



Plain Language Estate Planning: How to Explain Estate Planning Principles and Documents to Your Client

Seminar Topic: This program discusses Estate Planning with regards to living wills, power of attorney, power of attorney of property/finance, the three types of financial POA, and list of assets.

If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations. The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.





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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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About the Presenter

Peter G. Bora has over 25 years of experience representing clients in complex commercial litigation including insurance coverage, direct defense and contract matters. Martindale-Hubbell Law Directory awarded Peter the highest peer review rating bestowed upon an attorney, the rating of “AV”.

Peter gained extensive experience representing multinational insurance carriers as a partner with a large national insurance law firm. He has defended insurance clients in cases involving professional liability, construction defects, toxic tort, environmental and asbestos related bodily injury claims.

Peter has served as approved lead counsel for CNA and AIG Companies, Atlantic Mutual, Zurich, Steadfast Insurance Co., London Underwriters, Prudential Reinsurance, Gibraltar Casualty Company and others.

Peter is an active speaker and continuing legal education presenter. He is a coauthor of “Writings at Trial” in the treatise Illinois Civil Trial Evidence (Illinois) 2004, 2009 Edition, published by the Illinois Institute for Continuing Legal Education. Mr. Bora is the author of “The Implied Covenant of Good Faith and Fair Dealing in Computer Contracts”, published in the Software Law Journal (1989).

John Marshall Law School in Chicago awarded Peter a Juris Doctor degree with distinction in 1989. He holds a Bachelor of Science in Political Science from Illinois State University.

Peter practices in Illinois and the United States District Court for the Northern District of Illinois. He has been admitted pro hac vice in Arizona, California, Kentucky, Indiana, Michigan, Missouri, New Jersey, Texas, Washington, West Virginia and Wisconsin. [Insert Biography]

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Course Description

Course Presentation

This course provides a fundamental examination of the terms, documents and definitions used in estate planning.

This course provides a fundamental overview of the creations and execution of estate planning documents.

This course provides practical guidance and a discussion on best practices regarding plain language estate planning and how to explain estate planning principles and documents to your clients.

This course provide a base of skills, knowledge and perspectives regarding Living Wills, Power of Attorney for Healthcare, Power of Attorney for Property/Finance, Standard Power of Attorney, Durable Power of Attorney, and Springing Power of Attorney.

This course provides practical guidance and a discussion on best practices regarding creating a list of assets, wills, validity of a will and revocation of a will.

This course provides a fundamental overview of a Trust and terms such as Grantor, Trustee, and Beneficiary.

This course provides a fundamental overview of different types of trusts, revocable living trust, irrevocable trust, asset protection trust, and special needs trust.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives

The ability to understand the relevant state and federal law related to wills, trusts and estate planning.

The ability to understand, discuss and implement practice tips to improve an attorney's practice and provide improved representation to clients.

Participants will develop the ability to recognize and describe the terms, documents and definitions used in estate planning.

Participants will develop an understanding of the creations and execution of estate planning documents.

Participants will practical gain skills in the area of best practices regarding plain language estate planning and how to explain estate planning principles and documents to your clients.

Participants will practical gain skills in the area of Living Wills, Power of Attorney for Healthcare, Power of Attorney for Property/Finance, Standard Power of Attorney, Durable Power of Attorney, and Springing Power of Attorney.

Participants will practical gain skills in the area of regarding creating a list of assets, wills, and validity of a will and revocation of a will.

Participants will develop an understanding of the fundamentals of a Trust and terms such as Grantor, Trustee, and Beneficiary.

