

Zac Getty:

One, good afternoon. Thank you for joining us today for our Estate Planning 101 webinar. My name is Zac Getty, and I am the Senior Education Manager here at Fight CRC. Fight Colorectal Cancer is the leading patient empowerment and advocacy organization in the United States, providing balanced and objective information on colon and rectal cancer research, treatment and policy. We are relentless champions of hope focused on funding promising high impact research endeavors, while equipping advocates to influence legislation and policy for the collective good.

Before we get started with our actual webinar today, allow me to go through a few housekeeping slides and items that I always go through at the beginning of these. We will have some time at the end of this webinar for general questions, but please feel free to use the Q&A panel on the right side of your screen to ask any questions that come up along the way.

I am going to take a second here just to point out that while we do have an attorney here today with us, he will not be able to answer specific legal questions, so please just keep that in mind when you're typing your questions. I know that this is an interesting topic and that there will probably be a good chance for discussion at the end, but just please keep in mind that we cannot answer any specific legal questions for you today.

We will do our best to address any questions at the end or while we are actually having our discussion today, if they're pretty topical. This webinar is meant to educate as well as serve as a forum for you to ask your questions, so please don't be shy. Let's see here. Let's see. A recording of this webinar will be available on our site within the next few days. If you've registered for this, you will receive a direct link via email as soon as it is available, if you've registered.

We will also provide a transcript of the webinar on our site for those of you that would prefer to read the information discussed today. Also, please feel free to tweet along with us. You can use the hashtag CRC webinar. Also, please remember to stop by our website at [fightcrc.org](http://fightcrc.org) to check out all of our patient and caregiver resources. Keep an eye out for meetups which will return early in 2025, which serve as a space to discuss a variety of topics with people from the CRC community.

Visit us at our free Community of Champions app where you can connect with other people in the CRC space, and keep in touch with Fight CRC and know what we're up to. And we also offer an assortment of print and digital educational resources that are free to request and download.

One more mouthful of a slide. Quick disclaimer here. The information and services provided by Fight Colorectal Cancer are for general informational purposes only. The information and services are not intended to be substitutes for professional medical advice, diagnosis, or treatment. If you're ill or suspect that you're ill please see a doctor immediately. In an emergency, call 911 or go to the nearest emergency room. Fight Colorectal Cancer never recommends or endorses specific physicians, products, attorneys, or treatments for any condition, so please keep that in mind.

All right. With all of that out of the way, I would like to take a second to briefly introduce our panelist today. Joining us today is Mr. David Healy, of Appleby Healy, Attorneys at Law. Mr. Healy has maintained a broad legal practice with significant estate planning experience and we are very lucky to have him today.

Mr. Healy, thank you for joining us. I'm going to give you just a second to provide a little more background about yourself, a little more thorough introduction, and then we will get into the questions that I've prepared for this event today.

David Healy:

All right. Thanks, sir. My name is David Healy, and I've been practicing law for over 20 years, which a little surreal saying that out loud. So it's been a day or two now. The first 10 years I practiced law, I did a little bit of everything, a lot of courtroom stuff, lot of estate planning, probate, litigation. The last 10 years, I have focused exclusively on estate and tax planning and principally, how to avoid the courtroom battles later, quite frankly. And so that's really been the focus of my practice. Law firms down here in Ozark, there's six of us attorneys that do this and I am the managing partner.

Zac Getty:

Excellent. Thank you. I do want to ask just a real quick question. So everybody knows that you've got specialty physicians, physicians that, I'm using this as an example because we deal a lot with physicians, physicians that specialize in a specific area of medicine. Can the same be said for attorneys? You have attorneys that specialize in everything or really specific narrow focus for you?

David Healy:

Yeah, that's a great question and that's changed a lot in the practice of law. Where even when I started back 22 years ago, it was not uncommon that an attorney that did estate planning would also do family law, would also do this, also do that. There was only one or two attorneys in Springfield that really concentrated on estate planning, and that's changed really a whole lot in the last 10 years.

It's always been the evolution of the practice, but I would say today, I'm going to spend at least two weeks a year sitting in a classroom keeping up with tax law updates. And another week with just general changes and updates in trust law. And that's about what it takes to stay on top of things anymore.

Zac Getty:

Wow. So the landscape changes pretty rapidly and you want somebody that is on top of those changes, I would assume, if you're planning your estate.

David Healy:

Yeah, absolutely. I tell you, we really see those differences too. We miss a lot of different estate plans and sometimes they're not as thorough as they should be. They miss things that were like, wow, wish that was in there. That would have made a huge difference. Sometimes it's aggravation and sometimes it's money that gets missed when the planning isn't really up to par. So it does make a difference.

Zac Getty:

Well, that is really helpful to know right off the bat. We'll touch on a variety of the things that you mentioned here, but I'm just going to go ahead and start with the first question that I laid out. And you mentioned this, you're in Ozark, so I want to point out that both of us, we're in Missouri, you practice in Missouri. Are the laws wildly different in terms of estate planning all over the country? Does it vary on a state by state basis? What does that look like?

David Healy:

Yeah, well, that's an area it's evolving. That's really interesting. In 2008, Missouri adopted what we called a Missouri Uniform Trust Code, and that Uniform Trust Code has been circulated across the country. Pretty much every state has now adopted some version of it, and that's really brought the trust laws across the country in a lot more uniformity than they've ever been.

So now when we see a trust from another state, it's not an automatic, oh, great, we've got to start over. Sometimes it is, but not always, and really it is more of a when was it done? If it was done 30 years ago, we're starting over, and if it was done three years ago, I bet you we can use about 99% of it. Maybe we need to touch it up a little bit.

So we start talking about interstate portability of estate plans. It's much easier today than it's ever been. Principally the biggest difference that we're going to see in between states is real estate laws and different states can vary. So some states have what we refer to as community property, other states are going to be separate property laws, and that's really the biggest defining difference. When you get into financial accounts, brokerage accounts, things of that nature, that's pretty much exclusively federal law and reflected in state law, so that doesn't require nearly as much of adjusting from state to state.

