

# THE ALERT

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## To Avoid Probate? Or Not to Avoid Probate?

“Learn how to avoid probate,” the advertisements and television commercials echo.

For the most part, those come-ons generally are trying to sell you a “Living Trust.”

First off, a Living Trust usually is not needed by low and even moderate income persons.

Avoiding probate may not be necessary in the first place. But, if you really want to

avoid probate, there may be cheaper and better ways to do it.

To make informed decisions, it is necessary to understand what some documents are.

We will start off with some basics about Wills and Trusts and then describe some related topics such as Living Wills and Powers of Attorney.

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### We Have Moved Temporarily

The Older Persons Law Office of The Legal Aid Society of Cleveland has moved temporarily to the Fourth Floor of the Courthouse Square Building at 310 Lakeside Avenue.

But our mailing address and phone number remain the same: 1223 West Sixth Street, Cleveland, OH 44113 and 216-687-1900.

If you have an appointment with an Older Persons lawyer, please come to the new address.

However, if you do not have an appointment and want help from Legal Aid, please go to the first floor intake desk at 1223 West Sixth Street or call the Senior Helpline, 216-861-5479.

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THE ALERT IS THE NEWSLETTER OF  
THE OLDER PERSONS LAW OFFICE OF THE LEGAL AID SOCIETY OF CLEVELAND  
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### *Last Will and Testament*

A person's Last Will and Testament is a document which becomes effective only after that person dies. It says who is to get property owned by the person who died.

Having a Will or not having a Will does not determine whether the estate has to be probated. The need for probate depends on whether the person who died owned property that requires a court order so that it can be passed on to the person who is supposed to get it—by law or by what the Will provides.

***If your only goal is to avoid probate, there are ways to do it at no cost or for a much lower cost than a Living Trust.***

Probate is a legal process that usually involves filing the deceased person's Will with the Probate Court, taking an inventory and getting appraisals of the deceased's property, paying all legal debts and eventually distributing the remaining assets and property.

If your only goal is to avoid probate, there are ways to do it at no cost or for a much lower cost than a Living Trust.

For instance, you can hold ownership of your home or other property with two types of deeds that can be used as tools to avoid probate.

One is called a Joint and Survivorship Deed. It allows you to own property jointly with another person during your lifetime and to have that property pass automatically to the joint owner when one joint owner dies.

If you do not want to share ownership of your property with your spouse or another person during your lifetime, but want the property to pass to your spouse or someone else after your death, there is a Transfer on Death Deed.

Such a deed allows you to name a beneficiary to whom the property will pass after your death. The property remains in your name during your lifetime.

There are, of course,

situations where a Transfer on Death Deed may not be a good choice. For instance, you may have more than one child and name all of your children as transfer on death beneficiaries. If one dies, your remaining children will get the property and the children of the deceased child will get no share of the property. That may not be what you intend.

You could name the grandchildren as contingent beneficiaries, but you would have to do a new transfer on death deed every time a new grandchild was born.

In such a case, you may prefer to have a Will which allows you to clearly spell out your intentions.

**Another way to avoid probate for such things as bank accounts and mutual funds is to use joint ownership or payable on death designations. If you choose not to make such provision so the bank account is in your name only, even if there is only \$1,000 in a bank account, it cannot be touched by survivors without going to Probate Court.**

For pension funds and insurance policies, you can designate a beneficiary to avoid having the proceeds become probate assets.

If you provide for all of your assets to pass directly, such assets are not affected by your Will and are not considered a part of your probate estate.

If automobiles are registered just in the name of the deceased person, one or two vehicles can be transferred into the spouse's name without going to Probate Court.

From time to time, there are changes in the Ohio laws and regulations dealing with estates.

Many people still think they must rush to the bank to withdraw funds that are in a joint account or to remove documents such as Wills from a safety deposit box.

There is no need to do either. If the account is joint, the joint survivor can access the funds at any time.

There no longer is a requirement that the tax

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commissioner or his representative inventory a safe deposit box upon the death of the owner or co-owner or any other person having access to it.

***Do You Need a Will?***

Whether you need a Will depends a great deal on your individual circumstances.

If your estate will not be simple and if you have not provided for assets to go to your heirs with a deed, joint accounts and beneficiary designations, you should have a Will.

If you think there will be disagreement among your heirs over who gets the desk, who gets the ring and who gets the china you inherited from your mom, it may be best to spell it out in a Will.

In those circumstances, a Will can make for peace in the family.

If you have minor children in your care, you may want a Will to designate a guardian to care for them and manage the assets you leave should you and your spouse both die.

