Michael Williams is an Attorney with a private practice in Ventura County specializing in Estate Planning and Probate. He is an active member of the California Bar and has been since 1981. He has been involved with the organization and management of Grey Law since 1979.
Advanced Health Care Directive

- What is an Advanced Health Care Directive?
- Who should I choose as my agent.
- Remember what you are trying to do is end of life stuff and some of your children will NOT be able to do it
Do I need an Attorney?

- They are extremely self explanatory so read through one and see if you need any help, then call Grey Law.

- I have seen at least 25 different Advanced Health Care Directive forms and they all appear to be fine.

- If it’s called something else, then it’s not really an Advanced Health Care Directive.
Powers of Attorney

- The single most dangerous (legal) form you can sign
- Allows the person you appoint to take your money and property against your wishes
- Shares your authority, does not take away your authority
Do I need to hire a lawyer?

- Statutory form verses Attorney prepared POA
- Springing powers can delay the start of the POA
- Who gets to determine if you lack competence?
- What do they have control over?
Living Trusts and Wills

Michael Williams
Directing Attorney with Grey Law
Holographic Wills

**Handwritten**
In order to create a valid holographic will in California, a testator writes the material portions of the will in her own handwriting. Her signature must also be present on the will. A testator is not required to have witnesses to her signature when the will is written and signed in her own handwriting.
Date of Execution

For a valid holographic will, the court must be able to determine the date of execution. The testator should include the date of execution when preparing the holographic will. Dates of execution matter with wills because the most recent will is usually the legally valid one.
Then just sign it

Then Just sign it. Three rules but with a couple common sense add-ons:
1. Don’t use legalese! Quickest trap to make your will invalid!
2. Write it as if your explaining it to a 9 year old.
3. Decide if you really need a lawyer to do it.
   1. Uneven distribution.
   2. Leaving out one or more children
   3. Adopted Children?
   4. Otherwise complicated?
Talk to an Attorney about your will

- Costs of Wills vary as widely as the price of cars. Do you need a Junker or do you need a Cadillac?
- Does the lawyer regularly do wills?
- Do you care if your estate has to go through Probate?
So What is Probate?

- There are three ways to transfer property in California
  - Sign a deed
  - Operation of Law (Death of Spouse, death of Joint Tenant)
  - Signature of a Judge of the Superior Court (Probate)
So ... how much does it cost?

- Attorney fees and Administration fees paid to your executor are set by statute and both are calculated the same
  - 4% of the first $100,000.00
  - 3% of the next $100,000.00
  - 2% between $200,000.00 and a Million dollars
  - 1% between one million and ten million dollars
How long can it take?

- It is mathematically impossible to do it in less than 7 ½ months
  - Document Preparation
  - Waiting for a court date
  - After Appointment of Personal Representative 4 months for creditors
  - Document Preparation
  - Waiting for a court date
So it’ll be done in 8 months?

- They are routinely completed in less than a year unless there are complications such as:
  - Family disputes
  - Problem with the will
  - Difficulty with one or more assets
  - Structural or engineering problems with real estate
  - Other Contests
How can I avoid Probate

- Don’t own real estate, (real estate is the key)
- Have accounts listed with beneficiaries
- Same with 401K, 457 accounts
- Small estate Declaration
How Small of an Estate??

- Probate code Section 13100 et seq
  - Less than $150,000.00
  - Not counting Car
  - Not Counting Mobile home (as long as you don’t own the land)
  - Not counting Boat/ watercraft
OK but I have Real Estate

- Then is it worth more than $30,000.00
- If the Answer is “Yes” You need a Living Trust to avoid Probate.
Do you need a Living Trust

- Divide assets into 4 groups
  - Real Estate
  - Bank accounts/CDs
  - Qualifying Accounts (tax deferred accounts)
  - Other
Do I need to talk to an attorney about a Living Trust?

- If you had a business worth $600,000.00 and your accountant told you to consider a corporation, would you do it yourself?

- Technically a trust and a corporation are similar
  - Declared into existence
  - Legally recognized entities
  - Capable of owning property
But still different

- Trust uses your social security number
- Corp uses EIN or tax id number
- Trust uses your tax structure
- Corp follows different set of IRS rules
So how does it work?

- Draft instrument declaring yourself Trustor and Trustee

- Trustor has 2 powers
  - Revoke
  - Amend

- Trustee is like President of Corp, runs day to day operation of assets
  - Buy, sell, borrow, lease, rent, like you do now
Then choose some as Successor Trustee

- This is a position of great responsibility
- Because this person Takes over complete control of assets at the time of your incapacity or upon your death
Then include yourself as Life Beneficiary

- Because you want all assets of the trust exclusively for your benefit during your life
- No one can claim the property except you unless they have some outside power
  - Court order
- This doesn’t mean you can’t give it to them, but it's your control
Then list remainder Beneficiaries

- Almost exactly like a will.
- List who gets it under what circumstances after your death
- Transfer can be completed as soon as Successor Trustee has a certified copy of the Death Certificate
- Not a year later
- At limited cost
Okay consider you are creating a vessel for the soul purpose of transferring assets from you to your children upon your death.

At the time of execution you also sign a deed (Quit Claim/Trust Transfer deed) which makes the Trust itself own the property.

You DON’T own your home any more because if you own it when you die it will go through probate

As Trustee you control it completely, the Captain of the vessel.
So what assets should go into the trust?

- Every year at seminars I am told to tell my clients to transfer everything into the trust

- NO ONE DOES!

- So evaluate what you own and decide for yourself
Remember this slide from before?

- Divide assets into 4 groups
  - Real Estate
  - Bank accounts/CDs
  - Qualifying Accounts (tax deferred accounts)
  - Other
Look out for land mines

- Have you sold property and taken back a note secured by the property?
  - That is real estate so can require probate
- Do you own and asset that has some sort of provenance?
  - Implying it has a greater value simply because title can be traced
Questions?