Zac Getty:

Interesting. So just as an example, so if I was to have a family member that had planned their estate, let's say in Texas, and I myself am located in Missouri, when I'm looking to manage that estate, if I am marked as an executor or otherwise responsible for some sort of enacting what those estate plans are, do I need an attorney in Texas? Can I get an attorney in Missouri? Does it matter? What does that look like?

David Healy:

Yeah. Well, it depends, like all your answer, I know, it depends. So it depends a little bit on the assets inside that estate. So that's a pretty common thing where somebody will come in the door, and actually that was literally last week in my office was estate plan was done in Dallas, they retired in Branson, never updated it. So we have to read the trust, and in that situation, the trust was very clear that it was to be administered pursuant to the laws of Texas.

Okay. Well, we're not in Texas and I don't know what Texas law is on trust administration, but we have real estate in Missouri. Now it is getting a little complicated. So now I'm bringing in co-counsel from Dallas to make sure we comply with the state of Texas administration laws, while also dealing with the real estate here in Missouri. So it does depend just a little bit.

But generally speaking, and that's also a two-edged sword because sometimes that's what people want. When you think about a client, for instance, some might have part of their estate is in California, for instance. And California is somewhat notorious for having a lot of rules with trust administration, a lot more than Missouri does, and I would say a lot more catch points where things can go wrong.

So their trust very clearly says, be administered pursuant to the laws of the state of Missouri very intentionally, because they don't want to get bogged down in California Trust code. So sometimes that's an intentional thing as well.

Zac Getty:

Interesting. It sounds like this can get out of hand and confusing very quickly.

David Healy:

Yeah. Well, at the end of the day, Zac, I always tell clients, "It's an organizational project." It's a very large organizational project and you eat an elephant one bite at a time. But that's part of it is figuring out all these pieces and then how do they all interplay with each other.

Zac Getty:

That's actually a really interesting point and I'm glad you said that. I think part of what can be so overwhelming is that this seems like just one big monolithic thing that you have to do when you're planning your estate. But if you frame it organizational process, it's step after step after step after step and makes it a little bit easier. Like you said, how do you eat an elephant? One bite at a time. Fascinating.

David Healy:

Yeah, 100%. That's actually something, and you'll see this more in lots of casting aspersions, but I think maybe the attorneys that principally do this, most of them have a step-by-step process of gathering information, the organization meeting, the plan assembly. And as you go through it, it's meant to not overwhelm, but actually just get through the process.

I would say a fail point in a lot of estate plans, it gets overwhelming at a certain point and it never gets finished, and then we have a halfway completed plan. Unfortunately, of course, a large part of it fails and it doesn't go well. So getting to the end of that road is a key part of all this.

Zac Getty:

Interesting. Thank you. So this is a broad question, but can you describe generally what the advantage is to having a plan for your estate before your death confers? How helpful is it to actually have your wishes written down, to have them planned somewhere with an attorney?

David Healy:

That's a softball question right there. So when I talk to clients, especially I'm at a seminars speaking, I always ask that question, "Who in this room already has an estate plan?" Virtually nobody raises their hand, that's why they're there. They want to learn about estate planning, they don't have one. And then I get to pop the bubble and say, "Well, no, everybody in this room already has an estate plan." The state, in this instance, wherever you live, has a plan for everybody that doesn't take the initiative to do it themselves.

So here in Missouri, the state of Missouri has a plan for everybody that doesn't have the initiative to do it themselves. Then of course we get into next question, who thinks putting the state of blank, Missouri, for instance, in charge of your estate plan is the correct answer? Everybody understands that question. Okay. Well, that's why we're here. We're going to take a little bit of initiative and do something ourselves.

If you sit back and do nothing, you will have an estate plan that is, here in Missouri and pretty much every state, we have a whole section of code that deals with probate, and it talks about what the judge is supposed to do when there's no written direction. And I've yet to find one of those estates settle out in a matter that everybody thought was fantastic. It's just you run into a whole lot of unintended beneficiaries, creditors, things that nobody thought would ever get involved that's all of a sudden right in the middle of it.

Everything we do in planning on the other side, of course, it's just what it sounds like, we're planning. First question is, well, what do you want to see happen? What's your objective? We work backwards from that. So we think about when you plan your estate, now you know where you want to go. And I always tell clients, "Once I know where you want to go, now we can draw a map to get there, and we can sit down and we have a plan, we're going to get there." But that old proverb without a vision or without a plan the people perish. It's literally one of those things where if there's no plan in place it's going to be generally somewhat of a circus.

Zac Getty:

I think that line really spoke to me. You have an estate plan even if you didn't create one, because the state has one for you. Hammering that home that it's not just going to work out in people's best favors if they pass without a plan in place, because there is a plan and it's probably not advantageous or at least in line with what you would hope would happen to your estate after your death.

David Healy:

I'll tell you, in the state of Missouri, the one that always gets everybody is when I get to tell people, "Surviving spouse doesn't get it all." In Missouri, if there's nothing in place, surviving spouse gets half the estate, children get the other half. And sometimes that is a disaster for a surviving spouse and a lot of states still have those laws.

Zac Getty:

Wow. Well, that's helpful to know because I'm sure most people are not up-to-date with what the state laws surrounding their estate would be if they didn't have their own plans in place. Helpful. So we touched on this, but what happens to my state if I die without plans in place? It just goes to the state that I live in. It's dealt with by them.

David Healy:

Yeah, yeah. It doesn't necessarily go to the state. That is a little bit of a misnomer. Though, I will tell you, you're running some typically ginormous court costs in this process, so the court system makes out really well. The attorneys make out really well. And when people are shocked at the attorney fees in those types of cases, they're by statute in almost every state. I always have to ask, "Well, who do you think wrote these laws?" It's unfortunate. It is something I joke about, but at the same time, it's very unfortunate. It doesn't have to be that way, and that's why we do estate planning is to keep it out of the court system.

But I'll tell you probably the biggest thing that I see in these plans where there's really no planning in place, typically what we see is creditors coming out of the woodwork and we're in court dealing with all of that. And generally what I tell clients, "If you think my fees are really high, let's wait until about 12 to 18 months into this." And I think at least you'll see why.

