

WHERE THERE ISN'T A WILL, THERE'S STILL A WAY

Non-Probate Transfers and Will Substitutes

Presented to

Maricopa County Bar Association
Estate Planning, Probate & Trust Section

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I. Leaving property to beneficiaries - Intent vs. Formalities

A. Intent: ARS § 14-1102(b)(2)

§14-1102. Purposes; rule of construction

- A. This title shall be liberally construed and applied to promote its underlying purposes and policies.
- B. The underlying purposes and policies of this title are:
1. To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons.
 2. **To discover and make effective the *intent* of a decedent in distribution of his property.**
 3. To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors.
 4. To facilitate use and enforcement of certain trusts.
 5. To make uniform the law among the various jurisdictions.

B. Formalities: ARS § 14-2502

§14-2502. Execution; witnessed wills; holographic wills; testamentary intent

- A. Except as provided in sections §§14-2503, 14-2506 and 14-2513, a paper will shall be:
1. In writing.
 2. **Signed by the testator** or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
 3. **Signed by at least two people**, each of whom signed **within a reasonable time** after **that person witnessed** either the signing of the will as described in paragraph 2 of this subsection or the testator's acknowledgment of that signature or acknowledgment of the will.
- B. Intent that a tangible medium or an electronic record constitutes the testator's will can be established by extrinsic evidence, including, for holographic wills under §14-2503, portions of the document that are not in the testator's handwriting.

C. Leaning towards intent: ARS § 14-2503

§14-2503. Holographic will

A will that does not comply with section §14-2502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

In other words, “fill-in-the-blank” forms can be holographic wills. See Matter of Estate of Muder, 159 Ariz. 173, 765 P.2d 997 (1988):

“We believe that our legislature, in enacting the present statute, intended to allow printed portions of the will form to be incorporated into the handwritten portion of the holographic will as long as the testamentary *intent* of the testator is clear and the *protection* afforded by requiring the material provisions be in the testator's handwriting is present.”

II. Arizona Intestacy Statute - worst-case scenario: no will
(See Exhibit 1 - Arizona Intestacy Statute)

- Married, no children
- Married, three children, all from this marriage
- Married, one child from this marriage, two from previous marriage
- Unmarried, three children
- Unmarried, no children
- In situations where the statute coincides with the testator’s intent, is intestacy an acceptable will alternative? Is it always the “worst case”?

III. Non-Probate Transfers – Will Alternatives

A. Jane: Widow and retired
Three adult children
No will
Wants to leave everything to her children, equally

Assets (no debts)

<u>Property</u>	<u>Value</u>
House	\$300,000
Vacant Land	\$40,000

Mutual Funds (non-qual.)	\$200,000
Savings account	\$30,000
Checking account	\$3,000
IRA	\$350,000
Deferred annuity	\$37,000
Life Insurance	\$25,000
Car	\$15,000
<hr/>	
Total	\$1,000,000

B. Real Estate:

1. Joint Tenancy with Right of Survivorship

- a. With one child, to share with others (fairly common)
Issues to Consider: Liability
Will child share? Does not have to!
Can child share?
Gift tax limits?
Incapacity?

- b. With all three children
Issues to Consider: Liability
If one child predeceases?
Dissent among siblings?

2. Beneficiary Deed (See Exhibit 2 - Arizona Beneficiary Deed statute)

- a. Remember to add *exemption* language not included in sample form in statute: "*Affidavit of Real Property Value not required per ARS § 11-1134.B.12.*"

- b. Supplement to "main" deed, not replacement

- c. Revocable

- d. Beneficiaries are not “owners”; no liability issues
- e. Can pay to beneficiaries on death of surviving joint tenant (JTROS or CPROS + Beneficiary Deed). Beware - Surviving joint tenant could revoke and undo deceased joint tenant’s plan.
- f. Can name contingent beneficiaries: “To her daughter, Lucille if she survives, and otherwise to my daughter Lucille’s children *per stirpes*,” or can use *per capita* or “right of representation.” (See Exhibit 3 - Arizona definition of “Representation”)
- g. Can transfer to trust at death - instead of titling to trust immediately.

