

# **Florida Wills, Trusts, and Estates**

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# **Florida Wills, Trusts, and Estates**

## **Cases and Materials**

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# Preface

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## Teaching Comments

This casebook is designed to be used with an accompanying statutory supplement.<sup>1</sup> The casebook is geared to the Florida laws of wills and trusts, including the Florida Probate Code and the new Florida Trust Code. Except for U.S. Supreme Court cases, certain cases from federal courts, and a few seminal cases from other jurisdictions, the cases included in this book are Florida cases. We believe that there is much to be gained by studying the laws of one jurisdiction as a whole. To ensure that students understand the nuances of the Florida approach, we sometimes contrast Florida law with the laws of other jurisdictions. In doing this, the casebook includes discussions of some uniform codes—such as the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC)—and excerpts portions of the Restatement (Third) of Trusts. The UPC is available on both Lexis and Westlaw. The UTC, including comments thereto, is available on the National Conference of Commissioners on Uniform State Laws' website, [www.utcproject.org](http://www.utcproject.org).

## Editorial Comments

We have designed this book to encourage students to think about the cases from the standpoint of both planners and litigators. Accordingly, we include numerous questions that require students to think about ways to draft or plan around issues to avoid litigation. Notes accompanying cases suggest related issues and also guide students to think about even more nuanced problems.

Some editorial notes are in order. We follow casebook conventions and liberally omit footnotes from cases and excerpted materials without disclosure. Footnotes that are included from cases and materials include Editors' Notes indicating their number from the original source. In addition, Editors' Notes appear in various other places in cases or materials to indicate changes in the laws or for additional reference. When we omit citations from cases, we demonstrate those omissions by way of ellipses. Asterisks (\* \* \*) indicate substantive omissions, but concurring and dissenting opinions may have been omitted without a specific notation that such an omission was made. All Florida statutes and Internal Revenue Code provisions cited are as they appeared on Lexis, Westlaw, or Online Sunshine as of the date of this publication. Thus, the statutes do not include a date.

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1. For example, in Florida, the students could use The Florida Bar's version of the relevant statutes and probate rules published by LexisNexis-Fla. Probate Rules or the version published by West-Fla. Probate Code. Alternatively, students may find the Florida statutes at Online Sunshine, the official internet site of the Florida Legislature, at <http://www.leg.state.fl.us/welcome/index.cfm>.

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All of us are grateful for the support of our colleagues, especially Professors Lisa Smith-Butler and Angela Gilmore, the insights we have gleaned from our wills and trusts students over our decades of teaching, for the dedication of our stellar and tireless research assistants: Lourdes Abalia, Kathryn Ebel, Aubrey Giraldez, Vanessa Peñaranda, Elisabeth Reid, and Michelle Shabo, and for the dedicated members of the

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Elena Marty-Nelson  
Eloisa C. Rodriguez-Dod  
Gail Levin Richmond  
Donna Carol Litman  
Jani Maurer

November 2006



# Overview

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## I. Introduction

Death has many financial consequences. Money or other property passes to new beneficiaries, or existing beneficiaries acquire different rights. Creditors may assert claims against specific items of property or against the estate as a whole. Some debts may arise solely because a death occurred.

Given the emotional distress a decedent's family and friends suffer, reducing financial uncertainty is an admirable goal. By introducing the rules that govern how property passes at death, this casebook gives you a framework for advising your future clients.

Not surprisingly, estate planning involves more than merely drafting wills. Effective planning goes beyond property transfers at death. Some clients may establish trusts to manage property or protect spendthrift relatives. Others may authorize third parties to act on their behalf in dealing with health care professionals. Still others may wish to transfer property by means other than trusts. As the listing below indicates, this casebook covers all these topics.

## II. Focus

This casebook is unique in its focus on Florida Law. Despite widespread adoptions of uniform acts and codes, the rules governing wills and trusts continue to be state-law driven. Florida law is particularly well suited for studying this area of the law. Florida has a well developed probate code and its common law wills and trusts decisions address issues in fascinating factual situations that students find engaging. Moreover, in 2006, Florida adopted its version of the UTC referred to as the Florida Trust Code (FTC), effective July 1, 2007, making Florida a perfect platform for studying modern trusts law and practice.