It's unfortunate, but you'll be in the court with me a number of times. This five-page file is going to be about three inches thick and it's just going to go on and on. That's the process we have to follow, and a lot of states are that way.

So without a plan in place, it really is, I always just define it as it's going to be a bit of a circus. It's going to be helter-skelter, picking up the pieces where we can. They don't always go that way, but more often than not, when you start running newspaper ads asking people to come participate in a process that involves money, sometimes people answer those ads and that's part of that process.

It's a very public event. That's something else we typically try to avoid with planning is to keep it a private event, not make it a public event. So when you start distributing estate assets in a public forum where virtually anybody can show up and claim that money is owed, and that's always the first step to get past, well, you're not there anymore to tell me whether or not the money is actually owed. And now we're having hearings about this and on and on it goes.

Then you get past all that. Then the next thing of course is who's actually getting the money? And at the end of the day, it should be your heirs-at-law. And in Missouri, that's a table, it goes down 16 levels. I

always tell clients, "They will find somebody, whether you know them or them, that is going to be an heir-at-law," but you lose all control over this process.

There might be very good reason that people shouldn't be on that table, but they will be statutorily. And not just even for, I'm going to say unfortunate reasons of they've treated you poorly. When we think about a disabled individuals, state of Missouri is going to say, "If you're on Medicaid and you're the beneficiary of one of these estates, there's a statute that prevents you from disclaiming your interest."

You can't just say, "Oh, I can't take it. That's going to get me off Medicaid." You have to accept it and you have to get off Medicaid, and you have to spend your money down, reapply for Medicaid. It's a tremendous burden, and there were so many more things we could have done beneficially for that person within an estate plan, where we plan for that person and how we can actually use that money for their benefit.

In a probate court it's just wasted. It's hard to watch, quite frankly, but it's very unfortunate. But those types of situations are what we run into when we have, I would say an unorganized plan, where we're just running by the statutes and whatever happens, happens.

Zac Getty:

Interesting. Wow. So it sounds like a long, time-consuming, expensive mess if you pass without a plan.

David Healy:

Yeah. That's a very good description of it. Long, time-consuming, expensive mess. I have a client and I find her entertaining from the standpoint of every family member in her family has nominated her to be the person, the fiduciary. So she's high functioning obviously, she's very responsible, her parents, her uncles, everybody says, "Nope, this is who we want in our plan."

I have now administered two trust estates with her and I've done probate once with her. So she's done this three times. And we finished probate up back in the summer and her comment to me was, "David, I'll do another trust estate, but don't call me if I'm on the paperwork for another probate estate because I won't do it."

Zac Getty:

Not an enjoyable process.

David Healy:

I just told her, "Yeah." I said, "Well, you earned your stripes. You won't have to do it again. I won't make you do it again."

Zac Getty:

Good to know. So we often, when we're talking about estate planning, the topic of having a will comes up and having your wishes written down in a will. Is creating a will the only thing that I need to do to plan my estate?

David Healy:

It is not. So obviously I'm going to speak from a perspective of Missouri. Every state is a little bit different, but mostly pretty much every state, I'm going to say, I think fairly confident, the premise here is a will must be adjudicated by probate judge.

So in Missouri, we have two types of probate, one with a will and then one without a will. And the one without a will just means we pull the books out, we find out who the heirs are going to be. The one with a will it is a step-up. Now we have the decedent telling us where the money is supposed to go, but we still have the same issues. It's a very public proceeding. We're going to run a newspaper ad asking if anybody wants to come and join the party as far as a creditor.

Those things breed, I'm going to say if anybody is left out or anything of that nature, they have a lot more ability to jump into an existing court action than going and creating their own. So a lot of times you'll see, I'd say disputes show up in those type of estates a lot more often than a trust state that it's mostly a private affair.

So generally speaking, I would tell people, I talk about estate planning, there's four stages or four different ways of doing it. And a will is better than leaving it up to the state of Missouri, but marginally. We're still going to be in probate. A lot of the money is going to get spent in probate, and my biggest concern is going to be at the end of the road, we had these beneficiaries, we've identified them, and it's my client's wishes of who gets the assets. That's great, but what if, what if, what if?

What if they're incapacitated? What if they're disabled? What if they have creditor issues? What if they're in middle of a divorce? All these types of issues that at the end of the road in probate, it's a big shoulder shrug and the court, they don't have any way to stop that. They just get the money whether they need it in their name or not.

Zac Getty:

Interesting. So the answer is no. Having a will is not the only thing I need to do.

David Healy:

That's correct.

Zac Getty:

If I am creating a will, do I need a lawyer to create that for me or can I do that myself?

David Healy:

Yeah, that's a great question, Zac. I just came back from a seminar where it was focus group with about 20 attorneys involved. And we always got together to talk about artificial intelligence, LegalZoom, it's all on the horizon. The short answer is, it's yes and no, I'd say. You can create a legally compliant will. Anybody can do that. It's really not that hard in any state to do that. LegalZoom has a form that will work.

The issue is of course going to be, you're missing the knowledge and experience of an attorney who's been down the road a couple of thousand times to tell you, "Don't do it that way, do it this way."

Zac Getty:

Sure.

David Healy:

And I can tell you from personal experience, I have been involved in two estates I think of off the top of my head in the last five years. They were LegalZoom documents and they were a mess, and you feel bad for the people that did it. They spent money on it. They probably thought they were doing the right thing, but they used the wrong words. They selected options that were actually contrary to what they

were trying to get done. We had ambiguities in the documents, and now it turns into this big thing of trying to sort out, well, what actually was their intent? What were they trying to get done?

Had one where the distribution schedule added up to 102%, that's a bit of a problem. But what we think about is drafting the documents is really a small part of what an attorney does. I think 100 years ago, it was a big part of what an attorney did when we got into this.

You think about an era where a percentage of the population was illiterate, they owned real estate. All of a sudden having the attorney draw up or draft these documents was really critical. We're way past that. Now it's a lot more, what's the tax ramifications of that? How can we be tax efficient? How do we protect the assets for the kids? All these different things that we can do that's really just a combination.

