

Florida Wills, Trusts, and Estates

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Florida Wills, Trusts, and Estates

Cases and Materials

Second Edition

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Preface

Overview

Wills, trusts, and estates is a dynamic and exciting area of the law. Since our first edition, there have been critical changes in this ever-developing area. Florida statutes have been enacted, and cases have been decided, affecting the rights parties may have in the context of estates, trusts, or other methods for transmitting wealth. There has also been significant activity at the federal level. Congress has amended the estate and gift taxes, albeit with lower rates and higher exclusions than were scheduled to apply. This book reflects these changes to offer students current information, together with the challenge of considering questions not yet answered by statutes or case law.

In revising this book for the second edition, we have kept in mind the features from the first edition that made it a success. Thus, we maintained the breadth and depth of its coverage. The book covers trusts as extensively as it does wills. That coverage recognizes modern trends in family wealth planning. The book also goes beyond wills and trusts and includes several related topics, such as durable powers of attorney, designations of health care surrogates, and principal and income allocations. It also discusses estate planning and the probate process. These topics are a useful bridge to such advanced courses as Elder Law, Estate Planning, and Probate Practice.

The second edition also keeps the book's unique focus on Florida law. Despite widespread adoptions of uniform acts and codes, the rules governing wills and trusts continue to be state-law driven. We believe that there is much to be gained by studying the laws of one jurisdiction as a whole. Florida is particularly well-suited for studying this area of the law. Florida has a well-developed probate code and an extensive trust code. Moreover, case decisions in Florida address wills and trusts issues in fascinating factual situations that students find engaging. Although Florida law is the focus, this book includes discussions of the common law from other states (including excerpts from the Restatements) and of uniform codes (including the Uniform Probate Code (UPC) and the Uniform Trust Code (UTC)), particularly when they differ significantly from Florida law. Although case or statutory law differs from state to state, the concepts and issues students will encounter and ponder are the same. Knowledge of the rules governing Florida wills and trusts is thus important for attorneys practicing in Florida or elsewhere. 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 and problems that require students to think about ways to draft or plan around issues to avoid litigation while accomplishing clients' goals.

This book 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. Chapter 1 also addresses property interests that are not subject to probate. Finally, Chapter 1 introduces the difference between the probate estate and the gross estate. Chapter 2 covers the rules for intestate succession. The intestacy 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 16 consider topics that apply to both testate and intestate estates. These include homestead, family allowance, elective share, simultaneous death, disclaimer, and issues concerning nonresidents.

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, killers, 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. Chapter 29 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. 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.

Editorial Comments

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 may also indicate changes in the laws. 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. This book assumes that the students will also study the Florida statutes assigned in each chapter. The Florida statutes are available on the official website of the Florida Legislature, referred to as Online Sunshine, at <http://www.leg.state.fl.us/welcome/index.cfm>. All statutes

were current as of the date this book went to press. Note that in the summer of 2011 two major pieces of legislation were enacted in Florida (HB 325 and SB 670), portions of which have an effective date of October 1, 2011.

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We appreciate, and have benefited from, the lively discussions we have had with our wills and trusts students over our decades of teaching. Lastly, we would like to thank our families for their encouragement, and patience, while we were working on both the first and second editions of the book.

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