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Retired

The Spartanburg County Foundation Seminar

“Estate Planning Essentials for Women”

September 23, 2026

James W. Shaw

I. Will

- A. Controls the disposition of assets and the person who serves as personal representative
- B. Absent a valid Will (“intestacy”), state law determines who inherits “probate assets” and priority for serving as personal representative
- C. Will should authorize the Personal Representative to sell real estate without court approval, and should waive the requirement of posting bond

II. Powers of Attorney

- A. “Durable” powers of attorney - a “general” power of attorney which avoids a court determination of incapacity
 - 1. “immediate” v. “springing”
 - 2. should include comprehensive powers to deal with financial issues, sell property, deal with financial advisors, accountants, and attorneys, make decisions regarding principal’s care and welfare, manage real estate, business interests, digital accounts
- B. Health Care Powers of Attorney - “statutory” advance medical directive (alternative to a “living will”)

III. Probate v. "Avoiding Probate"

A. "probate" v. "non-probate" assets

1. Examples of non-probate assets:

- a. life insurance/annuities with designated beneficiary
- b. IRAs/retirement accounts with designated beneficiary
- c. joint tenancy accounts/deeds with right of survivorship/tenancies by the entirety
- d. "transfer on death" ("TOD") accounts and "payable on death" (POD) accounts
- e. revocable and irrevocable trusts

B. Advantages of revocable trusts -

1. privacy - Will and probate documents are public record
2. minimization/elimination of probate court fees
3. avoid court involvement/supervision - eliminate hassle factor
4. simplification of estate administration

IV. Current Estate Tax Law - "The One Big Beautiful Bill Act of 2025"

- A. Estate Tax Exclusion Amount - for persons dying in 2026, the "unified" estate tax and gift tax exclusion, as well as the generation-skipping transfer tax (GST) exemption, is \$15,000,000 *per person*
- B. Portability - for married couples, when the first spouse dies, the surviving spouse has the *option* of making a "portability" election to "claim" the deceased spouse's unused estate and gift tax exclusion amount; if the surviving spouse makes a portability election, the deceased spouse's unused exclusion amount is added to the surviving spouse's available exclusion amount (resulting in combining the exclusion amount); *[does not apply to the generation-skipping transfer tax exemption]*