I'd say somebody like me, it's seven years of college and doing it for 22 years, I've got a lot of time and effort into this. That's the part that clients are probably going to miss is the knowledge and experience side.

Zac Getty:

So it's not just getting your wishes down on a piece of paper and signing it, it's making sure it's done correctly and with somebody that can guide you through the process.

David Healy:

That's right. Yeah. And so we hear that every now and then. Well, aren't you guys just putting names in forms. And if you saw my form database, your eyes would glaze over. It's hundreds of options for what we're trying to get done. And it is back to, well, what lever do we pull? And what card do we play here to get the exact result we're looking for?

And that's the key difference now, from our perspective, is anybody can get on the internet and do this, but is it actually going to work in the manner that they're envisioning? And really the biggest issue that we see is people think that a will avoids probate, which it doesn't, so that's a mistake. And then if they take it a step further, they try to do an online trust.

Those fail almost 100% of the time, which is a little unfortunate, but I just see people bring those in all the time where mom and dad spent \$300 online, they had this trust. Well, if the titling isn't done correctly, then it's all back in probate. There's generally very few spendthrift provisions. The lifetime trusts are not fully articulated. There's tax problems with it, on and on it goes. Back to it'd be like me operating on myself. How would I? I can read a book, I can watch a YouTube video, but probably should just pay the doctor to do it.

Zac Getty:

Sure. That's good advice. Interesting. Well, and I think you hit the nail on the head. It's easy to find these resources online, but I think a big part of these webinars and why we do a lot of this content is you don't know what you don't know. And so while you may think that you're setting yourself up right and your family up correctly, that there are probably holes in there that may or may not come back to bite you in the butt once something actually happens, and these plans need to actually be enacted.

David Healy:

I mentioned I spent about two weeks out of a year in a classroom on tax seminars, right?

Zac Getty:

Sure. Yeah.



David Healy:

This stuff is constantly evolving and we are constantly updating our forms. We are constantly reaching out to clients from four and five years ago, 10 years ago, "Hey, this has changed. We need to talk to you to make sure that this is still going to work." And that's what you're getting with an attorney doing it, is that relationship where they're in your corner trying to make sure it works for you. And you really do miss that when you are just simply filling out, quote, "a form". It might in theory do some things, but rarely is it effective of fully, I'd say encapsulating the full estate what your wishes are.

Zac Getty:

Good to know. Thank you.

David Healy:

You get what you pay for, how about that?

Zac Getty:

Absolutely. Absolutely. So you mentioned trusts as an option here. Can you describe the benefits of establishing a trust versus only having a will in place?

David Healy:

Yeah, that's a great question. And that is something a lot of times clients come in. We always tell clients here when they come in for that first meeting, it's educational because a lot of people just don't know. And I don't want people out on the internet trying to figure it out because back to, there are some differences between states.

But we talk about the levels of estate planning. Trust is always the most risk-adverse way to do it, and that's really what we talk about. It's risk management. We can, back to spend a little bit of money and carry a lot of risk, we spend a little bit more money and eliminate a lot of risk. So it's how risk-adverse do we want to be with our estate planning? So we talk about establishing a trust, and by the way, that's being, I think most estate planning attorneys, it's what we do, 99% of the times.

We're going to do a trust for lots of different reasons, but we think about the purpose of why would you have a 30-page document instead of a three-page will. Well, we probably get to say a lot more in that 30 page document than we can in the three-page will. There's only so many things we can do in probate court regardless of what we might want to do.

We think about a trust document. It's essentially a business you're forming and you're writing your own bylaws. So do we talk about, well, how do you want your business to be ran? Who do you want to run it, and what type of restrictions do you want to have on them? What type of restrictions do we want to have on the beneficiaries of this trust? Sometimes restrictions, I say restrictions and it might sound a little negative, but we're trying to help them and we're trying to protect the beneficiaries, either fund themselves or unknown creditors, give them a chance.

And so we talk about utilizing a trust. We just have a plethora of options in front of us. And back to, you show me on a map where you want to go, we can generally find a road to get you there. So we think about tax efficiencies and things of that nature that you just can't even really start to do inside of a will. But with a trust, it is going to be something that we do routinely. So it is a very comprehensive way to manage a lot of risk.

And we think about when people die, ultimately what we do when people die, we distribute assets, we pay bills and we deal with IRS. And those three things can be done in a lot of different forms, but only

the trust form are we really doing it in, I say a high functioning manner. Where we are really constricting the creditors down to really legitimate ones. We're distributing assets down to the infinite degree of however much detail the client wants, exactly at the timelines that the client wants. And we're protecting those assets.

And we also have a vehicle where we are very closely monitoring tax efficiency and making sure that, they might pay fair amount of tax, but no more than is necessary. And clearly trying to avoid any tax traps that I see a lot of times happen in probate court.

Zac Getty:

Sure. So it sounds like setting up, establishing a trust may be a little more involved, a little more in depth, take a little more time, and definitely more time spent with an attorney, but can help to protect those assets that you want to make sure they get where you want them to go. Can prevent your family that survives you from paying an excessive amount to creditors or to taxes. Just really a stronger framework to protect and make sure that your assets are delivered in a way that you see fit.

David Healy:

Yeah, you've got it. And it is, you think about, so here in Missouri, and again, the uniform trust code is in a lot of states, but very clear framework of how it works. And what we enjoy here in Missouri, in particular, is the creditor protection of those assets, but also if there's any disputes, anything of that nature, we can control those so much better inside of a trust administration than we can, let's say in probate court.

And back to, once you file that probate court action, it's very simple to jump in and join as a party. It is too easy. And with a trust estate, it's a lot more involved. And most states now have non-contest roles that really eliminate. Here in Missouri, we have a really nice framework of, I think a lot of states have similar laws, nice framework that really makes it, I'd say an uphill battle for frivolous litigation. To the point where we have removed out of Missouri a lot of what we call frivolous trust administration litigation down to where it's very uncommon to see trust disputes in a courtroom. As opposed to being, I'd say 15 years ago, very common.

And a lot of states have moved that direction, and we just start adding up more and more benefits of a trust, where we just control the environment so much better and much more efficient. And really, I'll tell you, back to my client that's done multiple trust administrations and then a probate, the timeline is so much shorter. We're generally in and out in a matter of months as opposed to years.

