Buhrman Law Firm, P.C.

Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

QUESTIONS AND ANSWERS ABOUT WILLS AND ESTATE PLANNING

1. What is a will?

   A will is the document by which you may direct what happens to your property after your death.

2. Can I do this with any kind of directions to my family or friends?

   No. The law requires that certain things be done to make a will valid.

3. Why?

   It is too easy for someone to lie about what you intended, and it is too easy for a document that you never intended to be a will to be construed as a will after your death. Perhaps no one in your family would lie about your intentions, but some people have friends or relatives who would lie: the law applies to everybody. In addition, the law wants to prevent mistakes.

4. What happens if I do not have a will?

   Every state has a law telling where a person's property goes when the person dies without a will. For example, if you have a spouse and three children, your spouse gets one-third of your estate and your children divide the remaining two-thirds. If you would not want your property divided in this manner, you <u>must</u> have a will.

5. What if I want my property to go the way the state law says?

   You may still need a will.

   (a) Your family may have disputes over how to divide the property. For example, your daughter may believe you wanted her to have a certain item of jewelry. Your son may believe you intended his daughter to receive it. A will can give them guidance.

   (b) If a court ultimately must divide the property, it needs guidance.

   (c) You can appoint as executor anyone you believe will divide your property fairly. Otherwise, the court will appoint an administrator (who might be the same person you would have appointed, but it is up to the court).

   (d) A creditor can become administrator if you do not appoint someone.

(e) If you do not appoint an executor and excuse bond, the court will require the administrator to post bond, even if it is a family member.

(f) If you have an estate that is large enough to be taxed, a will is very important to help the estate take advantage of all tax rules.

6. Do I have to have a lawyer write my will?

No, but it is a good idea. There are a number of things you may want to say in a will that are not valid. For example, "I give my house to John, but he cannot sell it." A lawyer can tell you how to express your wishes in a way the courts will accept. In addition, there are many things that you might forget to put in a will. Suppose you forget to excuse your executor from posting bond. This can be rather expensive. If your estate is large, you need a lawyer (and a CPA or some other professional) to show you how to save estate and inheritance taxes.

7. Can I change my will?

Yes. There are two ways to change a will. You can tear up your old will and write a new one. If you have major changes or if the law has changed drastically since you made your last will, this is the best thing to do. If you have minor changes, you can write a "codicil." This is an amendment to a will. It must have the same elements as a will to be valid (see question 4).

8. Why should I change a will?

A will should anticipate many of the things that happen in a person's life that would affect their will. For example, we always tell what happens if a beneficiary dies before you do or if you and a beneficiary die together. We tell what to do with people born after you make your will or after your death, as well as many other things that may happen. When they do, you do not have to change your will. Sometimes, however, things happen that we do not anticipate. A divorce or a sudden change in the type or amount of property you own could give you a reason to change your will.

In addition, the law may change. You may have a will that makes a certain type of gift in trust to take advantage of the tax laws. The Internal Revenue Service might make this trust illegal or reduce the benefits it once offered. We periodically review our clients' wills to see if they are affected by changes in the law; if the law changes, we will tell you about it so you can decide if you want to change your will.

Buhrman Law Firm, P.C.

Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

INTESTACY VERSUS WILL

Advantages of Intestacy:

1. No expense of a will
2. No need to think about death
3. All joint property to surviving joint owner (usually to spouse)

Disadvantages of Intestacy:

1. Expense of a probate proceeding with an administrator
2. Inability to provide for the various advantages available with a will

Advantages of a Will:

1. Power to dispose of property according to testator's wishes
2. Appointment of guardian for minor children
3. Appointment of executor
4. Powers to executor to carry on business, sell assets, make tax decisions
5. Allocation of death taxes in best way
6. Elimination of executor's bond
7. Waiver of inventory, accountings and other reports
8. Creation or exercise of powers of appointment
9. Gifts to relatives, individuals, or charities, none of which are covered by intestacy laws
10. Tax saving through marital deduction
11. Tax saving through credit-shelter "by-pass" trust
12. Providing for descent of property for children of those who die before testator
13. Establishing testamentary trusts instead of expensive guardianships, with spendthrift clauses
14. Keeping property out of hands of future spouse of a survivor

Buhrman Law Firm, P.C.

Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

WHAT IS "PROBATE" AND DO I WANT TO AVOID IT?

1. What is probate?

Technically, probate means proving that someone's will was actually their will. However, the term is commonly used to describe the court procedures necessary to administer an estate. This common definition is the one we will use.

Even if you do not have a will, your estate must be probated. Tennessee law provides that no one can "administer" an estate without the court's approval. A court could find that family members who chose to divide a deceased person's property without going through probate were violating this law.

2. What happens to my property when I die?

Regardless of whether you have a will, your estate must be formally administered. This is commonly called "probate." Sometimes family members have no argument with each other over how to divide property, and they do not actually go to court to divide it. Tennessee law does not say, "When someone dies, the estate must be administered in court." So some people say it is all right to avoid probate. But the law does say that no one can administer an estate without the court's approval. This suggests that all estates must go through the probate court.

In addition, all estates must file a Tennessee Inheritance Tax Return.

3. What happens in probate?

The probate court is only concerned with your "probate estate." This includes only property you own alone and insurance proceeds payable to your estate rather than an individual. Jointly owned property is not part of your probate estate.

The probate court lets the executor run the estate, but the court always watches out to see if it is done correctly. The executor has to list all of the assets in the probate estate, file a tax return, pay creditors of the estate, and distribute all of the property to the beneficiaries under the will (or under the statute if there is no will).

4. How long does probate take?

From six months to several years, depending on how large or complex the estate is.

5. What does probate cost?

The actual probate fees are usually around $500.00. Lawyers' fees vary. Many lawyers use a fee schedule published by the probate court. This is based on a percentage of the assets of the estate. This office, and some others, charge a regular hourly fee for the administration; and this fee is usually lower than the probate court fee schedule. An executor should always compare the fee schedule with a fee estimated at hourly rates.

6. Does probate help?

<u>How Probate Helps:</u> When probate procedures are completed, the family can be more confident that all of the deceased person's debts are paid. In addition, disputes are resolved over who receives what portion of the estate.

<u>How Probate Hurts:</u> The type and amount of your estate will become a matter of public record. Probate can also be a time-consuming and expensive procedure. Sometimes an executor or administrator must be paid. Lawyer fees also come out of the assets of the estate.

7. Do I want to avoid probate?

Avoiding Probate: Some people try to reduce the amount of property they own so probate will be easier and less expensive. In reality, these attempts may reduce probate time and cost but result in expensive and complicated procedures outside of probate. Thus, avoiding probate may not accomplish your real goals.

There are two common ways to avoid probate:

(1) Put your assets in a living trust. This will reduce your probate estate. However, a transfer to a trust could result in a taxable gift if you give up all control over the trust property. If you do not give up all control, the property is still part of your estate for tax purposes. In addition, professional trustees charge a fee for administering your property.

(2) Put your assets into joint names. This is hard to do with personal property. Also, there can be severe detriments to the original owner by putting property into joint names--the effect of joint ownership is discussed in another memo.

8. Other issues.

There are other considerations, however. Do you want to give up sole control over your property? What if you give all control to a trust and then change your mind about where your property should go? Do you want to burden someone else with responsibility for your property before you die? In other words, avoiding probate just for the sake of simplifying your estate may not in fact simplify anything.

If your total estate is valued at less than $25,000.00 (under current law), or the only probate asset is real estate in Tennessee, probate proceedings are substantially less complicated and expensive.

Buhrman Law Firm, P.C.

Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

SHOULD I PUT PROPERTY IN JOINT NAMES?

Tennessee recognizes several types of joint ownership in property:

1. Tenancy in Common - Suppose John and Bill own property in this way. When John dies, his one-half interest goes to his estate. Bill still only owns one-half of the property.

2. Joint Tenancy - When John dies, Bill gets all of the property. John's interest does not pass to his estate. A conveyance of a joint tenancy must specify that there is this "right of survivorship." Otherwise, John and Bill are tenants in common.

3. Tenancy by the Entireties - This is available only to husbands and wives. When one spouse dies, the other gets all of the property. The deceased spouse's interest does not go to the deceased spouse's estate. Therefore, tenants by the entireties also have a "right of survivorship."