**You also may want to name an alternate guardian should your first choice be unable or unwilling to serve.**

If you do decide you need a will, you will have to designate someone to serve as your executor.

The executor is the person who sees that estate bills are paid, collects all money due to the estate and sees that the assets

are distributed as provided by the Will.

The costs involved in probating an estate are court costs, executor or administrator fees, attorney fees and taxes.

Depending on the date of death, the amount of the estate assets and whether the sole beneficiary is a spouse, a short

***Whether you need a Will depends a great deal on your individual circumstances.***

procedure called a Relief from Administration is available.

This procedure is less expensive and works faster than regular probate proceedings.

If you decide not to have a Will and do not make other provisions for distribution of your assets, they will pass to relatives according to the provisions of state law. If there are no relatives, the assets will go to the State of Ohio.

If you have a Will, make sure it is in a safe place and that your executor or family members know where it is stored.

***Living Trusts***

A Trust is a legal arrangement that allows one person (the grantee) to give control of property to another person (the trustee) for the benefit of someone else (the beneficiary).

Living Trusts are trusts that take effect while the grantor is still alive. With most Living Trusts, the grantors are also the trustees and may also be the beneficiaries.

Living Trusts usually are sold to seniors as a way to avoid probate.

As we have explained above, there may be better and less expensive ways to avoid probate.

Sometimes Living Trusts are sold as a Medicaid planning tool to enable you to receive Medicaid benefits should you require nursing home care.

**Regulations on using Living Trusts for Medicaid planning have changed and are available in only very limited circumstances and on restricted timetables.**

Our advice here is to consult an attorney well versed in this area before even considering a Living Trust for this purpose. A consideration also should be whether you prefer to use your assets to pay for a better level of care than is available to Medicaid patients.

Some people mistakenly think that Living Trusts are a way to avoid payment of estate taxes.

However, estate taxes are not a concern for low or middle income persons. Spouses pay no state estate

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taxes no matter how large the estate. If the death occurred after January 1, 2002, no one has to pay any Ohio estate tax on assets totaling less than \$338,300. That includes

A Will is a written statement of how you want your assets distributed after your death. It has no effect while you are alive.

On the other hand, a Living Will lets your family members,

up to you. Your Living Will may include some and not others.

In any event, a Living Will never allows your doctors to stop giving you "comfort care."

They must continue to give you medical and nursing care that is aimed at making you comfortable and to relieve you from pain even if you have decided that you do not want life-sustaining treatment administered to you.

A physician cannot withhold or stop nutrition or hydration (giving liquids) unless your Living Will specifically authorizes the physician to do so.

It is a good idea to prepare a Living Will at a time when you are not in any immediate medical crisis and have plenty of time to carefully consider your treatment preferences. The Living Will should be reviewed periodically to make sure it still reflects your intentions.

***As for assets in a Living Trust, they generally are taxed for estate tax purposes the same as other assets***

probate and non-probate assets.

If a person died in 2002 and 2003, the federal estate tax is not charged on estates that are under \$1 million. The exempt amount increases after this year.

Because estate taxes are changing, it is wise to consult with an attorney about future rates.

As for assets in a Living Trust, they generally are taxed for estate tax purposes the same as other assets

There are some instances where Trusts may be appropriate for even modest estates. For instance, a Trust may be recommended where there is a mentally handicapped child.

If in doubt, consult with an attorney.

***Living Wills***

A Living Will is totally different from a Will and Last Testament.

friends and/or physician know what type of care you want or do not want to receive should you become terminally ill or permanently unconscious.

It becomes effective only when you are not able to make health care decisions on your own.

**A Living Will tells your family, doctor, the hospital and others what you want done with respect to treatment when you are approaching the end of your life.**

It may authorize withholding of or terminating medical procedures related to life support, including such things as use of feeding tubes, respirators, cardiopulmonary resuscitations and intravenous therapy.

It also may include a Do Not Resuscitate (DNR) comfort care order. That means that you do not want to be revived or have cardiopulmonary resuscitation performed on you if your heart stops beating or you stop breathing.

Whether it includes those orders mentioned above or not is

***Durable Powers of Attorney for Health Care***

A companion document to a Living Will is a Durable Power of Attorney for Health Care.

In it you designate someone to make all of your healthcare decisions if you are unable to make them yourself.

*(Continued on page 5)*

The person designated is given the power to carry out the decisions you have expressed in your Living Will as well as to make other health care decisions.

**This Power of Attorney for Health Care has no effect so long as you are able to make your health care decisions yourself.**

The person you authorize to make health care decisions for you, called your agent or attorney-in-fact, may make such decisions only when your attending physician determines that you have lost the capacity to make informed health care decisions for yourself.