Zac Getty:

Wow. Oh, wow. So definitely get some of your life back. That's good to know.

David Healy:

Oh, absolutely. And significantly cheaper too. Significantly cheaper for trust administration as opposed to probate administration.

Zac Getty:

Fascinating. Thank you. So you've touched on probate a lot, and I think if you've been paying attention to this webinar, I think it's easy to discern from that that probate is a process that you go through with the courts. Can you give us a very general, this is what probate is and this is what the process looks like if you're going through it?

David Healy:

Yeah. So of course I'll take it from the perspective of Missouri, but every state's got a pretty similar process. First step is for the court to accept the nomination for who's going to be in charge of the estate. So here in Missouri, it's personal representative. We just finished one here where none of the kids could agree.

So now we're really almost at DEFCON three before we get started, because now we have the public administrator in charge, a third party, because the kids couldn't agree about who was going to be in charge of it. And of course, everybody has an ax to grind and it's a bad situation. But that's the first thing is, well, who's going to be in charge of this? Who's the court going to authorize to be in charge of it?

The second phase of this is going to be the credit or claim period. Now we're running a newspaper ad. We have the case ID number up. All it takes is a form that they can actually in Missouri, get off the Missouri court administrator's website. Anybody can fill it out and mail it in. Now they have a valid claim that we have to set for hearing. And so it's just way too easy. It doesn't cost them a dollar to do that.

So we go through that period, set everything for hearing, but generally they're not processed. Of course, we are administering assets. A difference between a trust estate and a probate estate in Missouri is typically, and there's different types of probate in Missouri. We have what we refer to as supervised administration. We have what's referred to as independent administration. So it varies a little bit between those. But we're getting court orders, court approval, sale assets. Everybody has a right to object to every step of the way. That's the biggest headache you deal with.

Zac Getty:

Wow.

David Healy:

So we're going to sell a piece of real estate. If there's somebody out there, any beneficiary that thinks we're selling it too cheap, they have a right to object. They can block it at least temporarily. We have to go see the judge. And of course, the problem that we have in Missouri, and I think attorneys experience everywhere. I tell clients down here in Springfield, Missouri, Ozark, Missouri, one of my seminar questions, "How many judges did we have 100 years ago doing probate in Greene County?"

It's a population of almost 400,000 people. The answer is one. "How many probate judges do you think we have in 2024 doing this?" We have one. So the bottleneck is large. And when somebody says, "We need to set this for hearing," we're not looking at next week or next month, we're looking at 60, 90 days if we're lucky, it could be 120. And now all of a sudden we're just sitting around twiddling our thumbs, waiting for the next time we get to go see a judge. So that's a problem.

So you get past all of these issues. In fact too, the beneficiaries just have a right basically with probate administration, they can get in the way along the process there and really slow things down. And obviously the well-intentioned beneficiary should have a voice, but what of course we run into too much is, I'm going to say the one that's just there to cause problems because this is their way of acting out for whatever reason. So you deal with that.

We get past all the liquidating and all of that. Then you do move into the final step, that's settlement, administration, distribution, and that's typically pretty simple. And again, sometimes people will object to the accounting, they can object to anything. So we will have a hearing on that. Then the probate judge orders assets distributed.

And then what I was talking about earlier, and that is sometimes that's where the real pain is. Now I'm looking at one of these beneficiaries that's been on Medicaid for the last six years and really doesn't

have much of anything. And thinking about, well, that could have been a supplemental needs trust where they would've never had to touch this money. They still qualify for Medicaid.

Now by court order, we're writing that person a check, and let's just say it's for \$100,000, they're immediately disqualified off Medicaid. They're private pay, they're trying to get insurance. It's just a matter of time. They spend down to nothing. They're back on Medicaid. They have nothing to show for the experience.

And that \$100,000 or worse, ¼ million, something like that, could have been put in a supplemental needs trust and been there for whatever physical needs they have. Vehicle, place to live, food, stuff like that. But that's the end result of a probate is just this, the way I describe it, we're going to pour it all out on the ground and hope it's okay. There's really no system here. Everybody just go grab what's yours, and hopefully everybody can just not be too disadvantaged by that process.

Zac Getty:

So to my non-lawyer ears, a nightmare would be how I would describe the probate process is what that sounds like. It sounds-

David Healy:

It's not, right. I paint a really rosy picture I know. After 20 years, I might be a little jaded about it. It's one of those things where, another question I always ask is, "Who's been through probate?" People raise their hands like, "Well, who wants their kids to go through that on your estate?" After 20 years of asking that question, I have yet to find anybody that says, "That's the plan I want for my kids."

Zac Getty:

Good to know. I think that's a good takeaway. This is not what I would want for my children. So avoiding probate. You mentioned trust earlier. In Missouri, you mentioned specifically, if you have a will, it's going to go to probate. And are there any other ways to avoid probate?

David Healy:

There are. Shortcuts and sometimes the shortcuts work. So I always tell clients, "This is one of those things you just need to know what you're getting into and this risk tolerance." So beneficiary designations are a simple way to plan your estate. And as you may think, when we talk about a simple estate plan, that means we're not managing risk in any way, shape, or form. We're hoping for the best.

And that's generally where I leave clients with hoping for the best isn't really the estate plan I'm here to sell. I like to have a little more definition to this thing, and hopefully a client would think hoping for the best is probably not really what they should be doing for their kids. But beneficiary designation can be as simple as a bank account being payable on death to a child. It can be a cars transfer on death to somebody.

And then where really, of course I get the phone calls because it's a disaster, it's a beneficiary deed or real estate is going directly to somebody. And I can spend the next 30 minutes telling you more stories about beneficiary deeds. But just in summation, I can say I've seen things. I've seen two-year-olds listed as beneficiaries on a beneficiary deed. As you may imagine, that's an issue to have a two-year-old owning real estate.

We finished one not this summer, last summer, where there was I think eight people on it that were all married. And I wish I could have talked to that person. I would've never allowed, I just wouldn't have done it. But what that meant was 16 people had choked the title company and be happy with what

happened. So, as everybody can guess, that's not what happened. We ended up in the courtroom having a judge tell us how it was going to work. Because you can't get 16 people to agree on anything much less how to sell a house.

