

# Understanding Estate Plans: Creating a new plan and updating existing plans

## About the presenter:

### *Attorney Erin Duques*



Attorney Erin Duques is a Connecticut estate planning attorney who helps her clients lay out plans that ensure their wishes are carried out and that their assets go to the right people at the right time in the right way. She also helps create carefully-designed Medicaid plans to protect assets from the high cost of long-term care.

Erin is a member of the Elder Law and Trust & Probate sections of the Connecticut Bar Association and the National Association of Elder Law Attorneys.

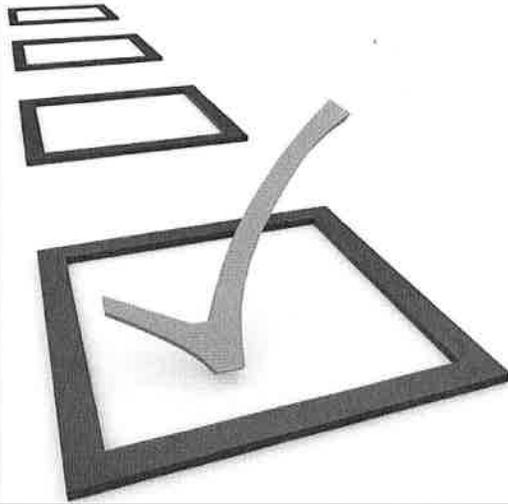


## **Power of Attorney (POA)**

The power to choose someone you TRUST to make financial decisions for you when you're unable.

- Durable (i.e., it will remain valid in the event that you become incompetent or disabled)
- Expressly contain gift-making authority tailored to your specific needs.
- New POA Rules 2016

## What *can* a POA do?



- Assist with banking & investments
- Access safe deposit boxes
- Safeguard assets
- Work with DMV
- Assist with tax matters

- Durable (i.e., it will remain valid in the event that you become incompetent or disabled)
- Expressly contain gift-making authority tailored to your specific needs.
- New POA Rules 2016

## A POA *can't*

- Change or invalidate your Will
- Make decisions on your behalf after death
- Change POA to someone else
- Breach their fiduciary duty

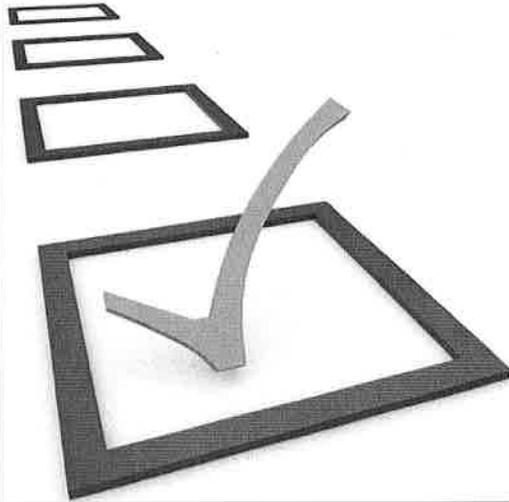




## **Living Wills and Healthcare Representatives**

1. Right to die
2. Terminal illness and persistent vegetative state
3. Health Care Representative (effective October 1, 2006)
  - Combines general health care and life support decision-making authority
  - Replaces Health Care Agent and POA for health care decisions
  - Necessary even if you are married
  - Includes End-of-Life Decision-Making
  - HIPAA concerns

## What a Healthcare Rep *can* do..



- Make healthcare decisions on your behalf if you are unable to do it yourself
- Accept or refuse treatment on your behalf

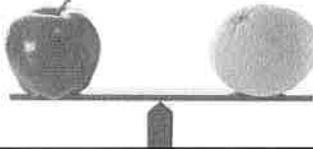
## A Healthcare Rep *can't*

- Make medical decisions if you have capacity to give informed consent.



## DNR vs. Living Will

- **Do Not Resuscitate Order (DNR)** is a directive you provide to a physician stating that you do not wish to receive CPR if you have stopped breathing or if your heart has stopped.
- A **Living Will**, which is part of your advanced directives, is a document where you express whether you would or would not like to be kept alive by artificial means if you are terminally ill or permanently unconscious.