Both the Living Will and the Power of Attorney for Health Care must be properly signed and witnessed OR be notarized to be effective.

Neither document may be witnessed by relatives, the person designated as your attorney-in-fact, your physician or the administrator of a nursing home where you are a patient.

If the signing, witnessing or notarizing are not done correctly, both documents will be useless just at the time you intended them to help you.

The Power of Attorney for Health Care will not expire unless you specify a date when you want it to end.

### ***What If You Do Nothing?***

If you have neither a Living Will nor a Power of Attorney for Health Care to enable your agent or attorney-in-fact to instruct the physician, you must be permanently unconscious for 12 months or longer before your physician may stop any life-sustaining treatment.

Even then, or if you are in a terminal condition, consent to stop life-sustaining treatment must be given by those authorized by law to give it and must be

***Speak with a lawyer if there is anything in the forms you do not understand.***

consistent with any expressions of your wishes you made while you were able to state those wishes.

If you did not express your intentions, the consent must reflect what your intentions would have been if you had made them known.

Those who object may go to court. In cases where the issue is termination of nutrition and hydration, the decision must be approved by the Probate Court.

Whether you need a Living Will and a Durable Power of Attorney for Health Care is a very personal matter. Your decision should be made after you examine your own thoughts on the matter.

Whatever you decide, it is best to discuss your concerns with your family and a lawyer. If you obtain forms that some organizations are providing, read the explanations **very** carefully so that you are sure exactly what you would be agreeing to.

Speak with a lawyer if there is anything in the forms you do not understand. If there is something in the forms you would like to change, a lawyer can prepare documents that meet your needs.

Do not sign any document if it contains anything with which you disagree or which you do not fully understand.

### ***General Durable Powers of Attorney***

There is still another document you may want to consider getting.

It is a General Durable Power of Attorney (POA) and is different from A Durable Power of Attorney for Health Care.

A POA is a document that gives another person (called your agent) the right to do things for you in your place, the same as you could do for **yourself**.

Generally, you would sign a POA to have someone you designate take care of your financial matters if you become disabled and unable to take care of them yourself.

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You must be competent to sign a POA so it needs to be done while you still are competent

You can limit a Power to Attorney by specifying only certain things you want your agent to do. For instance, you can authorize your agent to do your banking, but not to sell your house.

**On the other hand, the powers you grant can be very broad and give the agent the right to take control of all of your assets.**

You do not lose the right to make decisions and do things yourself unless the POA document says so. If both you and your agent are able to act at the same time, you must be sure that you each know what the other is doing.

It is important to consider some factors before making someone your agent:

- ◆ **Pick someone you trust.** We have all read stories in the newspapers about a child or relative or friend who used a POA to spend all of the assets on him or herself.
- ◆ **Think about what you want your agent to do.** You want to give the agent enough power to do those things you need done, but you may want to limit the powers you give so that the agent won't have access to all of your assets.

- ◆ **Decide how long you want the power to last.** The POA can say it ends on a certain date or state when some certain act should be done. Unless you specify an ending date, the POA continues in effect until it is revoked or until the agent dies, unless you named an alternative agent.
- ◆ **Don't listen to others about whether you need a POA?** Think before you agree to make someone your agent if he or she is asking you to do so. Because of the risk that an agent may steal or otherwise do harm to your assets, think twice before signing a POA
- ◆ **Don't get a POA just to pay bills.** Creditors will take money from anyone. If a husband and wife have a joint account, no POA is needed to give the other spouse access to it.
- ◆ **Be careful about using a pre-printed POA form.** We advise against pre-printed POA forms. See a lawyer and have one drawn up to fit your needs. If someone else is asking you to sign a POA, refuse to sign until you have a lawyer check it.

**Don't let anyone talk you into signing a POA if you are not 100% comfortable with doing so.**

*Legal Aid does not do Living Trusts. However, if you are a low-income senior over the age of 60, we can help you with Wills, Living Wills, Durable Powers of Attorney for Health Care and General Durable Powers of Attorney. See Page 8 for information on how to contact us.*

### **Ill Seniors May Qualify For Air Conditioners**

*Low income seniors may be eligible for air conditioners to fight summer heat if they have a respiratory disease or breathing problems.*

*If they qualify they also may be able to get a one-time payment of up to \$175 on their summer utility bills. Low-income seniors without breathing problems also may qualify for the utility bill credit*

*For information on where to apply for the Home Energy Assistance Program, phone 216-518-4014.*

*Apply as soon as possible for these very scarce funds.*

# You Can Stop Those Pesky Telemarketer Telephone Calls

Sitting down to dinner sometime seems like a signal for the phone to ring.

