tax apportionment?
- ◆ Need?
- ◆ Relationship?

# What can't your will do?

- ◆ Can't direct what happens to non-probate property.
- ◆ Important to examine and update your beneficiary designations, account titles, deeds regularly so they do what you want!

# What is a trust?

◆ “[T]he normal private trust is essentially a gift, projected on the plane of time and so subjected to a management regime.”

■ Bernard Rudden

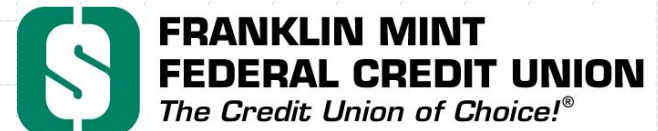
# Types of trusts:

## ◆ Private:

- Testamentary
- Revocable (a.k.a. living or inter vivos)
- Irrevocable

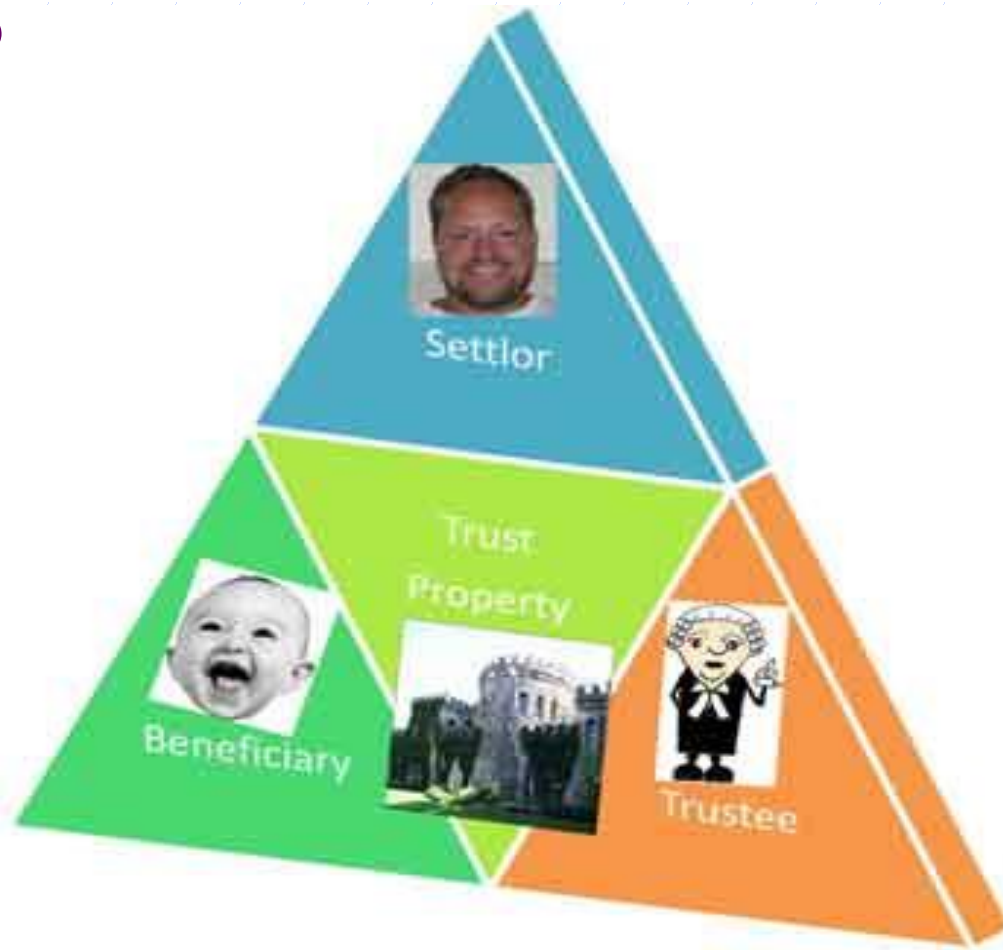
## ◆ Charitable

## ◆ Business

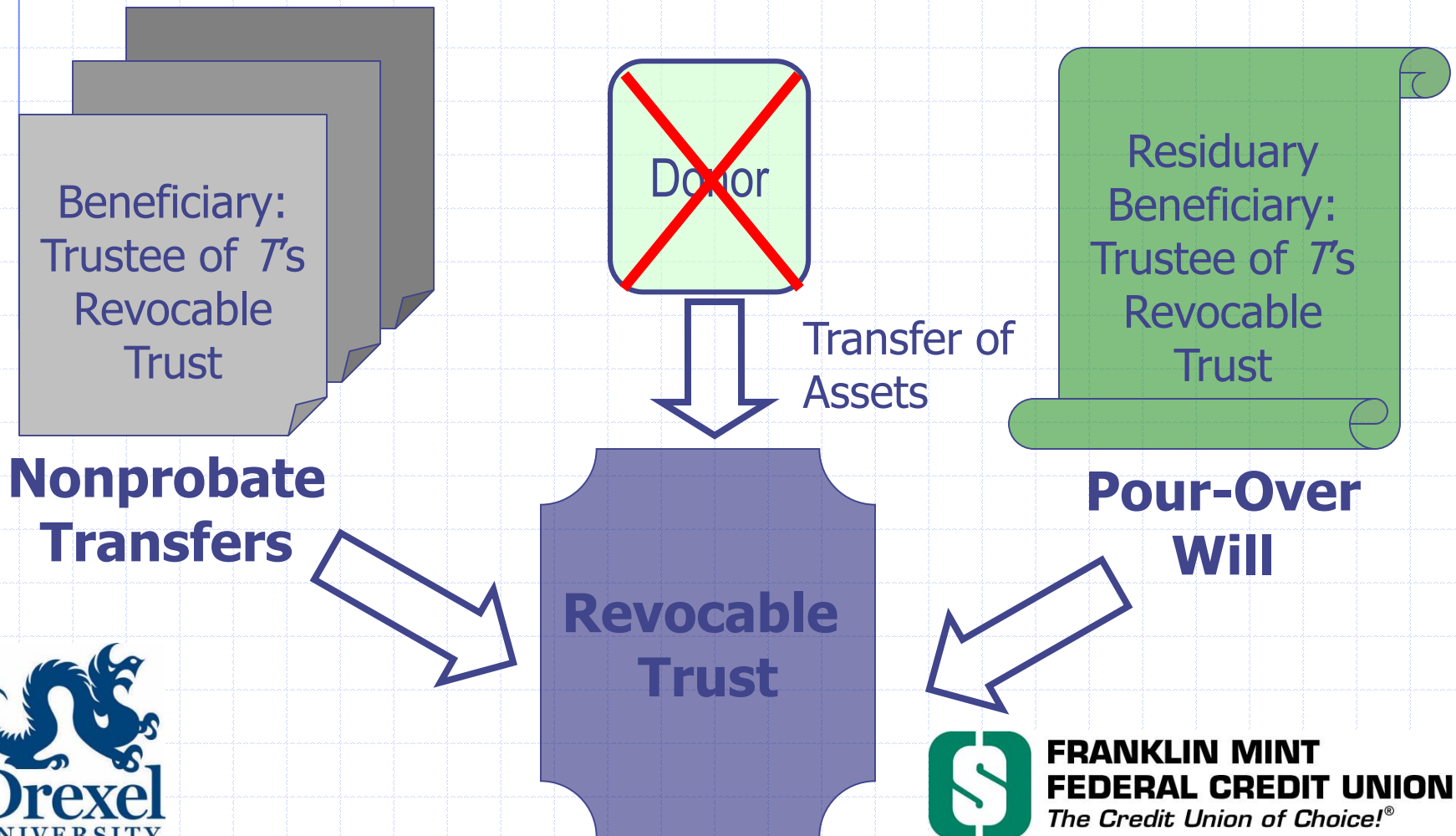




# Trusts



# A typical estate plan:

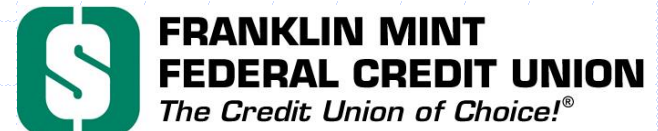


# Some Advantages of Trusts

- ◆ Control over WHEN your beneficiary inherits.
- ◆ Creditor Protection.
- ◆ Lifetime management of property.
- ◆ Possible tax planning.
- ◆ Complete probate avoidance, even if no successors named.
- ◆ Unified bucket for assets
  - An overarching statement of how you want your estate to pass. E.g. if I name my son as beneficiary of an investment account currently worth 10% of my estate, what happens if the account's value increases to 50% of my estate (or 2% of my estate) by the time I die?

# What are advance directives?

- ◆ Living will
- ◆ Health care power of attorney
- ◆ Financial power of attorney



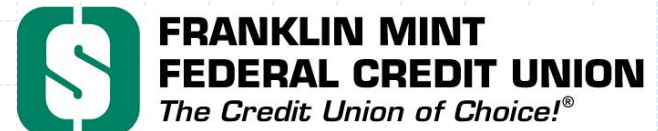
# How often should you update your plan?

- ◆ Any major change in life:
  - Divorce
  - Marriage
  - New child (birth, adoption, ART)
- ◆ Otherwise, every 3-5 years for review



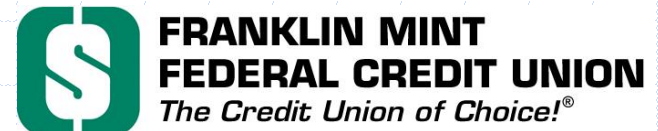
# How do you get started?

- ◆ Who do you involve?