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DNR	Living Will
<ul style="list-style-type: none"> <li>• Can only be put in place with the assistance of a doctor.</li> <li>• Only relates to CPR and other similar procedures.</li> <li>• Directive you or your health care representative provide to a physician.</li> </ul>	<ul style="list-style-type: none"> <li>• To go into effect (1) a physician (or APRN) must certify that you have a terminal illness that will result in death without life support; or (2) two physicians conclude that you are permanently unconscious.</li> <li>• Covers breathing tubes, CPR, and artificial means of nutrition or hydration.</li> <li>• Acts as your voice while you are alive but unable to express your medical care wishes.</li> </ul>

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# MOLST

- **The MOLST** (Medical Orders for Life Sustaining Treatment) form is a medical order based on a person's right to accept or refuse medical treatment, including treatment that may extend life.
  - Contains treatment instructions defined by the patient and a MOLST-trained medical professional.
  - Outlines patient's choices about life-sustaining treatments and ensures healthcare professionals will honor these patient care choices.
  - Unlike a health care directive, it goes into effect as soon as it is signed, regardless of the patient's capacity to make decisions.

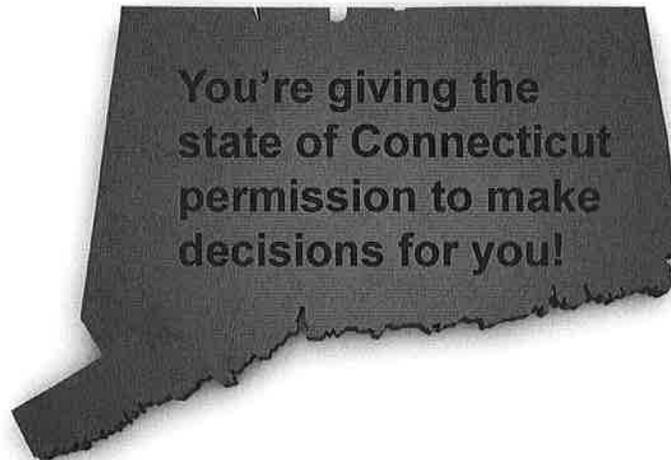
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*Reasons why a*  
**WILL**  
*is so important...*



- A Will gives you the flexibility to:
  - specify your bequests
  - to name and Executor
  - to name a guardian for your children
  - to create trusts for disabled children

*What happens when  
there is no Will?*



- If you are married without children, have living parents and pass away **without a Will** – the first \$100,000 of your probate estate and only 75% of your remaining estate will pass to your spouse – the remaining 25% will pass to your parents!
- Without a Will, the State of CT will determine who gets your property – this will likely not be in conformity with your wishes.
- A Will gives you the flexibility to specify your bequests, to name and Executor, to name a guardian for your children, to create trusts for disabled children.... there are countless benefits to executing a Will....

## Scenario 1:

### *Dying **Intestate** (without a Will)*

- Sue and Doug were happily married for 24 years before Doug died suddenly.
- They did not have kids.
- He did not have a Will.
- Sue was very upset to find out that not all of the estate would go to her, but a portion will go to his parents.



- If you are married without children, have living parents and pass away **without a Will** – the first \$100,000 of your probate estate and only 75% of your remaining estate will pass to your spouse – the remaining 25% will pass to your parents!
- Without a Will, the State of CT will determine who gets your property – this will likely not be in conformity with your wishes.
- A Will gives you the flexibility to specify your bequests, to name and Executor, to name a guardian for your children, to create trusts for disabled children.... there are countless benefits to executing a Will....

*It's true. Celebrities do die*  
***Intestate***



It took 6 years of litigation and millions of dollars in fees to resolve and divide his \$156 million estate.

In the end, the estate passed to his one full sibling and five half-siblings.

After dying in a skiing accident in 1998, Sonny's wife, Mary Bono, had to go through probate court to become administrator of his estate.

Ultimately, Bono's estate was divided between Mary and Sonny's two children: Chaz and Christy.



