


## **Living Wills and Wills: What are they and Who should have them!**

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1



## **Introduction**

2

**Objectives; By the end of the session, the participant will be able to:**

1. Describe the parts that should be included in advance directives and wills, and their value to each of us.
2. Identify who should have a will and living will .

3

**QUESTION: What are Advance Directives (Living Wills)?**

- 🥁 A person's documented, written notice stating
- 🥁 What medical interventions they want or do not want
- 🥁 If they become too ill to speak for themselves.



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4

4

## **QUESTION: What do "Advanced Medical Directives" include?**

- 🥁 Living Wills
- 🥁 Medical Durable Power of Attorney (for health care)
- 🥁 CPR (cardiopulmonary Resuscitation) or DNR (do not resuscitate) Directive



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5

5

## **What is a "Living Will"?**

- 🥁 A Living Will is a document by which a person declares that he or she does or does not want artificial life support systems used if he or she becomes terminally ill.
- 🥁 Everyone 18 years old and older who is of sound mind should have a living will.



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6

6

## How does a "Living Will" work?

- 📖 A Living Will states whether or not a person wants artificial life support systems used if he or she becomes terminally ill.
- 📖 The doctor and relatives can use the Living Will to make the "hard decisions" when a loved one is close to death.
- 📖 If you do not have a living will, your relatives will have to make the decision about when to take you off life support (unplug) you.



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7

7

## QUESTION: What does "artificial life support" mean? (cont.)

- 📖 Artificial life support can include:
  - ⊕ Life sustaining procedures including nourishment.
  - ⊕ It can also include:



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8

8

## What does "artificial life support" mean? (cont.)

- ⊕ Kidney dialysis
- ⊕ Surgery
- ⊕ Transfusions of blood and blood products
- ⊕ Drugs and antibiotics
- ⊕ Artificial feeding and hydration
- ⊕ Electric Shock and heart stimulation (drugs)
- ⊕ Breathing tubes



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9

9

## What are Living Wills?

- 🥁 A Living Will also states how a person wants to be treated at the end of life or in case of serious accident or illness. A Living Will gives directions to the Agent about important decisions.



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10

10

## What is "Medical Durable Power Of Attorney"?

- 🥁 Medical durable power of attorney is a document you sign naming someone to uphold your health care decisions when you are unable to represent them yourself. The person that you name becomes your "agent."



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11

11

## QUESTION: Who can be an "agent"?

- 🥁 Must be at least 18 years or older
  - ⚖️ (Meet State age requirements)
- 🥁 Someone you trust
- 🥁 Someone who can understand the doctors and nurses and can communicate for you
- 🥁 Someone who knows you very well
- 🥁 Someone who can make difficult decisions and can "hold the line".



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12

12

## Who Shouldn't be an "Agent"?

- 🥁 Often a spouse or family member is too emotional to make hard decisions in respecting your wishes.
- 🥁 Each person knows best for themselves.



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13

13

## QUESTION: What is a CPR Directive?

- 🥁 A CPR Directive means that if your heart stops beating you want to be left alone with no medical intervention taking place: no breathing assistance or heart shock and stimulation
- 🥁 This also is known as a DNR

CPR means "Cardiopulmonary Resuscitation"

DNR means "Do Not Resuscitate"



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14

14

## How do I make an "Advanced Directive"?

- 🥁 A person needs to ask themselves some very hard to answer questions.
- 🥁 Some people talk to loved ones when making these decisions.
- 🥁 Others talk to professionals in the health care system.
- 🥁 Some people talk to their pastor or clergy.
- 🥁 Some people talk to all of the above.
- 🥁 It is up to each individual.



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15

15

## Ask Yourself Questions ...

- 🥁 What kind of treatments or extraordinary efforts do I want taken on my behalf?
- 🥁 Under what conditions do I want to be kept alive?
- 🥁 Is there any condition when I wouldn't want to be artificially alive?
- 🥁 How comfortable do I want to be?



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16

16



## QUESTIONS: How do I Make "Advanced Directives"?

- 🥁 Once you have made your decisions, write them down.
- 🥁 Document them with the signatures of two (2) witnesses.
- 🥁 You can also have them notarized.
- 🥁 Keep your Advance Directives-Living Will and Durable Power of Attorney- handy so your loved ones and care givers will know your wishes.