Participants will develop an understanding of the fundamentals of different types of trusts, revocable living trust, irrevocable trust, asset protection trust, and special needs trust.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



Timed Agenda:

Presenter Name: Peter G. Bora

CLE Course Title: Plain Language Estate Planning: How to Explain Estate Planning Principles and Documents to Your Client

Time Format (00:00:00 - Hours:Minutes:Seconds)	Description
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title
00:34:18	CLE Presenter Introduction
00:34:21	CLE Substantive Material Presentation Introduction
00:01:26	Living Will
00:03:55	Power of Attorney for Healthcare
00:05:54	Power of Attorney for Healthcare vs. Living Will
00:07:42	Power of the Agent
00:09:10	Grant of Authority to Your Agent
00:23:19	Power of Attorney for Property
00:45:45	The Will
00:52:59	The Trust
01:05:24	Asset Protection Trust
01:06:20	Special Needs Trust
01:08:24	Presenter Closing
01:08:37	ApexCLE Company Closing Credits
01:08:42	End of Video



Plain Language Estate Planning: Estate Planning Principles, Definitions And Documents

Living Will

This is a simple document which says that if you are ready to die that you do not want any heroic measures to keep you alive longer. When it is my time to die, let me die.

Your doctor would always rather hear from you, if you can communicate, than read a document you have prepared. So, if they can ask you what you want done then they will ask you.

A Living Will is rarely used. It is not even often looked at. In order to be used you need to be unable to answer for yourself, have an incurable illness, and death must be imminent. Because all of the above must occur, the Living Will does not often come into play.

A sample Living Will is set forth in Appendix No. 1.

Power of Attorney for Healthcare

The Health POA names a person who steps into your shoes any time you can not speak for yourself. They have all the rights you have to approve or deny medical treatment on your behalf. You do not have to be dying. You do not even need to be very badly injured. If you walk outside and slip on the ice and bang your head the Agent you named in your Health POA can talk to your doctor for you.

Rules for selecting the proper Agent are:

You need to pick a person who will do what you want them to do.

If your spouse has some whacky ideas about medical treatments, with which you do not agree, then you should not choose your spouse to be your Agent.

You need to pick someone who is not afraid to talk with doctors and hospital staff. If your best friend is frightened of authority figures and cannot contradict or question medical professionals then don't choose him as your Agent. The person you choose does not need to be a pushy pain the neck but they should have the moral fortitude to stick up for you.

Power of Attorney for Property/Finance



The Financial POA gives the person you appoint as your Agent the authority to make business and financial decisions on your behalf.

There are 3 types of Financial POA. They differ by when the power, conferred upon the Agent, becomes effective and when the power ends.

Standard Power of Attorney

Standard POA is becomes effective immediately when it is signed and the power ends when you become incapacitated.

Durable Power of Attorney

The Durable POA becomes effective immediately and is un-effected by you subsequent incapacity. The power conferred ends at your death.

Springing Power of Attorney

The Springing Power becomes effective when you are incapacitated and ends at your death.

Some practitioners recommend using the Springing Power to avoid the possibility of abuse of the power by the Agent you have appointed.

If the honesty of your Agent is in question then do not name that person. If you have a limited pool from which to choose and you have doubts about the person you are naming as Agent then I often recommend using a Durable Power and keeping it in the attorney's office. When the Agent needs to make decisions for you he can come to the attorney and show him why he should gain access to the POA document.

List of Assets

It is particularly important to prepare a list of assets. You will save countless hours of headache for your family if you have some form of organized financial records available when you die or become incapacitated.

An envelope labeled "Important Papers" can be enough. In the envelope should be a copy of your important financial records.

- bank account statement
- financial or investment account statement life insurance policy declarations page
- car and homeowners policy declarations page email passwords



- passport
- credit card statement
- property tax records
- military discharge papers
- marriage license
- divorce decree
- birth certificate
- social security card
- social security benefits statement IRA and 401k records
- pension records
- name and address of financial advisor name and address of CPA or tax advisor name and address of your physician name and address of your attorney
- keys to the safe deposit box name and address of your bank

If you use a computer program to document your financial records please remember to let someone know how to access them.

Will

During your lifetime, when you want to give something of value to someone, you need to put a pen on paper and sign your name. If you sell your car you need to sign a title. If you sell your home you sign a deed. If you want to give your neighbor \$500 you probably need to sign a check.