The rest of this discussion will assume that you want to create a joint ownership with a right of survivorship. This is what people usually consider when they want to explore the effect of joint ownership on their estate.

People usually give three reasons for joint ownership of property:

1. You can assure that the person you want to get certain property after your death will get it.

2. The value of your probate estate is reduced, thus simplifying probate (but not tax) procedures.

3. If you are incapacitated, you will have someone responsible for your property.

We generally feel that there are better reasons for avoiding joint ownership:

1. The joint owner immediately has the same rights that you have to the property. For example, if a joint owner wanted to spend all of the money you put in a joint bank account, he could do so. The creditors of the new joint owner can attach to the asset. For example, if Mom wants to add Son to her bank account and add his name to her house and then Son gets sued or files bankruptcy, Mom's bank account and house are subject to Son's creditors.

(1) You may have to get the joint owner's permission to do certain things with the property.

(2) You can obtain the conveniences and some of the advantages of joint ownership sometimes by simply having a proper durable power of attorney.

(3) You may have created unwanted gift tax issues.

(4) If the joint owner dies before you do or if the joint owner is a spouse you later divorce, the joint owner must be replaced. Some people do not want to take the chance that they would forget to do this or that they would be physically or mentally incapacitated and could not transfer the property before their death.

(5) The joint owner will get the property when you die. No one else will have a right to the property. Care must be taken to ensure that the joint owner is the person who should get the property.

(6) You may be putting a burden on the joint owner. For example, when someone dies, an inheritance tax return must be filed. All jointly owned property must be listed. If the joint owner dies before you, that property must be listed in the joint owner's estate for tax purposes. The joint owner's estate will not owe tax on the property if you paid for it but owning property jointly increases the paperwork for the joint owner's estate. In addition, sometimes it is hard for the joint owner's estate to prove he did not pay for the property. Then the joint owner's estate must pay estate tax on the property.

(7) It is hard to put personal household property in joint names. This type of property will be divided by the probate court. The court will not object to the way the family chooses to divide it unless a family member objects to his share. Having a will that describes how to divide property can help the family avoid this problem.

(8) When property is owned jointly at least one-half of the total value is subjected to death taxes when one owner dies (and perhaps the entire amount will be taxed) and then the entire amount is taxed at the death of the second owner. At a <u>minimum</u>, joint ownership subjects property to 1 1/2 times the normal death tax.

Buhrman Law Firm, P.C.

Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

THE USE OF TRUSTS IN ESTATE PLANNING

There are two types of basic estate planning documents: wills and trusts.

Your will accomplishes a variety of functions (both tax and nontax) to transfer property in your probate estate to your designated beneficiaries. A will is nothing more than your list of instructions on how to conduct the probate process. It is your basic instrument for transferring property at death. Your will might also provide for the creation of testamentary trusts. Proper drafting of your will may save some probate costs. Estate tax savings provisions may or may not be contemplated by your will. If you do not have an effective will your probate property will pass under applicable laws of descent and distribution (intestate succession).

Property may also be transferred through non-probate arrangements. Such transfers avoid the probate process and are not affected by the existence of your will. For example, to reduce probate costs you may place substantial properties into a revocable living trust. At your death, your property is distributed (or maintained in trust) in accordance with your instructions spelled out in your trust instrument, avoiding the probate process. Below is a description of certain types of trusts used in the context of estate planning (that is, avoidance of probate and reduction of estate taxes). To the extent trusts are used as vehicles for lifetime gifts, they may also have an estate tax savings impact. This is because the gift, if made properly, removes property from your taxable estate and may also remove the appreciation which takes place in the property from the date of the gift to the date of your death.

Trusts can be created for a variety of estate planning reasons:

1. To conserve property for beneficiaries and to protect them against their own mismanagement

2. To manage investments

3. To avoid guardianship proceedings (and related probate procedures) for the transfer of property to minors and other persons legally incapacitated

4. To minimize probate costs by transferring property outside the jurisdiction of the probate court (the “living trust”)

5. To assure privacy in the transfer of property at death (also a “living trust” function)

6. To save taxes, including federal income and estate taxes, and state income, inheritance, and estate taxes

REVOCABLE LIVING TRUSTS

Revocable living trusts are of substantial value and are commonly used in estate planning. Since the trust is revocable (changeable), you can cause trust assets to be returned to you whenever you desire. This trust may be created with only a nominal corpus, say, $100.00. The balance of the trust corpus is added at the time of your death. This balance may be received under a will which directs the "pour-over" of your residuary estate into the trust. This may also be accomplished by designating the trustee as the beneficiary of life insurance on your life.