Although Florida law is the focus, this casebook includes discussions of the common law from other states and uniform codes (including the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC)), particularly when they differ significantly from Florida law. Demonstrating how Florida law varies from that of other states (or uniform codes) serves a pedagogical purpose. It crystallizes the issues students will face when they practice wills and trusts by allowing them to see how other states may resolve these issues.

This casebook may also be productively used by students who expect to practice in other states. Although the case or statutory law differs from state to state, the concepts and issues students will encounter and ponder are the same. In addition, Florida continues to attract new residents, including large numbers of immigrants and retirees. Even if they initially remain domiciled elsewhere, these individuals are likely to acquire property that will have a Florida situs. Knowledge of the rules governing Florida wills and trusts is thus important even for attorneys practicing elsewhere.

This casebook is also unique in the breadth and depth of its coverage. First, it covers trusts as extensively as it does wills. That coverage recognizes modern trends in family wealth planning. Moreover, the trusts chapters cover the Florida Trust Code (FTC), which was enacted on June 14, 2006, and is effective July 1, 2007. The FTC is a substantial codification of the Florida law of trusts. The trusts chapters address where the FTC provisions vary from or are consistent with Florida common law or prior Florida statutory trust law. Second, this casebook is unique in that it treats topics that relate to both testate and intestate estates together. Covering topics such as disclaimers, slayer statutes, and simultaneous death together reinforces students' understanding of the statutory rules and when the use of wills or other documents may be employed to achieve different outcomes. Third, it goes beyond wills and trusts and introduces several related topics: documents such as durable powers of attorney and designations of health care surrogates; principal and income allocations; estate planning, and the probate process. These introductions are a useful bridge to such advanced courses as Elder Law, Estate Planning, and Probate Practice.

### III. Topics Covered

This casebook can be used in separate Wills and Trusts courses or in a course that combines both topics. Although it covers wills before trusts, these topics can be addressed in a different order.

Chapter 1 introduces some of the terminology encountered in intestacy, wills, trusts, and certain related areas such as advanced health care directives. Chapter 1 also addresses property interests that are not subject to probate, such as property held in a joint tenancy with right of survivorship. Finally, Chapter 1 explains the difference between the probate estate and the gross estate. Chapter 2 covers the rules for intestate succession. Its rules apply to probate property that is not effectively disposed of by the decedent's will.

Chapters 3 through 11 cover property passing by will. Topics include the requirements for a valid will and for amending and revoking a will. These chapters also address rules designed to implement a testator's presumed intent, such as the rules for pretermitted children or spouses, rules of construction of will provisions, and rules dealing with situations where beneficiaries predeceased the testator. They also cover various types of misconduct, such as undue influence and fraud.

Chapters 12 through 15 consider topics that apply to both testate and intestate estates. These include homestead, the surviving spouse's elective share, such events such as simultaneous death and disclaimer, and using estate property to pay debts.

Chapter 16 concludes this segment by considering problems affecting nonresidents. These individuals may own property in Florida or may become entitled to such property after the death of a Florida resident.

Chapters 17 through 25 focus on express trusts as a particular tool used to manage property for the benefit of one or more individuals, charities, or other beneficiaries. Topics include the necessary substantive elements and formalities to establish a trust, spousal elective share trusts, creditor access to trusts, charitable trusts, trusts for animals, modification and termination of trusts, and issues that affect both wills and trusts, such as mistake, undue influence, slayers, and divorce. Chapter 26 introduces powers of appointment, which are another flexible estate planning tool. Chapter 27 covers future interests and the Rule Against Perpetuities. Chapter 28 addresses the very important topic of trustees' powers, duties, and liabilities. Finally, this segment concludes with Chapter 29, which considers constructive and resulting trusts and distinguishes them from express trusts.

The concluding chapters cover an array of related topics. Chapter 30 covers the allocation of trust and estate property between principal and income. Because end of life decisions involve non-financial planning, Chapter 31 includes materials on such documents as designations of health care surrogates, living wills, and durable powers of attorney. Chapter 32 provides an overview of estate planning. Finally, Chapter 33 provides an overview of the probate process, by which assets are transferred from the decedent to beneficiaries.

The Appendices consist of forms and annotations made available by Northern Trust Corporation. Appendix A contains a Will with a Testamentary Trust. Appendix B contains a Will with a Pour Over Devise. Appendix C contains a Codicil to a Will. Appendix D contains a Revocable Trust Agreement for a married settlor. Appendix E contains a Revocable Trust Agreement for an unmarried settlor.