Creditor protection for real property in JTROS (See Exhibit 4 - ARS § 14-6102)

Pay to trust at death of surviving spouse (JTROS or CPROS + Beneficiary Deed) (See Exhibit 5 - Sample Form - Beneficiary Deed - CPROS to Trust)

Preferable to Special Warranty Deed to trust?

- i No problems with title insurance
 - ii No problems with lender/refinance
 - iii *May* be able to use disclaimer at first death, if necessary
- h. Convenient for *specific bequests* of real property.
 - i. Convenient way to leave real property to *charity*.

C. Mutual Funds:

1. Joint Tenancy with Right of Survivorship

- a. JTROS with one child. See issues to consider above.
- b. JTROS with all children.

2. “Pay On Death” (POD) (See Exhibit 6 - Arizona “Pay On Death” statutes. Some banks use “Transfer on Death” (TOD))

- a. Can pay to individuals at death of surviving spouse (JTROS or CPROS + POD)
- b. Convenient for *specific bequests* of personal property (stocks, bonds, mutual funds, bank accounts).
- c. Convenient way to leave intangible personal property to *charity*.
- d. How? Letter (See Exhibit 7 - sample letter - Pay On Death to children). Often, financial institutions want info about beneficiaries so they can contact them, e.g., name, dob, address, phone, SS#

Mots Financial institutions have forms

For regulated securities, companies may want “Medallion Guarantee”

Some out of state companies will not do POD at all, because their home state does not have POD statute.

E. Bank Accounts: checking, savings, money market accounts

- 1. Same options as mutual fund

2. Beware: If hold bank account with multiple parties, amount on deposit belongs to the survivor. ARS § 14-6121

F. IRA and Annuity

1. Beneficiary Designation – to one or more children

- a. One child “to share with others”
Issues to Consider: Will the child share? Does not have to!
Can the child share?
Who will pay the income tax?
Minimum distribution requirements
- b. All three children
Issues to Consider: Most convenient
Predeceased children
Should have *contingent* beneficiaries

2. Beneficiary Designation – “Estate of the Participant”

- a. Generally, the worst way
- b. Probate for what would normally be non-probate
- c. Minimum distribution requirements; could accelerate income taxation

3. Failure to Designate Beneficiary – Result to Probate Estate

- a. Often results from failure to name a contingent beneficiary (Did Jane name her late husband or ex-husband as primary beneficiary, leaving contingent beneficiary designation blank?)
- b. Probate for what would normally be non-probate.
- c. May subject IRA funds to claims by estate creditors.

G. Life Insurance

1. Beneficiary Designation

- a. Same options as IRA (but No concern about MRD).
- b. Should have *contingent* beneficiaries.

2. Estate as Beneficiary

- a. Beware if life insurance is paid to the “estate” either intentionally or unintentionally is subject to estate creditor claims. (See Exhibit 9 - ARS § 20-1131 - Creditor Protection for Life Insurance)

3. Spousal Waiver

- a. Spouse’s signature should not be necessary unless spouse is beneficiary of less than his/her community property share, but if insurance company employees want spouse’s signature, humor them.
- b. *But see In re Estate of Kirkes*, 229 Ariz. 212 (App. 2012) and *Gaethje v. Gaethje*, 7 Ariz. App. 544, 549 (1968): Person has right to leave up to 100% of an item to person other than spouse, so long as spouse gets his/her half of *aggregate* value of community estate.
- c. If married person wants to name child, friend, charity or paramour as beneficiary, should have right to do that without telling spouse, but how to do that, practically? How does insurance company know spouse will get half of aggregate? Will they insist on spouse’s signature regardless of case law?

H. Vehicle

- 1. Beneficiary Designation Form for Motor Vehicles** ARS § 28-2055. (See Exhibit 10 - Transfer on Death for Motor Vehicles, and Exhibit 11 -- MVD form 96-0561.)

- a. The Beneficiary Designation form is kept by the owner, and not submitted to the MVD until *after* the owner dies by the named beneficiary/new owner; so, not on record anywhere. (Give copy to intended beneficiary, to put him/her on notice?)
- b. Awkward for multiple beneficiaries. (For example, assuming car will be sold, proceeds divided among children.)
- c. Only available for “sole owner” of vehicle; no transfer on death of surviving joint tenant, as with beneficiary deeds and POD.