If you are dead you can no longer sign.

In order for your assets, things of value, to get to your family or intended legatee, someone needs to substitute their signature for yours. We call that person a Judge. Your Will is a letter to the Judge telling her what you want to do with your stuff after your death. It asks the Judge to sign on your behalf and distribute your stuff.

A will is “an instrument by which a person makes a disposition of his property to take effect after his death.” In re Estate of Henry, 396 Ill. App. 3d 88, 95, 919 N.E.2d 33, 39 (1st Dist. 2009).

A sample will is included in Appendix 2.



Validity of a Will

In Illinois, pursuant to Article 4 of the Probate Act, in order for a will to be valid:

- the testator (the creator of the will) must be 18 years old or older;
- The testator must be of sound mind and have the mental capacity to understand the consequences of their actions,
- The will must be signed by the testator in the presence of at least two witnesses, who must also contemporaneously sign the will.

If a person is incapable of signing their own will, the law provides that they may name a different person to sign the will on their behalf.

Illinois

(755 ILCS 5/4-1)

Sec. 4-1. Capacity of testator.

(a) Every person who has attained the age of 18 years and is of sound mind and memory has power to bequeath by will the real and personal estate which he has at the time of his death.

(b) Except as stated herein, there is a rebuttable presumption that a will or codicil is void if it was executed or modified after the testator is adjudicated disabled under Article XIa of this Act and either (1) a plenary guardian has been appointed for the testator under subsection (c) of Section 11a-12 of this Act or (2) a limited guardian has been appointed for the testator under subsection (b) of Section 11a-12 of this Act and the court has found that the testator lacks testamentary capacity. The rebuttable presumption is overcome by clear and convincing evidence that the testator had the capacity to execute the will or codicil at the time the will or codicil was executed. The rebuttable presumption does not apply if the will or codicil was completed in compliance with subsection (d-5) of Section 11a-18 of this Act. This subsection (b) applies only to wills or codicils executed or modified after the effective date of this amendatory Act of the 99th General Assembly.

Sec. 4-3. Signing and attestation.

(a) Every will shall be in writing, signed by the testator or by some person in his presence and by his direction and attested in the presence of the testator by 2 or more credible witnesses.

(b) A will that qualifies as an international will under the Uniform International Wills Act is considered to meet all the requirements of subsection (a).

Revocation of a Will

Under the Illinois Probate Act, a will may be revoked by:

- Burning it;
- The execution of a later will declaring the revocation;
- A later inconsistent will;
- The execution of an instrument declaring the revocation.

Illinois Statute, (755 ILCS 5/4-7)

Sec. 4-7. Revocation - revival.) (a) A will may be revoked only (1) by burning, cancelling, tearing or obliterating it by the testator himself or by some person in his presence and by his direction and consent, (2) by the execution of a later will declaring the revocation, (3) by a later will to the extent that it is inconsistent with the prior will or (4) by the execution of an instrument declaring the revocation and signed and attested in the manner prescribed by this Article for the signing and attestation of a will.

(b) No will or any part thereof is revoked by any change in the circumstances, condition or marital status of the testator, except that dissolution of marriage or declaration of invalidity of the marriage of the testator revokes every legacy or interest or power of appointment given to or nomination to fiduciary office of the testator's former spouse in a will executed before the entry of the judgment of dissolution of marriage or declaration of invalidity of marriage and the will takes effect in the same manner as if the former spouse had died before the testator.

(c) A will which is totally revoked in any manner is not revived other than by its re-execution or by an instrument declaring the revival and signed and attested in the manner prescribed by this Article for the signing and attestation of a will. If a will is partially revoked by an instrument which is itself revoked, the revoked part of the will is revived and takes effect as if there had been no revocation.

Sample Revocation of a Will

REVOCATION OF WILL



I, [NAME], a resident of Chicago, Illinois being of sound mind and disposing memory, do hereby revoke all Wills and Codicils heretofore made by me.