A revocable living trust may also be funded with a substantial part of your property during your lifetime. It is only the assets which are actually in the trust before you die that will avoid probate.

IRREVOCABLE LIVING TRUSTS

Various irrevocable living trust arrangements have developed in response to tax benefits available under specific income and gift tax provisions. Among these are split-interest charitable trusts, minors' trusts, and Crummey trusts. In general, irrevocable trusts are intended as vehicles for lifetime gift giving. Irrevocable trusts are also commonly used to keep life insurance proceeds out of your estate. These trusts may also be used to receive other property at your death by beneficiary designation or by "pour-over" from your will.

TESTAMENTARY TRUSTS

A testamentary trust is created under your will. Although technically it comes into existence at the time of your death, it is usually not activated as an entity for income tax purposes until assets are received by the trustee upon a distribution from your estate. Distribution normally does not occur until the initial phases of probate administration have been completed.

Similar to living trusts, the testamentary trust may also function as a receptacle for non-probate assets. For example, insurance proceeds may be made payable to the testamentary trust, revocable living trusts might be consolidated into the testamentary trust, and benefits under an employer's qualified pension or profit-sharing plan may be made payable directly to the testamentary trust. However, some or all of the properties put into the testamentary trust may be subjected to the probate process.

Buhrman Law Firm, P.C.

Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

REASONS FOR ESTATE PLANNING OTHER THAN ESTATE TAX ISSUE

Most people think that estate planning is only for the wealthy and only if they have a taxable estate, i.e. $1 million or more for Tennessee purposes, however, below is a list of non-estate or inheritance tax reasons for estate planning:

- Number one goal is to protect and preserve the family
- To avoid probate, especially if you own real property in more than one state
- Disability protection
- Appointing appropriate fiduciaries—Executors, Trustees, Guardians, etc.
- Asset protection planning for you and/or other family members
- Planning for second marriages, your own or other family members
- Planning for minors or for other family members whose financial abilities are unproved or impaired
- Minimizing the sources of potential family conflicts, i.e. personal property dispositions
- Life insurance planning
- Charitable giving
- Placing reasonable, flexible restraints on inherited wealth
- Building balance and flexibility into an estate plan to permit modifications in the future
- Income tax planning

Buhrman Law Firm, P.C.
Richard W. Buhrman
John R. Buhrman †

† Also Licensed in Georgia

The Terrace at Frazier
345 Frazier Avenue, Suite 210
Chattanooga, Tennessee 37405-4095
423-266-5691
423-265-7041 Fax
www.buhrmanlaw.com

DIGITAL ASSETS

A new, but critical, area of estate planning is attending to a client's digital assets or legacies. Digital assets are defined as any online accounts that you own, or any file that you store in your computer or in a cloud drive. While many of these assets have no monetary value whatsoever, they often have sentimental value to family members. In today's tech savvy society, more and more people are using online banking for routine transactions, automatic bill paying, etc. If one spouse primarily does this and the other one does not know the login and password information, that can provide a great obstacle if that spouse were to die first. In most cases, the other spouse, and quite commonly, their heirs, simply may not know of the existence of each and every online banking or financial account, the location of online photos, movies, and other data that the deceased may want to pass on at their death.

There are several ways to address the management of digital assets after death or incapacity of a family member. One way is to have specific language under a person's financial or business matters power of attorney that authorizes the attorney-in-fact to have access to the principal's online digital assets and accounts. Obviously, this is a new area so no one can predict how smoothly this will work in the real world, but it cannot hurt to have this language in a person's power of attorney.

Another way would be in a client's will, if the primary or favored Executor is not internet and electronically savvy, they could name a specific Executor solely for the purposes of dealing with their digital and online accounts and assets.