IV. Transfer by Affidavit (“Small Estates”) §14-3971 (See Exhibit 8 - Transfer by Affidavit)

A. “Small estate” refers to assets subject to probate, not *total* estate. If most of estate can be distributed by non-probate transfers, then beneficiaries may be able to claim the rest by affidavit, avoiding probate.

B. Real Property.

- 1. Up to \$100,000 in equity (value less encumbrances).
- 2. Value is defined as Full Cash Value as determined by County Assessor.
- 3. Must wait 6 months following date of death.
- 4. Still requires filing with the Clerk of Court.
- 5. Cumbersome process.

C. Personal Property.

- 1. Not more than aggregate total of \$75,000 (e.g., total of all bank accounts, mutual funds, uncashed checks, vehicles, etc. that do not pass by operation of law.)
- 2. Must wait 30 days following date of death.

D. Sample Forms. Maricopa County Superior Court provides sample affidavits at their website:

https://superiorcourt.maricopa.gov/llrc/prob_pbse1/

(See, Exhibit 13 – Form Affidavit for Collection of All Personal Property and Exhibit 14 - Form Affidavit for Transfer of Title to Real Property).

V. Limited Liability Companies

A. ARS § 29-732.01

- **JTROS.** Two or more people can own a member interest in a LLC as JTROS
- **CPROS.** A married couple can own a member interest in a LLC as CPROS

B. Transfer on Death? Is there such a thing as Transfer On Death for an LLC interest? Maybe.

14-6101. Nonprobate transfers on death; nontestamentary nature

- A. A provision for a nonprobate transfer on death in any insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature is nontestamentary.
- B. A written instrument is nontestamentary if it contains a provision that:
1. Money or other benefits due to, controlled by or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.
 2. Money due or to become due under the written instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.
 3. Any property that is controlled by or owned by the decedent before death and that is the subject of the written instrument passes to a person the decedent designates

either in the written instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.
C. This section does not limit rights of creditors under other laws of this state.

Therefore, it *might* be possible to include language in an LLC's operating agreement (or even a separate writing) that says who takes a member's interest at death, which would have the same effect as a POD designation. Or even when listing the members, could you do something like: "Husband and Wife, as Community Property with Right of Survivorship, Transfer on Death to the survivor of them or to their issue, by right of representation"? Would that be a written instrument within the scope of ARS § 14-6101?

VI. Rights of Creditors

A. Non-Probate Beneficiaries. Non-probate beneficiaries are generally liable for their proportional share of creditors' claims against the decedent. (See Exhibit 4 - Liability of Nonprobate Beneficiaries for Creditors' Claims).

Issues to consider: How does the creditor collect?

Does the PR or creditor bring a claim against the non-probate beneficiary?

Who notifies creditors?

B. Life Insurance Proceeds. Special treatment for some life insurance proceeds (See Exhibit 9 – Creditor Protection for Life Insurance and In re Estate of King, 269 P.3d 1189 (2012). ARS § 14-6102 (liability of nonprobate beneficiaries) does *not* supersede ARS § 20-1131 (creditor protection for life insurance). See May v. Ellis, 92 P.3d 859 (Ariz. 2004).

C. Qualified Retirement Plans. Retirement plans are generally exempt from the beneficiary's creditors (See Exhibit 12 - ARS § 33-1126, Property exempt from claims of creditors) But see Clark v. Rameker, 134 S.Ct. 2242 (2014) (In fed BK, *inherited* IRA not exempt if not exempt under state law of *beneficiary*. ARS § 33-1126 protects Arizona beneficiary.)

VII. Are Will Alternatives *better* than Wills?

A. Wills require “formalities” to prove validity: capacity, no undue influence or fraud; Will Alternatives usually require fewer formalities, often determined by the financial institution rather than by the state.

C. Is a Will Alternative easier or harder to contest than a Will?

C. What is the objective? Should disposition of property at death be *easier*, or more *certain*?

D. When there is likely to be a contest, should Will formalities be applied voluntarily to Will Alternatives (*e.g.*, use two witnesses for a POD or beneficiary designation)? Or should clients use Wills instead of Will Alternatives? Or vice-versa? OR BOTH?