So, in Missouri and a lot of states, marital rights attach. So those eight people turned into 16 people, then of course you have other issues, well, if somebody is incapacitated? I just commented that it was left to the minor, but also an adult that's incapacitated. Now we're to have court approval and a conservatorship for that person, so it's another layer of litigation.

And really probably the one that I deal with the most and have some of the worst stories about is example from a couple of years ago. A guy comes in and I knew what was going on before he got here, of course. But US Bankruptcy Trustee had advertised his farm for sale at an auction. And this is the farm that his mom, who had died two months before, had left him and she left it to him by a beneficiary deed.

So I'd already done the research before he got here and he knew what was going on that he just needed me to give him the bad news face to face. But his sister was in bankruptcy court and she had almost a million dollars worth of medical bills. So mom passes, she's in bankruptcy court, she has all these medical bills, that all attached to that real estate immediately. US Bankruptcy Trustee gets paid 20% on recovery.

It was low hanging fruit. So he went out, he borrowed on a family farm that had not had debt against it since the '20s or '30s, I believe he told me. It was like fourth generation from the 1800s, and had gone and borrowed almost \$800,000 to stop the auction. He's still paying on that today.

Zac Getty:

Wow.

David Healy:

I'll just in this narrative with, of all places, the LA Times ran a front page story about the pitfalls of beneficiary designations. And that happened during COVID and believe me, that got circulated among the estate planning attorneys. So we all found it really fascinating. This was a front page story in the LA Times. But what they spelled out was just because it's easy doesn't mean it's the plan you should be picking.

And they went through all these things of creditors attached, all the marital interests attached, we have all these issues attached that you don't have in a trust or with a will. So it's one of those things where it's just, it's easy, but it's not always the right answer.

Zac Getty:

Sure. Unfortunate for that-

David Healy:

And then outside of that, trust is going to be the other option. So that's your two options here. It's either going to be going through a trust or back to we hope for the best and do a beneficiary designation.

Zac Getty:

So it's either set up everything with a trust or cross your fingers and hope stuff goes well, which I imagine most people are not too keen on doing. I'm sure going through the steps to set up a trust are

not always the easiest. I'm sure it costs money, but ultimately it provides more protection and more benefits to the people that survive the estate. So good to know.

David Healy:

Yeah. That's generally what I tell people, that I don't think you probably came to me for a plan where we're hoping for the best.

Zac Getty:

Yeah, exactly.

David Healy:

Yeah.

Zac Getty:

Fascinating. You mentioned this very early, when people move from one state to another, do I need to revisit my plans after they've been put in place for my estate?

David Healy:

Absolutely. And unfortunately this is where I see some plans fail. Right now I'm in the middle of a plan that's from 1996, and tax laws were a lot different in 1996 than they are today. It's a very large estate, it's very complicated. But what's happened is we spent a ton of money complying with the terms of that trust that were totally unnecessary. That's the short answer.

And if they had taken the time to see somebody in the last 30 years, updated that plan, we would've been done with it by now. But we're in year two of trust administration, which is very unusual, but it's incredibly complicated and most of it is complexities of that trust having phrases like shall in it instead of may. Very simple thing. But back in 1996, they didn't envision that being anything other than you shall go do this thing, that's no longer necessary.

And there are some ways to mitigate that a little bit, but really what we talk to clients about when you come in and form an estate plan with your attorney, that really should be the beginning of a relationship. It really shouldn't be a transaction where it happens one time and you've done that and you check the box and you move on.

And quite frankly, that is the LegalZoom plan, where you're going to jump online, you're going to do it, you check that box and you're done with it. Of course, things change, laws change, tax law changes. We have changes in families. Families are going to mature and change. So, typically we like to sit down with our clients, some clients annually, some clients every three years. And sometimes it's just a catch-up meeting that's 15 minutes and it's great.

Sometimes they're going to say something that's going to trigger a bigger conversation of like, "Okay. Well tell me more about that." It's going to your doctor for a checkup. You might think you feel great, but we're probably going to still do blood work and we're going to check you out a little bit just to make sure there's nothing that you're not seeing that's alarming to us.

Zac Getty:

Perfect. I love the medical analogy. Thank you. I think that hits home for probably our audience. We typically focus more on medical stuff, so that's a great analogy for us. So thank you. So don't just set it and forget it. Check back in with your estate plans is what it sounds like.

David Healy:

Absolutely.

Zac Getty:

Excellent. How do I ensure my plans are legally binding and won't be challenged after my death? Is there a way to prevent that?

David Healy:

Yeah, that's a really good question. We get that a lot, obviously, and it's a concern everybody should have. You'd rather spend all this money and we're trying to control risk, and nobody wants to see their state in the courtroom. And I started out a little bit earlier with, in Missouri, we really tightened those laws up a whole lot about seven years ago.

I think that was a model set as an update to the Uniform Trust Code a lot of other states adopted as well. Where we have this great process in Missouri where basically the case is either kicked or deemed to be non-frivolous within 90 days of being filed. And I say kicked, be dismissed.

So we don't get into, we have to find out what a jury thinks in three years if it's frivolous or not. The judge has the right to make that call and his criteria to go by. But really in the state of Missouri, it's a very simple one sentence thing. For me, in our estate plans we cover it with one sentence, we cite to that statute and we say, "Hey, pursuant to the statutes, it's no-contest clause," and that statute spells it all out. A lot of the older trusts will have phrases like no-contest clauses, a little more general, that works in Missouri as well.

But really I think this ties back to the last question, because that's clearly something when people come in with older estate plans we're going to talk about is, well, let's bring this up. That law has changed. And back in the early 2000s, and there still are, but it's not as frequent, but attorneys who made their whole living off trust litigation, that stuff still goes around, but nothing to the level of what it used to be with the frivolous stuff.

And so it depends a little bit on your state laws. And actually in some states, I think Florida might be one where they have this really great provision basically says whatever the trust says controls in that regard. Which means the estate planning attorneys write really Draconian paragraphs about what happens to people that contest the trust. It's a scary thing to read. I think we'll just leave this alone, it's probably not worth messing with.