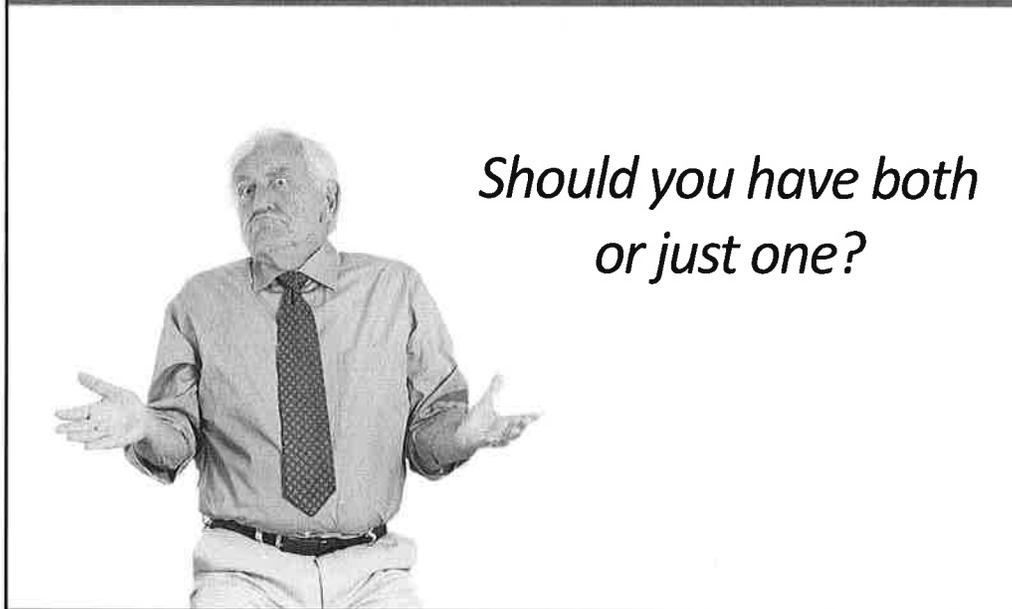
Prince: In the end, the estate passed to his one full sibling and five half-siblings. This is worth noting since audience members would probably readily presume that "half siblings" are maybe not typically a close family connection, and we are stressing how intestacy imposes strict family tree composition over subjective questions of who the decedent was actually close to in their life.

*Make sure your*  
**Assets and Beneficiary Designations**  
*are titled properly*

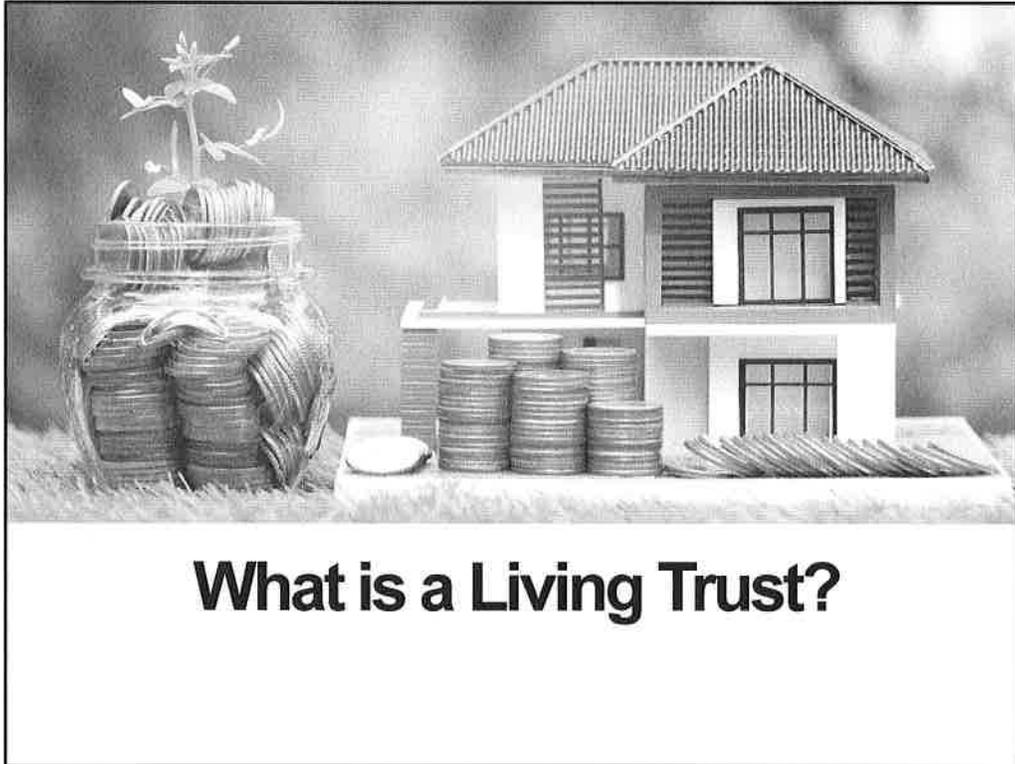


- You will only be able to take advantage of the benefits of a proper estate plan if you title your assets correctly.
- Owning assets jointly with one child, when you have more than one child, can distort your overall plan because joint assets are not governed by a Will and will belong, instead, to the joint account holder.
- This may result in one child getting more than the others and leading to discord amongst the children.
- If one spouse is residing at a nursing home, the healthy spouse should disinherit the ill spouse and change all beneficiary designations so that, if the healthy spouse passes away before the ill spouse, the State does not take all the money.