VIII. Summary: ways to leave property other than by Will:

- A. Intestacy
- B. Right of Survivorship (JTROS/CPROS)
- C. Beneficiary Deed
- D. Beneficiary Titling (Pay On Death/Transfer On Death)
- E. Beneficiary Designation (insurance, annuity, retirement plan)
- F. Motor Vehicle Beneficiary Form
- G. Small Estate Affidavit

EXHIBIT 1
Arizona Intestacy Statutes

§14-2102. Intestate share of surviving spouse

The following part of the intestate estate, as to both separate property and the one-half of community property that belongs to the decedent, passes to the surviving spouse:

1. If there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire intestate estate.
2. If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate separate property and no interest in the one-half of the community property that belonged to the decedent.

§14-2103. Heirs other than surviving spouse; share in estate

Any part of the intestate estate not passing to the decedent's surviving spouse under §14-2102 or the entire intestate estate if there is no surviving spouse passes in the following order to the following persons who survive the decedent:

1. To the decedent's descendants by representation.
2. If there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent.
3. If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation.
4. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive or to the surviving paternal grandparent or the descendants of the decedent's paternal grandparents or either of them if both are deceased with the descendants taking by representation. The other half passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

§14-2105. Unclaimed estate; passage to state

If no one is qualified to claim the estate under this article, the intestate estate passes to the state.

EXHIBIT 2
Arizona Beneficiary Deed Statute

§33-405. Beneficiary deeds; recording; definitions

A. A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the interest to the designated grantee beneficiary effective on the death of the owner subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime.

B. A beneficiary deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, a husband and wife as community property or as community property with right of survivorship, or any other tenancy that is valid under the laws of this state. Unless the beneficiary deed provides otherwise, the interest in real property conveyed by a beneficiary deed is the separate property of the named grantee beneficiary and is not community property.

C. A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates a successor grantee beneficiary, the deed shall state the condition on which the interest of the successor grantee beneficiary would vest. Unless the beneficiary deed provides otherwise, if there are no grantee beneficiaries named in the beneficiary deed who survive the owner, the beneficiary deed is void and § 14-2603 does not apply.

D. If real property is owned as joint tenants with the right of survivorship or as community property with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the then surviving owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship or community property with right of survivorship, the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed. If the last surviving owner did not execute the beneficiary deed, the transfer shall lapse and the deed is void. An estate in joint tenancy with right of survivorship or community property with right of survivorship is not affected by the execution of a beneficiary deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship or a surviving spouse in community property with right of survivorship shall prevail over a grantee beneficiary named in a beneficiary deed.

E. A beneficiary deed is valid only if the deed is executed and recorded as provided by law in the office of the county recorder of the county in which the property is located before the death of the owner or the last surviving owner. A beneficiary deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

F. A beneficiary deed may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who executed the beneficiary deed. To be effective, the revocation must be executed and recorded as provided by law in the office of the county recorder of the county in which the real property is located before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship or community property with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.

G. If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

H. This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

I. The signature, consent or agreement of or notice to a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

J. A beneficiary deed that is executed, acknowledged and recorded in accordance with this section is not revoked by the provisions of a will.

K. A beneficiary deed is sufficient if it complies with other applicable laws and if it is in substantially the following form:

Beneficiary Deed

I (we) _____ (owner) hereby convey to _____ (grantee beneficiary) effective on my (our) death the following described real property:

(Legal description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary shall either (choose one):

___ Become null and void.

___ Become part of the estate of the grantee beneficiary.

(Signature of grantor(s))

(acknowledgment).

L. The instrument of revocation shall be sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned hereby revokes the beneficiary deed recorded on _____ (date), in docket or book _____ at page _____, or instrument number _____, records of _____ county, Arizona.

Dated: _____

Signature

(acknowledgment).

M. For the purposes of this section:

1. "Beneficiary deed" means a deed authorized under this section.
2. "Owner" means any person who executes a beneficiary deed as provided in this section.