But I'll tell you, the statute of Missouri says if you cite to the statute and invoke it, that any beneficiary that tries to contest the trust, first of all, challenging the distribution schedule is almost guaranteed failure and you will pay all the attorney fees the trust incurs in defending it. So that's a pretty big deal. And then it goes on to say that if it's deemed to be frivolous by the court, that they also lose their share of the trust estate.

So, I would say I was clearly involved in some cases earlier in my career where people were just causing problems just to get even with siblings and just to be annoying, quite frankly. Today, I just saw it happen here in Springfield, where somebody lost out on about \$2½ million distribution and paid in their 300 grand in attorney fees.

And I'll just say generally speaking, these are very wealthy people suing each other over things that happened in their childhood, let's leave it at that. But they got dumped in the whole thing because it was frivolous, it was clearly frivolous from day one. They persisted in it. And judge warned them and they persisted. And at the end of the day, that's how it turned out.

I would say I feel like maybe to answer your question more on point, I feel like statutes in most states are really catching up with this. We've all been down that road as attorneys where we don't like it. What we don't like is people wanting to argue about what happened when they were 16 and somebody stole somebody's boyfriend or whatever, or somebody got the car, somebody else didn't. And we get into these really petty things and then we start litigation really based off really petty things. So I think the statutes of most states have caught up with that where we can really disincentivize people from even thinking about pursuing that.

Zac Getty:

Interesting. I think you touched on something unfortunate that people take as a given with this stuff, is it can get really messy with family members after the death of somebody in the family, especially with money and debt. So it's really unfortunate that that is the true fact of the matter.

David Healy:

Basically to summarize, the other thing we have to tell people is that there is no way that we can deny access to the courts. At the end of the day, anybody that is hard-headed enough or strong-willed enough, they can file whatever they want to file and we have to deal with it. But now there are at least there's penalties in place where it might slow us down, it might be distracting and aggravating and stressful. But at the end of the day, at least we're not outing you money.

Zac Getty:

Helpful. Thank you. I do want to point out, we've got about 10 minutes left. If you have any questions, please put them in the Q&A panel. I have just two more quick questions here, but if you're watching and you have questions, please feel free to ask. We will answer them to the best of our ability. So we deal a little bit with durable power of attorney, people who make medical decisions for you, that kind of stuff. Is that something that I need to outline as part of my estate planning?

David Healy:

Absolutely. When clients come in and we talk about estate planning, we always talk about power of attorney documents. That's part of the estate plan. Typically, a trust is the cornerstone document, but then we're going to have financial power of attorney and medical power of attorney, living will documents, all of that makes the estate plan.

And I always tell clients, "If you're still trying to sort through what you're doing on your estate plan, let's add a minimum, get power of attorney documents put together sooner than later, and we'll incorporate it all into the estate plan that we actually end up with later if we need to."

But having those power of attorney documents are just absolute lifesavers. Outside of that, what happens is if you go to probate court, you have to get a guardianship or a conservatorship or both over your loved one. And I always tell clients, probably the worst phone call we're going to take here is going to be the spouse that is downsizing and their significant other spouse is in a nursing facility incapacitated. And they've just been told by the title company they can't close on the house without a court order. What's that mean?

Well, that means we need to go get a guardianship and conservatorship over your husband or over your wife, and then get permission from the judge to go sell your house. And yes, that does sound ridiculous and I agree that you've been married for 60 years and you shouldn't have to do that, but that is the law. That's the law in most states where you can't just simply sign for your spouse.



So when we think about estate planning and just very basic pieces of that, power of attorney documents are very simple. It is actually something we do for a lot of younger people as well. We think about college kids, things like that. Lets at least get medical power of attorney in place for you so that your parents can talk to a doctor if you get in a car accident or something like that.

Zac Getty:

Absolutely. Fantastic advice. And I think it's important to point out physicians, healthcare people can't talk to anybody about your healthcare if it hasn't been outlined. So getting that set up is critical. I do have a couple of questions coming in, so I'm going to go ahead and postpone the last question I had and just start going through these, so we can try to get to some of the answers.

The first question I had came in a little while ago, and this has to do... Here's the question verbatim. If you have real estate assets and investments in another country such as Canada, does your will written in the USA cover that?

David Healy:

No, it does not. So that's a great question. I've actually done that before where we've had estates with foreign assets. There's lots of different ways to handle that depending on the foreign country. I'll tell you, China, for instance, I'm going to help hire a council in China, and I actually have an attorney in Beijing we use for this, where we basically write a mirror trust or a will in that foreign country. I've done that in China, India, Canada.

So basically we need to have a document that, and it can be different of course, but typically it's going to be the same distribution schedule, but something that'd be recognized by the laws of that country. And there actually is a provision in Missouri law, which is really interesting. It has some weight here, a foreign instrument like that. But I always tell clients really what your biggest problem is going to be. And actually, I sold some real estate in Greene County, Missouri once based off a will that was valid in Canada.

I'll just tell you that the hoops we jumped through were a lot. We got the job done. I would rather not do it that way. There's probably more efficient ways to go about it.

Zac Getty:

Good to know. All right. Thank you. Another question and I think you may have touched on this briefly. Does a spouse need a financial power of attorney if they're listed on all accounts?

David Healy:

Yes. I think that's still a good idea. Being on the account, that's ownership, that's one thing. But that financial power of attorney, it's a legal document. It encompasses a lot more than just the bank accounts. You think about everything else that can come up, really the biggest one is signing a contract for your spouse.

That might be medical care contract, that could be a personal services contract. All sorts of things out there where we need somebody that can sign. And having that financial power of attorney typically is going to grant the authority to enter into contracts on that person's behalf.

Zac Getty:

All right. Good to know. So yeah, just being on the accounts is not enough. Get the documents signed. Here is another question. If I want to designate a child as a beneficiary, what age is considered legal?

