ESTATE PLANNING BASICS
WILL

LIVING WILL

DESIGNATION OF HEALTH CARE SURROGATE

POWER OF ATTORNEY

TRUST

AVOIDING PROBATE

WILL VS TRUST
WHAT IS A WILL?

Testator sets forth disposition of assets upon death

-- Probable assets only (solely owned by decedent)

-- Nonprobable assets
    --- Jointly owned with right of survivorship
    --- Designation of beneficiary
    --- Held in trust

Probate ("to prove a will")

Personal Representative (Executor)

Beneficiary
WHAT IS A LIVING WILL?

Limit or terminate artificial life support

-- Terminal condition

-- End stage condition

-- Persistent vegetative state
WHAT IS A DESIGNATION OF HEALTH CARE SURROGATE?

-- Designate who can make health care decisions

-- Separate from Living Will
WHAT IS A POWER OF ATTORNEY?

-- Principal

-- Agent (attorney in fact)

-- Revocation

-- Writing

-- Death of principal

-- Mental incapacity of principal (unless durable POA)
WHAT IS A TRUST?

-- Settlor (also grantor or trustor)

-- Trustee

-- Beneficiary

-- Irrevocable

-- Revocable trust (also living trust)

-- Widely used in estate plans

-- Avoid probate

-- Avoid or reduce federal estate tax

-- Pour-over will

-- Must be funded
AVOIDING PROBATE

-- Assets held in trust by trustee
-- Assets held in nonprobateable form
-- Joint tenancy with right of survivorship
-- Tenancy by the entireties
-- Assets held with designated beneficiaries
-- Bank accounts/CDs (POD)
-- Brokerage accounts
WILL VS TRUST

Will pros

-- Low cost of preparation

-- Reduce claims vulnerability period from 2 years to 3 months

-- In simple estates can put assets in nonprobable form

Will cons

-- Cost of probate

-- Probate filings in court are public

Trust pros

-- Cost of administration usually less than probate

-- Private administration

Trust cons

-- High cost of preparation

-- Claims vulnerability period is 2 years