More than likely, it's another of those telemarketer calls and it's a recording so you can't even complain about being disturbed at dinner.

Now you have a chance to eliminate most telemarketing calls by registering your phone number with the National Do Not Call Registry.

You can register by calling 1-888-382-1222; or

hearing impaired persons may call the TTY number 1-866-290-4236.

You must call from the telephone whose number you wish to register. **Do not include the 1 when you key in your area code and phone number as requested.**

If you call before August 31, 2003, you can expect to receive fewer calls by October 1. If you register after August 31, telemarketers covered by the Registry will have up to

three months from the date you register to stop calling you.

After you register, your phone number will be available to telemarketers the next day for them to remove it from their call lists. However, they will have up to three months to get your phone number and remove it from their call lists.

Your registration will be effective for five years

You can register up to three personal phone numbers by computer at this website: [www.donotcall.gov](http://www.donotcall.gov).

Be aware that registering will not relieve you of all unsolicited calls. Surveys, charities and political organizations and firms with which you have an existing business relationship are not covered by the Do Not Call Registry.

But if the charity hires telemarketers to solicit for it, you can ask that specific organization to place you on its do-not-call list.

Once registered, if you receive a call from a telemarketer covered by the Registry, you can file a complaint with the Federal Trade Commission. Violators can be fined as much as \$11,000.

## Seniors Can Connect With Computer Links

Seniors are invited to explore a new web site designed for Northeast Ohio's older adults and those who care for and about them.

It is sponsored by the Cleveland Public Library in cooperation with the Community Vision Council.

Among the many resources accessed by the North Coast SeniorsConnect site are Law and Legal Issues, Caregivers, Employment and Volunteer Opportunities and Health.

The site offers free e-mail accounts, access to benefits information and an opportunity for seniors to submit their own stories about the past.

If you don't have a computer, go to your nearest public library to explore [www.SeniorsConnect.org](http://www.SeniorsConnect.org).

**SENIOR CITIZEN CENTERS AND LEGAL AID OFFICES**

**CUYAHOGA COUNTY**

For information or to make an appointment in Cuyahoga County  
 phone the Senior Helpline  
 on Tuesday, Wednesday or Thursday between 1 p.m. and 4:30 p.m.  
 at 216-861-5479

**EAST SIDE**

**WEST SIDE**

Buckeye Senior Center  
 11802 Buckeye Road  
 216-491-8450

Maple Heights Senior Center  
 15901 Libby Road  
 216-587-5481

Lakewood Office on Aging  
 16024 Madison Avenue  
 216-521-1515

Emeritus House Senior Center  
 (at Indian Hills)  
 1554 East 193 Street  
 216-289-8586

Martin DePorres Center  
 1264 East 123 Street  
 216-268-3909

Metro Health Hospital  
 2500 Metro Health Drive  
 216-778-5551

Fairhill Institute  
 12200 Fairhill Road  
 216-421-1350

Murtis H. Taylor Center  
 13422 Kinsman Avenue  
 216-283-4400

Parma Senior Resource Center  
 7001 West Ridgewood  
 440-885-8155

Goodrich-Gannett Center  
 1368 East 55 Street  
 216-432-1717

Stella Walsh Recreational Center  
 7345 Broadway Avenue  
 216-441-0111

West Side Legal Aid Office  
 3408 Lorain Avenue  
 216-961-6630

Helen S. Brown Senior Center  
 16100 Euclid Avenue  
 216-761-8410

Woodland Branch  
 Cleveland Public Library  
 5806 Woodland Avenue  
 216-623-7109

**DOWNTOWN**

Hough Opportunity Center  
 8555 Hough Avenue  
 216-421-5400

Downtown Legal Aid Office  
 1223 West Sixth Street  
 216-687-1900  
 Extension 5336

For information or to make appointments outside Cuyahoga County  
 phone the offices listed below

**LAKE COUNTY**

Lake-Geauga Legal Aid, 8 North State Street, Painesville, OH 44077  
 440-352-6200 or TOLL FREE 1-888-808-2800

**LORAIN COUNTY**

The Legal Aid Society of Lorain County, 538 West Broad Street, Elyria, OH 44035  
 440-323-8240 or TOLL FREE 1-800-444-7348

**ASHTABULA COUNTY**

Ashtabula County Legal Aid, 121 East Walnut, Jefferson, OH 44047  
 440-576-8120 or TOLL FREE 1-866-873-9665

**The Legal Aid Society  
of Cleveland  
1223 West Sixth Street  
Cleveland, Ohio 44113**