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17

17

## QUESTION: What is a "Will"?

- 🥁 A will is a document you can use to control:
  - ⊕ Who gets your property
  - ⊕ Who will be guardian of your children and their property, and
  - ⊕ Who will manage your estate upon your death




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18

18

## What is an Estate? Do you have one? YES!

- Property
- Money
- Personal Belongings
- Everything you own
- Some bills may be included
- Your body

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19

## Estates

- Property: Land, Stock, Bonds, Bank Accounts (checking and savings), Life Insurance, Trust Fund, Home, Retirement Plan, IRA, Pension Plans, Investments
- Money: Cash
- Personal Belongings: Jewelry, Pets, Clothes, Ceremonial Articles, Art, Craft Objects, Pictures, Pottery, Dance Outfits, Knick Knacks

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20



## Estate

- 🥁 Everything you own: Anything that is yours and you value; not in joint ownership
- 🥁 Some bills may be included: Some bills are paid out of the estate, and some are not.



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21

21

## QUESTION: What is a "Will"?

- 🥁 A Will is the document that transfers certain kinds of property to people and organizations when you pass on.
- 🥁 The maker of a will decides who will get their property, the responsibility for their children, if any, and who will make certain their wishes are followed.



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22

22

## Beneficiaries

- 🥁 These are the people (relatives and/or friends) or organizations who receive specific personal items, property, and/or money according to your will.
- 🥁 You can say who gets what in your will.



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23

23

## What about my children?

- 🥁 **QUESTION:** Do they automatically go to your parents?
- 🕒 What do you think?



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24

24

## What about my children? (cont.)

- 🥁 You can appoint a guardian for your minor children in your will.
  - ⊕ Minor children are those under 18 years old
- 🥁 You can also appoint someone to take care of the property or money that you leave to your children.
- 🥁 These can be different people!



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25

25

## QUESTION: Who makes sure my wishes are followed?

- 🥁 The executor is the person who will be in charge of handling your estate.
- 🥁 This may include:
  - ⊕ Filing taxes and other forms
  - ⊕ Gathering your assets and distributing them to your beneficiaries as your will states,
  - ⊕ Hiring of attorneys or accountants to assist with the implementation of your will



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26

26

## QUESTION: Who can be an "Executor"?

- 🥁 An executor can be a sister or brother, other family member, friend, or even a bank representative or attorney.
- 🥁 Sometimes it is valuable to have someone outside the family be the executor to avoid favoritism and arguments between survivors of the loved one.



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27

27

## QUESTION: What do you think happens if you don't have a will?

- 🥁 If you have no will, the laws of the state you live and die in will determine who receives the property that you own and your children.
- 🥁 If you have Trust Land or an Individual Indian Monies account (IIM), under a new American Indian Probate Reform Act (AIPRA), your property and rights will only pass to a limited group of heirs unless you have a will.



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28

28

## QUESTION: What if I have no Will?

- 🥁 In most states, if money (bank accounts) and or real estate is jointly held, it will pass to the joint owner with or without a will.
- 🥁 Any property in your name alone would go to the persons named by the state law.



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29

29

## What if I have no Will? (cont.)

- 🥁 If you do not have a will, and your Tribe has a Probate Code and Court, it may take jurisdiction over your belongings.
- 🥁 Any property in your name alone would go to the persons named by the Tribal law.



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30

30

## Typical Sequence

1. Spouse if legally married.
2. Children
3. Parents
4. Brothers and Sisters
5. Grandparents
6. Aunts and Uncles
7. Nieces and Nephews

**All blood relatives.**

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31

31

## What if I have no Will?

🥁 Every state has different laws but they typically provide for the following:

- ⊕ If you have a spouse and children, the property is divided among them.
- ⊕ If you have a spouse and parents or siblings but no children, some states give it all to your spouse while others also give a share to your parents and siblings.

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32

32



## What if I have no Will?

- 🥁 If you have children and no spouse, everything is divided between the children.
- 🥁 If you have no children or spouse, your parents would get your property, unless a share was given to your siblings.



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33

33

## What if I have no Will?

- 🥁 If you have no spouse, children, or parents, your brothers and sisters would share your property.
- 🥁 If you have no spouse, children, parents, brothers, or sisters, your property would go to your grandparents, aunts and uncles, or nieces or nephews in that order.
- 🥁 And it may not be divided evenly!



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34

34

## QUESTION: What is "Probate"?

 Probate [pro-bate] n

- ⊕ (Law) the act or process of officially proving the authenticity and validity of a will
- ⊕ (Law) a. the official certificate stating a will to be genuine and conferring on the executors power to administer the estate





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35

35

## What is "Probate"? (cont.)

-  When a person passes on the probate
-  Process is used to determine
  - ⊕ Heirs
  - ⊕ The validity of the will
  - ⊕ Itemize the property in the estate and
  - ⊕ Distribute it according to the will



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36

36

## What is "Probate"? (cont.)

- When a will goes through probate, the will is made public to the court as a public record that is available to anyone. A probate inventory is also filed and may be available to the creditors and possibly the public.
- You can avoid probate by having a living trust or by putting the names of the people that you want to inherit your property with title, on the title before you die. Then it can be transferred without interference from the courts.