EXHIBIT 3
Arizona Definition of “Representation”

§14-2709. Property distribution by representation or per capita at each generation; distribution per stirpes; application of section; definitions

A. If an applicable statute or a governing instrument calls for property to be distributed by representation or per capita at each generation, the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants and deceased descendants in the same generation who left any surviving descendants. Each surviving descendant in the nearest generation is allocated one share. Any remaining shares are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

B. If a governing instrument calls for property to be distributed per stirpes, the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

C. For the purposes of subsections A and B of this section, a person who is deceased and who left no surviving descendant is disregarded. A person who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

D. This section applies to governing instruments executed after December 31, 1994. In the case of a codicil to a will, an amendment to a trust or another document amending a governing instrument, the date of execution is the date of the codicil, amendment or amending document only if the codicil, amendment or amending document materially affects the dispositive provision being construed under this section.

E. For the purposes of this section:

1. “Deceased child” or “deceased descendant” means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under § 14-2702.

2. “Distribution date” with respect to an interest means the time when the interest is to take effect in possession or enjoyment. Distribution date does not mean a date that necessarily occurs at the beginning or end of a calendar day but that may occur at a time during the course of a day.

3. "Surviving ancestor", "surviving child" or "surviving descendant" means an ancestor, a child or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under § 14-2702.

EXHIBIT 4
Liability of Nonprobate Beneficiaries for Creditors' Claims

§14-6102. Nonprobate transferees; liability for creditor claims and statutory allowances

A. Except as otherwise provided by law, a transferee of a nonprobate transfer is subject to liability to the decedent's probate estate for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the decedent's probate estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

B. Nonprobate transferees are liable for the insufficiency described in subsection A of this section in the following order:

1. As provided in the decedent's will or any other governing instrument.
2. To the extent of the value of the nonprobate transfer received or controlled by the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances.
3. Other nonprobate transferees, in proportion to the values received.

C. Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts that incur liabilities under this section abate as necessary to satisfy the liability as if all of the trust interments¹ were a single will and the interest were devised under it.

D. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another instrument, the later instrument prevails.

E. On due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, wherever the transferee is located.

F. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received from the surviving spouse or a child to the extent that statutory allowances are affected, or from a creditor, a written demand for the proceeding. If the personal representative declines or fails to commence a proceeding after demand, a person making the demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and

not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

G. A proceeding under this section must be commenced within two years after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty days after final allowance of the claims.

H. Unless a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances have been received from the decedent's personal representative, the following rules apply:

1. Payment or delivery of assets by any financial institution, registrar or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

2. A trustee receiving or controlling a nonprobate transfer is released from liability under this section on any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to that asset imposed by subsections B and C of this section.

I. For the purposes of this section a nonprobate transfer is a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state, and to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and to instead use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate. With respect to multiple party accounts, the portion of the account that is a nonprobate transfer is that portion of that account to which the decedent was beneficially entitled immediately before death pursuant to § 14-6211.

EXHIBIT 5
Sample Form - Beneficiary Deed - CPROS to Trust

Mail tax statements to:
Husband and Wife
[Address]

BENEFICIARY DEED

For the consideration of Ten Dollars, and other valuable considerations, husband and wife, dealing with their property held as Community Property With Right of Survivorship, upon the death of the survivor of them hereby convey all right, title, or interest in the following real property situated in Maricopa County, Arizona, to the Trustee of the [TRUST NAME] Trust dated [TRUST DATE]:

[Legal Description]

AFFIDAVIT OF REAL PROPERTY VALUE NOT REQUIRED PER ARS § 11-1134.B.12

Date: _____, 2021

Grantors:

HUSBAND

WIFE

STATE OF ARIZONA

ss.

County of Maricopa

The foregoing instrument was acknowledged before me on this date, _____, 2021, by HUSBAND and WIFE.

Notary Public

EXHIBIT 6
Arizona “Pay On Death” Statutes

§14-6201. Definitions

In this article, unless the context otherwise requires:

7. “Pay on death designation” or “POD” means the designation of:

(a) A beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on the death of all of them to one or more beneficiaries.

(b) A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

§14-6203. Types of accounts; existing accounts

A. An account may be for a single party or multiple parties. A multiple party account may be with or without a right of survivorship between the parties. Subject to the requirements of § 14-6212, subsection C, either a single party account or a multiple party account may have a pay on death designation or an agency designation, or both.