- ◆ What other information might you be asked to provide?



# Information about the beneficiaries

- ◆ Names and relationships
- ◆ Special considerations for children/descendants:
  - Adopted/adopted-out/non-marital/step-children
  - Special needs/addictions/relationships/spending patterns/other personal habits
- ◆ Personal information
  - Ages (guardian, trust, education)
  - Elderly (planning for incompetence)
- ◆ Contingent beneficiaries (“giftover”)



# Information about Fiduciaries



It turns out "fiduciary"  
means you have to give it back.



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# Fiduciaries

## ◆ Positions:

- Who will serve as “executor”?
- Trustee?
- Guardian of minor children?

## ◆ Characteristics:

- Individual
- Corporate or professional – Fees?

# Information about Property

- ◆ Accurate descriptions, including
  - How title is held
  - Value
  - Form (insurance, retirement assets, employee benefits, stock, real property, personal property)
  - Characteristics (“community” or separate)
- ◆ Debts/liabilities
- ◆ Expectancies



# Goals

◆ What do you wish to accomplish?

- Create a legacy
- Care for family
- Avoid taxes
- Promote certain behavior
- Timing/cost

# Hiring an EP Attorney: Some Questions to Ask

- ◆ Is the attorney's primary focus on estate planning?
- ◆ How many years of experience does the attorney have?
- ◆ Does the attorney assist clients with properly funding their assets into a revocable living trust?
- ◆ Does the attorney have a formal updating and maintenance program?
- ◆ Does the attorney charge a flat fee or an hourly rate for providing estate planning services?
- ◆ Ask yourself: "Can I see myself working closely with this attorney?"
- ◆ ACTEC as a source

# Questions?