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37

37

## Probate (cont.)

- States and Tribes have their own procedures that must be followed as part of the Probate Process. Contact the State or Tribe to get information.
- It can take six months.
- Not all Tribes have Probate Codes.



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38

38

## American Indian Probate Reform Act of 2004 (AIPRA)

- 🥁 Limits who the heirs are who can receive Indian Trust Land when the owner passes on.
- 🥁 Determines how Individual Indian Monies (IIM) accounts will be distributed
- 🥁 Very complex
- 🥁 Can be avoided if you have a Will.



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39

39

## QUESTION: What do I do first?

- 🥁 Make a list of your real personal property, real estate, and bank accounts etc. Be very specific in your descriptions.
- 🥁 Decide who you want to receive each item, or how the item is to be divided among your beneficiaries.
- 🥁 Identify the people you need to help you as Executor and Guardians and witnesses.



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40

40

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Assets				
	Value	Joint or Marital Property	Husband's Separate Property	Wife's Separate Property
Home				
Other Real Estate				
Checking Accounts				
Savings Accounts and Certificates				
Credit Union Accounts				
Annuities				
Oil, Gas or Other Minerals				
US Savings Bonds				

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41

41

Assets				
	Value	Joint or Marital Property	Husband's Separate Property	Wife's Separate Property
Jewelry				
Dance Regalia				
Blankets				
Pottery				
Family Heirlooms				
Artwork-paintings				
Artwork-sculpture				
Photographs				

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42

42

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Assets				
	Value	Joint or Marital Property	Husband's Separate Property	Wife's Separate Property
Other Bonds				
Stock				
Accounts Receivable				
Rents Receivable				
Notes Receivable				
Automobiles and other				
Interest in any business				
Other Bonds				


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43

### What next?

- 🥁 Have your Will notarized with witnesses.
- 🥁 Make copies and give to your family and executor.
- 🥁 Store the original in a safe place that the executor knows about and can access.


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44

## You CAN leave someone out of your Will!!!

- When making your will you can include a section where you name a person(s) and leave them completely and forever from receiving anything from your estate.



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45

45

## What if someone contests my will?

- When making your will you can complete a "Self-Proved Will Affidavit" which is signed by a notary and two witnesses.
- This document is attached to the will and helps to prove that you stated your wishes in your will and that witnesses can attest to its validity.




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46


46

## Witnesses to your will

### Should the witnesses be relatives or not?

 Witnesses should be adults who are not mentioned in the will as executor, trustees, guardians, or beneficiaries.

### Sample:

 The following is an excerpt from a will that can be used to help you write your own.





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47

47


## Sample Will

 Please indicate, by checking the appropriate option, how you want your assets to pass when you die

 \_\_\_\_\_ Option A. I want my assets to pass to my spouse and children as follows:

 To spouse, if surviving.

 If my spouse predeceases me, my assets will be divided in equal shares among my children.

 If any of my children predecease me, that child's share shall be distributed to his or her children in equal shares.



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48

48



## Sample Will (cont.)

⊕ In the event that my spouse and all of my children and descendents fail to survive me, I want my assets to be distributed as follows:

🥁 \_\_\_\_ Option B. I am unmarried with children and want my assets to pass

🥁 \_\_\_\_ Option C. I am unmarried and have no children. I want my assets to pass in equal shares as follows:



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49

49

## Special Provisions for family heirlooms, jewelry, or other items

ITEM	SPECIAL IDENTIFYING FEATURES	RECIPIENT
Traditional Regalia		Rosanne (sister)
Native rugs	4 with turquoise	Mary Lou (daughter)
Concho belt		
Diaries/journals	Notice the lock on the cover!!!	Cathleen (sister)
Pottery		
Jewelry		
Eagle feather fan		
Sacred pipe		



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50

50

## QUESTION: Who should have an Advance Directive (Living Will) and a Will?

- 🥁 YOU SHOULD!!!! If you are:
- ⊕ Over the age of 18 years (19 years for a living will) and
  - ⊕ In Sound Mind



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51

51

## Summary

- 🥁 In this session you have learned about:
- ⊕ Advance Directives and Wills and why **EVERYONE** needs to have them before you get sick.
  - ⊕ You must be of age to make a will (18 years old) and a living will (19 years old).
  - ⊕ You must have witnesses. (in most states)




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52

52

## Summary

-  In this session you have learned about:
- ⊕ You should keep your will(s) in a safe place where loved ones can find it.
  - ⊕ You must be of sound mind to make an Advance Directive or Will
  - ⊕ Tell your family about your wishes



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53

53

## Give Yourself a Hand!



54