## Will vs. Trust



- Having an appropriate estate plan is beneficial for anyone concerned about the management of his or her assets.
- An estate plan may consist of: a simple Last Will and Testament, a Durable Power of Attorney, a Living Will, and an Appointment of Health Care Representative.
- An estate plan may also contain a Living Trust. A Living Trust may not be suitable for everyone.



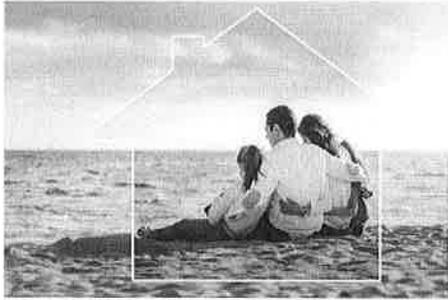
## What is a Living Trust?

Mention the 3 reasons:

- Probate Avoidance
- Privacy
- Incapacity Planning

We'll dive deeper in to each reason over the next several slides

## *Two strong arguments for* **Funding & Using a Trust**



Real estate property out of state



Family with conflict

### **You have out-of-state real property**

For out-of-state real property, a living trust that holds such property will avoid the need to go through that state's probate procedures and paying a lawyer from that state to handle the probate, usually at considerable cost for just the one asset.

### **You have a family that argues**

If there is a second marriage or children who do not get along, then a living trust may be best (if your Trustee is faithful to your wishes) because it will be harder for one of the other potential beneficiaries to cause trouble for trouble's sake if they do not know what the trust contains or says—remember that it is a private document.

*It's important to use the*  
**Right Lawyer**



- Estate and Medicaid planning—regardless of how “simple” you may think your situation is — requires the advise of an estate planning/elder law attorney.
- A general practitioner may not have the requisite knowledge to advise you.
- Remember that you are planning with your life savings in mind; take the time to consult with an attorney who has the knowledge and experience to help you protect it.

## Scenario 1:

### *What could happen....*



- John wrote his own Will.
- He did not get the appropriate number of signatures required for validity.
- When John died, the probate court deemed the Will invalid.

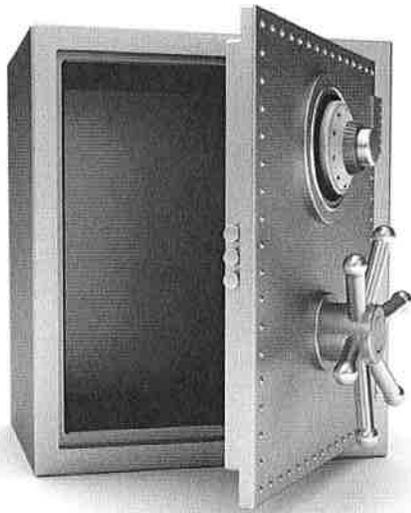
## Scenario 2:

### *Lisa Marie & Priscilla Presley*

- Priscilla argues that a 2016 amendment to Lisa Marie's trust which removed her as a co-trustee is invalid.
- There were numerous mistakes with the amendment including misspellings.
- Estate planning attorneys are held to a higher standard and must prepare clearly-written documents.



- SHRED the old Will so there's no confusion!



**You've got the  
documents...**

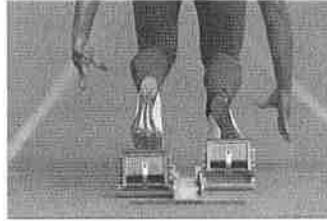
***Now what?***

- Store them!

## *Scenario- Flo Jo*

### *The importance of proper storage*

- Olympic great Florence Griffith-Joyner created a Will.
- She died suddenly at age 38 and her Will was never located.
- It took the probate court 4 years to close her case.
- Years of litigation tore her family apart.





# CZEPIGA DALY POPE & PERRI

Estate Planning | Elder Law | Special Needs | Litigation | Probate

## Attorney Erin O. Duques

[eduques@ctseniorlaw.com](mailto:eduques@ctseniorlaw.com)

(860) 236-7673

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

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