David Healy:

It depends on your state. So, in Missouri, you have to be 18, that's the age of majority. Now when we say that, my obvious comment is going to be, "And who thinks an 18-year-old is financially mature?" And I can tell you what it is, regardless of what you think of your child, I will tell you that I have concerns. I was 18 once and I did need a bunch of money when I was 18. I would've went out and bought new cars with it.

And I do like to tell the story about the kid that \$663,000 in 2006, is what he received. He's 18 years old and it was very hard to watch. He bought two new Corvettes the day he left the courthouse, one for him, one for the girlfriend that broke up with him the week after. He put it in her name, of course, and it was just a disaster.

And now clearly, there are some 18 year olds who will listen and they probably have very positive influencers in their life that might help get them directly to that financial planner, and forget they ever saw that check and then go on with their lives, and just invest it and have a retirement plan already taken care of. But for the most part, age of majority, that's the answer. And then the bigger question is, is that a good idea?

Zac Getty:

Got it. So it's not just a number, it's a know the person you're designating as a beneficiary.

David Healy:

Yeah.

Zac Getty:

All right. Good to know. Last one I have so far here is, what are best practices for addressing medical debt in estate planning?

David Healy:

Wow, that's a good one. So it's the number one reason for bankruptcy. And we talk about medical debt, that's always a big concern I have for the beneficiaries. Nobody wakes up on Monday morning and says, "Hey, this is the week to go out and have that heart attack and run up ½ million dollars in medical bills." Or get broadsided at that intersection, it's really dangerous or whatever.

It is in that category of bad things happen to good people, so nobody plans that's going to happen to them, but it happens all the time, obviously. And it's one of the big reasons that we do trusts is try to protect the money in case something good or bad happens to one of your kids or your beneficiaries. Now if he's talking about in the family and your spouse, that gets to be a lot more complicated. And it depends a whole lot on your state laws. Here in Missouri, there's not a ton you can do.

Medicaid has a different level for what it kicks in with, with a spouse. So you have what we refer to as a spousal allowance here, which means we don't have to be quite as destitute for a spouse to receive Medicaid. It makes a lot of sense. There's no point in putting the, I would say non-incapacitated, or what we refer to as a community spouse, in a position of just being absolutely destitute before their spouse can receive medical benefits through Medicaid.

But it's a challenging situation and it's probably harder today than it's ever been, which is not great news. And it's a very much case by case of we go through all of the person's assets, what can we actually do here? You'll see some Draconian steps people take. The worst one being they divorce their spouse,

so that their spouse is on a financial island of no assets. I'm really not a big fan of that and I find that to be something we try to avoid at all cost.

So we try to look at other things before we get down to that. That's a good question and probably could spend a whole hour just talking about the issues related with that because that's just a big challenge.

Zac Getty:

Sure. And I think that speaks to the, it depends and it's complicated caveat that a lot of these answers have. This is not cut really at all.

David Healy:

And I wish it was just here's what you do. And it's just, I will tell you, I feel like 20, 22 years ago when I first started doing this, I worked with an attorney that mentored me. And back then it was so much simpler, because it really was, oh well here's what we do, we do this, we do that, you'll be good to go. And it's just a natural progression.

The government doesn't have the money it used to for Medicaid. Government's a little bit more broke. They've tightened a lot of things up. For those of you listening that know about look-back periods, I'm from the era, it was seven years when I was doing this originally. Now we're in a five-year look-back, and I'll tell you a three year look-back is probably on the table for an immediate near future as the government just has less and less money to send to the states for Medicaid. And so it's just getting more and more challenging in that regard.

Zac Getty:

Good to know. Last question, I don't want to keep you. This one is broad and I'm sure it's a it depends. How much does this cost to get this set up with an attorney?

David Healy:

Yeah, that's a great question because it really does depend. This is a really wide gamut. I know my staff deal with this. I know they deal with this almost every day. When people call, they want to make an appointment, that's their first question, "What's this going to cost?" And I get that. That's a very fair question.

We try to, well, let's get some information first and I'll give you a range once we have some idea of what your assets look like. And of course it's not based on what their worth, it's the nature of them. Is it a very large 401k, which can be complex anymore versus real estate? What's your estate look like?

So the range that you typically see here in Missouri, it is going to be about 5 to 15,000 for, I'm going to say the full plan to take care of everything. And the next question you had there and it's a fair question too, and this has got a lot more expensive. Back to, it's just got so much more complex, but you also have to consider, well, what if you can't afford it? If you can't afford it, well can you not afford it? Let me put it that way.

And that's typically something that I'm going to do with clients, and I think a lot of attorneys do, is well, let's just make a pro and a con list here of okay, if you spend that money, what's that solve? If we don't spend the money, where does that leave you? And a lot of times clients come to the conclusion, well, they may not want to spend their money that way, but they really cannot afford not to. And it absolutely almost always comes down to we can pay a lot today or a lot tomorrow, a little today or a lot tomorrow.

Zac Getty:

Got it. All right. Thank you. It can be expensive to not pay what you need to upfront.

David Healy:

Well, and then just that probate in Missouri is going to be about 6% of the estate.

Zac Getty:

Okay. Yeah.

David Healy:

Yeah. You do that math, we generally have the estate plan paid for before we finish talking about the house. It makes sense to do it just for that, aside from everything else.

Zac Getty:

Sure. Excellent. Thank you. Well it is 3:01, I've already kept you a minute past when we had scheduled. But I do want to take a second to thank you very much for taking the time, Mr. Healy, to volunteer to go over some of these questions. I know this is a important topic that is difficult to navigate, so having that first person or professional experience to come in here and go over this stuff with us, I really, really appreciate it. Thank you so much.

David Healy:

You're very welcome. It's my pleasure.

Zac Getty:

Thank you. I end every webinar with a mission statement. We are Fight Colorectal Cancer. We fight to cure colorectal cancer and serve as relentless champions of hope for all affected by this disease through informed patient support, impactful policy change and breakthrough research endeavors.

Thank you again to Mr. Healy, for joining us today on this webinar and for volunteering your time. Thank you to everybody who took the time to watch us. And this will be sent out to you via email after our recording is processed. So thank you very much and have a great day. Mr. Healy, thank you so much.

David Healy:

Thank you.

Zac Getty:

Take care.