IN WITNESS WHEREOF, I have signed this Revocation of Will this ___th day of January, 20____.

[Client Signature]

We certify that the above instrument was on the date thereof signed and declared by [NAME] as his Revocation of all Wills and Codicils in our presence and that we, at [NAME]'s request and in our presence and in the presence of each other, have signed our names as witnesses hereto, believing [NAME] to be of sound mind and memory and not suffering from the undue influence of another person at the time of signing.

[Two Witness Signatures]

Trust

A Trust is different from a Will. A Trust is a relationship between 3 people.

Grantor

Grantor - The Grantor's job is to set up the Trust and to transfer their assets into the Trust. The process of transferring assets is called funding the Trust.

Trustee

Trustee - The job of the Trustee is to manage the stuff the Grantor put into the Trust. The Trust document contains the instructions on how you want the Trustee to manage the assets in the Trust.

Beneficiary

Beneficiary - The Beneficiary has a passive role. The Beneficiary simply needs to accept the benefits of the Trust. The Beneficiary can disclaim (not accept) the benefits of the Trust but normally they just take what is given to them.

This relationship between the Grantor, Trustee and Beneficiary is called a Trust Relationship. The Grantor sets up the Trust and puts the Trustee in charge of the assets because he trusts that the Trustee will do the right thing for the Beneficiary.

The Grantor is you or, in the case of a married couple, you and your spouse.

The Trustee is you also. You get to name people to follow up after you when you are unable to act as Trustee. These people are called Successor Trustees.



You, and your spouse, are the Beneficiary too. Your children can be Beneficiaries after you have died.

Types of Trusts

There are many types of Trusts which have been developed over the years. Some have limited uses based upon exploiting a particular tax code provision. Some are more universal in their appeal.

Revocable Living Trust

The RLT is probably the most common type of Trust used today. They are helpful in avoiding the necessity of Probate Court in distributing assets after a person dies. They also help families stay out of Guardianship Court when the Grantor becomes incapacitated. They provide for the smooth transition of authority over the assets of the Grantor.

With an RLT the Grantor retains control of the assets in the Trust. The Grantor has the right to collect all of the income from the assets in the Trust. The Grantor can get back all or part of the Principal at any time. The Principal is whatever the Grantor put into the Trust. If the Grantor's home is in the Trust then that home is part of the Trust Principal.

The RLT offers no asset protection for the Grantor. It is not designed to keep the assets away from creditors.

Irrevocable Trust

The "classic" Irrevocable Trust has fallen out of common usage lately. They are still used to hold specific assets as in the case of an Irrevocable Life Insurance Trust. There are also Charitable Remainder Trusts (CRT) which are used to help minimize the impact of capital gains taxes. Specific tax planning techniques are beyond the scope of this introductory course and can prove helpful for your clients if they are appropriate for their particular situation.

The big difference between a revocable trust and an irrevocable trust is that the Grantor cannot change the irrevocable version. This is not to say that it can never be changed just that the Grantor does not have authority to change it.

Asset Protection Trust

There are specific types of trusts which are designed to protect your client's assets from creditors and predators. If the client is concerned that they may be the target of a lawsuit some day then this may be the type of trust they need. This area of law is fraught with peril.



Please co-counsel with someone familiar with the ins and outs before you try this at home. There are many good books out there on the subject of asset protection. Reading the books is a good start but it is not enough in this case. Go find someone who has done it and let them guide you through the first few client experiences.

Special Needs Trust

The beneficiary of a Special Needs Trust (SNT) is a person who is, or will be, receiving payments public aid or Medicaid. When a person on a “means tested” government program inherits or is given money they get kicked off of their public aid till the money is spent.

We do not want our client to lose their benefits. To avoid interruption of benefits we make sure that any money they receive, as gifts or as inheritance, go into a SNT for them. The SNT can pay for things that the government programs will not pay for. There are special rules to go along with this special trust so make sure you consult a colleague who practices in this area before you take the plunge.