B. An account established before or after December 31, 1994, whether in the form prescribed in § 14-6204 or in any other form, is either a single party account or a multiple party account, with or without the right of survivorship, and with or without a pay on death designation or designating an agent, within the meaning of this section and is governed by this section.

§14-6305. Form of registration

Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD” or by the words “pay on death” or the abbreviation “POD” after the name of the registered owner and before the name of a beneficiary.

§14-6221. Financial institutions; types of accounts

A. A financial institution may enter into a contract of deposit for a multiple party account to the same extent it may enter into a contract of deposit for a single party account

and may provide for a pay on death designation and an agency designation in either a single party account or a multiple party account.

B. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

EXHIBIT 7
Sample Letter – Pay On Death to Children

Date: _____

National Bank
112 ½ Beacon St.
Anywhere, AZ 89999

Re: Account Number 123-4567

Please re-title this account as follows: Mabel Magillicuddy, Pay On Death to my children:

Jill Magillicuddy

Date Of Birth _____

Soc. Sec. _____

Address: _____

Will Magillicuddy

Date Of Birth _____

Soc. Sec. _____

Address: _____

Ruprecht Magillicuddy

Date Of Birth _____

Soc. Sec. _____

Address: _____

If one or more of my children does not survive me, this account will be distributed on the principle of representation, as defined in ARS § 14-2709(A).

Thank you.

Mabel Magillicuddy

EXHIBIT 8
Transfer by Affidavit

§14-3971. Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property

A. At any time after the death of a decedent, any employer owing wages, salary or other compensation for personal services of the decedent shall pay to the surviving spouse of the decedent the amount owing, not in excess of \$5,000, on being presented an affidavit made by or on behalf of the spouse stating that the affiant is the surviving spouse of the decedent, or is authorized to act on behalf of the spouse, and that no application or petition for the appointment of a personal representative is pending or has been granted in this state or, if granted, the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed.

B. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor and stating that all of the following are true:

1. Thirty days have elapsed since the death of the decedent.

2. Either:

(a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$75,000 as valued as of the date of death.

(b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$75,000 as valued as of the date of the affidavit.

3. The claiming successor is entitled to payment or delivery of the property.

4. The funeral expenses and expenses of the last illness of the decedent have been paid.

C. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors on presentation of an affidavit pursuant to subsection B of this section.

D. The motor vehicle division shall transfer title of a motor vehicle from the decedent to the successor or successors on presentation of an affidavit as provided in subsection B of this section and on payment of the necessary fees.

E. No sooner than six months after the death of a decedent, a person or persons claiming as successor or successors to the decedent's interest in real property, including any debt secured by a lien on real property, may file in the court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state then in any county in which real property of the decedent is located, an affidavit describing the real property and the interest of the decedent in that property and stating that all of the following are true and material and acknowledging that any false statement in the affidavit may subject the person or persons to penalties relating to perjury and subornation of perjury:

1. Either:

- (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all real property in the decedent's estate located in this state, less liens and encumbrances against the real property, does not exceed \$100,000 as valued at the date of death. The value of the decedent's interest in that real property shall be determined from the full cash value of the property as shown on the assessment rolls for the year in which the decedent died, except that in the case of a debt secured by a lien on real property the value shall be determined by the unpaid principal balance due on the debt as of the date of death.

- (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all real property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$100,000 as valued as of the date of the affidavit. The value of the decedent's interest in that real property is determined from the full cash value of the property as shown on the assessment rolls for the year in which the affidavit is given, except that if a debt is secured by a lien on real property, the value is determined by the unpaid principal balance due on the debt as of the date of the affidavit.

2. Six months have elapsed since the death of the decedent as shown in a certified copy of the decedent's death certificate attached to the affidavit.

3. Funeral expenses, expenses of the last illness and all unsecured debts of the decedent have been paid.

4. The person or persons signing the affidavit are entitled to the real property by reason of the allowance in lieu of homestead, exempt property or family allowance, by intestate succession as the sole heir or heirs, or by devise under a valid last will of the decedent, the original of which is attached to the affidavit or has been probated.