In addition, there are also websites such as legacylocker.com or securesafe.com to store your information, and upon your death there is mechanism to e-mail that information to a named individual. In the alternative, you could make a list of all your online accounts and passwords and put it in a safe place, such as a safe deposit box, which can be found upon your death by your Executor.

To date only five states have enacted laws that relate to digital assets with regard to estate planning. The rights of Executors, agents, guardians and beneficiaries with regard to accessing digital assets are muddy at best. In addition, there is no real consensus regarding ownership and transferability of digital assets with a category property in which digital assets belong. Some say they are intellectual property, while others say they are intangible property.

CONFIDENTIAL ESTATE PLANNING QUESTIONNAIRE

Buhrman Law Firm, P.C.
345 Frazier Avenue, Suite 210
Chattanooga, TN 37405
Phone: (423) 266-5691 Fax: (423) 265-7041
www.buhrmanlaw.com

I. FAMILY DATA DATE:________________

HUSBAND:______________________________ **D.O.B.** _______________ **S.S. #**______________________

WIFE:__________________________________ **D.O.B.** _______________ **S.S. #**______________________

CHILDREN & D.O.B.:____

____

ADDRESS:____**PHONE:**____________________

II. ESTATE PLANNING GOALS: Please describe your overall estate planning goals:

____

____

Do any family members or beneficiaries have any disabilities?____

III. ASSET SUMMARY: Please use Fair Market Value and round to nearest $1000.

Asset	Husband's Name	Wife's Name	Joint
Real Estate (Residence)			
Real Estate (Other)			
Cash, Bank Accounts, CDs, etc.			
Stocks, Bonds, Mutual Funds, Brokerage Accts.			
Household goods, Personal Effects & Misc.			

Tax Deferred Annuities, 401(k) Plans, IRAs and Other Retirement Accounts

Husband: Description	Value	Primary Beneficiary	Contingent Beneficiary

Wife: Description	Value	Primary Beneficiary	Contingent Beneficiary

LIFE INSURANCE

On Husband's Life:

Policy Owner	Type	Face Value	Cash Value	Beneficiary	Annual Premium

On Wife's Life:

Policy Owner	Type	Face Value	Cash Value	Beneficiary	Annual Premium

IV. APPOINTMENT OF AGENTS FOR:

Husband's Choice

	FINANCIAL POWER OF ATTORNEY Name	Relationship	HEALTH CARE POWER OF ATTORNEY Name	Relationship
#1	______________________	______________	______________________	______________
#2	______________________	______________	______________________	______________

Wife's Choice

	Name	Relationship	Name	Relationship
#1	______________________	______________	______________________	______________
#2	______________________	______________	______________________	______________

V. APPOINTMENT OF EXECUTOR

Whom do you want to be in charge of administration of your estate?

Husband's Choice

	Name	Relationship	Address
#1	______________________	_________	______________________________________
#2	______________________	_________	______________________________________

Wife's Choice

	Name	Relationship	Address
#1	______________________	_________	______________________________________
#2	______________________	_________	______________________________________

VI. APPOINTMENT OF TRUSTEE

If your will creates a trust for your spouse or other family members, who do you want to manage this inheritance? This can be the same person as your Executor. Trustee choices should be same for both husband and wife.

	Name	Relationship	Address
#1	______________________	_________	______________________________________
#2	______________________	_________	______________________________________

VII. APPOINTMENT OF GUARDIAN

Whom do you want to raise your children if both you and your spouse die with minor children?

	Name	Relationship	Address
#1	______________________	_________	______________________________________
#2	______________________	_________	______________________________________

VIII. BENEFICIARIES OF SPECIAL GIFTS

Do you want to make a gift—cash or a specific item to a charity, foundation or a religious foundation? Do you want to give any specific items to a family member or other individual?

Name of Beneficiary	Charitable Amount	Specific Gift
____________________________	______________________	__________________________________
____________________________	______________________	__________________________________

IX. RESIDUARY AND CONTINGENT BENEFICIARIES

Whom do you want to receive the rest of your estate after these special gifts have been distributed? Whom do you want to receive your estate if you and your spouse outlive the people you have named to be the residuary beneficiaries?

Name of Beneficiary	Amount or Percentage	Contingent Beneficiary	Amount or Percentage
____________________________	__________________	___________________	__________________
____________________________	__________________	___________________	__________________