Resources

Resources Specific to this Course

Appendix No. 1, Sample Living Will

Sample Living Will

You must review your jurisdiction's requirements before preparing a Living Will

LIVING WILL OF [CLIENT]

THIS DECLARATION is made this _____ day of [Month], 2022.

I, [CLIENT], being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed. If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such death delaying procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

[CLIENT SIGNATURE]

[NOTARY PUBLIC]

we certify that the above instrument was on the date thereof signed and declared by [CLIENT] as [his/her] Living Will in our presence and that we, at [CLIENT]'s request and in [his/her] presence and in the presence of each other, have signed our names as witnesses hereto, believing [CLIENT] to be of sound mind and memory and not suffering from the undue influence of another person at the time of signing.

Appendix No. 2, Sample Will

Sample Simple Will

You must review your jurisdiction's requirements before preparing a Will

LAST WILL AND TESTAMENT

OF

[CLIENT]

I, [CLIENT], a resident of Elgin, Illinois, being of sound mind and disposing memory, do hereby make, declare, and publish this as my Last Will and Testament, hereby revoking all former Wills and Codicils heretofore made by me, this ___ day of June, 20__.

ARTICLE II

All the rest, residue, and remainder of my estate and property, wherever situated, including lapsed legacies and devises, but expressly excluding any property over which I may have a power of appointment at my death, I give, devise, and bequeath to [NAME].

ARTICLE III

I am married to [NAME] and we have three (3) children together who are presently living, namely:

I have no other children born to or adopted by me.

ARTICLE IV

I hereby nominate and appoint my spouse, [NAME], of Elgin, Illinois, Executor of this my Last Will and Testament, and I direct that no bond and no surety on the bond of the Executor be required. Upon the death or disability or failure to act as Executor of [NAME], then my sister, [NAME], of Elgin, Illinois, shall become Successor Executor. No bond and no surety on the bond shall be required of any Successor Executor. I hereby give my Executors full power and authority, at any time or time without Court Order, to sell, mortgage, pledge, exchange or otherwise deal with or dispose of the property comprising my estate upon such terms as they shall deem best, to settle and compromise any and all claims in favor of or against my estate, to make any tax elections or returns, as they shall deem advisable, and for any purposes to make, execute, and deliver any and all deeds, contracts, mortgages, bills of sale or other instruments necessary or desirable therefore. My Executors are expressly authorized to postpone final distribution of my estate pending final determination of tax liabilities in connection therewith.



ARTICLE V

Subject to the Executor's duty to act in accordance with the terms of this Will and Illinois law, in the event a conflict of interest shall arise, his or her actions in these respects shall be as binding and conclusive upon all of the heirs hereunder as though no such relationship or possible conflict of interest existed.

ARTICLE VI

If my spouse, [NAME], does not survive me or dies after my death without providing for the custody of a minor child of ours, I hereby appoint, [NAME], of _____, Illinois, as Guardian of the person of that child. Upon the death or disability or failure to act as Guardian of the Person of [NAME], I appoint [NAME], of _____, California, and [NAME], of _____, Georgia, as Successor Co-Guardians of the person of that child.

If a guardian of the estate of a minor child is necessary, I hereby appoint, [NAME], of _____, Illinois, to serve in that capacity. Upon the death or disability or failure to act as Guardian of the Estate of [NAME], I appoint my mother-in-law, [NAME], of _____, Illinois, as Successor Guardian of the estate of that child.

No bond or security shall be required of any guardian.

I desire that the Guardians allow my children to maintain and develop relationships with all of the grandparents, and to facilitate adequate and appropriate visitation to achieve this.

ARTICLE VII

I hereby direct my Executor to cremate me, scatter my ashes, and conduct funeral services as he or she shall deem appropriate.

IN WITNESS WHEREOF, I have signed this Will, consisting of # (#) pages, this page included, and for the purpose of identification, I have placed my initials at the foot of each preceding page, this ___ day of June, 20__.

[Signature and Witness Signatures]



Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation -
www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org