5. No other person has a right to the interest of the decedent in the described property.

6. No federal estate tax is due on the decedent's estate.

F. The normal filing fee shall be charged for the filing of an affidavit under subsection E of this section unless waived by the court as provided by § 12-301 or 12-302. On receipt of the affidavit and after determining that the affidavit is complete, the registrar shall issue a certified copy of the affidavit without attachments, and the copy shall be recorded in the office of the recorder in the county where the real property is located.

G. This section does not limit the rights of heirs and devisees under § 14-3901.

EXHIBIT 9
Creditor Protection for Life Insurance

§20-1131. Exemption of life insurance proceeds and cash values from creditors

A. If a policy of life insurance is effected by any person on the person's own life or on another life in favor of another person having an insurable interest in the policy, or made payable by assignment, change of beneficiary or other means to a third person, the lawful beneficiary or such third person, other than the person effecting the insurance or the person's legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance.

B. Subject to the statute of limitations, the amount of any premiums for insurance paid in fraud of creditors, with interest, shall inure to their benefit from the proceeds of the policy, but the insurer issuing the policy shall be discharged of all liability on the policy by payment of the proceeds in accordance with its terms, unless before payment the insurer received written notice by or in behalf of some creditor, with specification of the amount claimed, claiming to recover for certain premiums paid in fraud of creditors.

C. For the purposes of subsection A, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by the clause.

D. If, for a continuous, unexpired period of two years, a policy of life insurance has named as beneficiary the insured's surviving spouse, child, parent, brother, sister or any other dependent family member, then, in event of bankruptcy or in any proceeding before any court in this state, the cash surrender value of the insurance, in the proportion that the policy names any such beneficiary, shall be exempt from claims and demands of all creditors, other than a creditor to whom the policy has been pledged or assigned, and except that, subject to the statute of limitations, the amount of any premiums which are recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1,¹ with interest, shall inure to their benefit from the cash surrender value. For the purposes of this subsection, "dependent" means a family member who is dependent on the insured for not less than half support.

And see In re ESTATE OF KING; 269 P.3d, 228 Ariz.565 (2012). For purposes of ARS § 20-1131, a trust is a "person," proceeds are protected from creditors if a trust is the beneficiary.

EXHIBIT 10
Transfer on Death for Motor Vehicles

§28-2055. Certificate of title; content requirements; transfer on death provision; delivery

A. The department or an authorized third party shall do both of the following:

1. Create the certificate of title with space for notation of liens and encumbrances on the vehicle at the time of transfer.

2. Provide forms for assignment of title or interest and warranty by the owner that contains the odometer mileage disclosure statement pursuant to § 28-2058.

B. At the request of the owner and on payment of a fee prescribed by the department by rule, the certificate of title may contain, by attachment, a transfer on death provision where the owner may designate a beneficiary of the vehicle.

C. If a motor vehicle, trailer or semitrailer has been registered in any other state or country, the department shall retain in its records the name of the state or country in which the prior registration took place.

EXHIBIT 11

MVD form 96-0561 - Beneficiary Designation for motor vehicles



BENEFICIARY DESIGNATION

For Vehicle Title Transfer Upon Death

This form must be stapled to and presented with the current title, and is void if altered or erased.

I am the sole owner of the motor vehicle, described as follows:

Vehicle Identification Number	Year	Make
-------------------------------	------	------

I designate that this vehicle be transferred, upon my death, to:

Beneficiary Full Legal Name (first, middle, last, suffix)	Date of Birth (optional)	Legal Status *

I release, discharge and agree to hold harmless, the Arizona Department of Transportation, Motor Vehicle Division from any and all liability to anyone whomsoever which may arise by reason of any contest of the validity of the beneficiary named herein.

This document is provided pursuant to Arizona Revised Statutes 28-2055(B) for the purpose of assigning a beneficiary as named above.

Owner Name (first, middle, last, suffix)	Owner Signature
--	-----------------

Acknowledged before me this date.		Notary or MVD Agent Signature	
Date	County	State	Commission Expires

* Legal Status determines which signatures will be required to transfer ownership of the vehicle. Options are:

Or: Ownership is joint tenancy, with an expressed intent that either of the owners has full authority to transfer ownership, license plates and/or fees, or to record loan information. Names will appear on the title as in this example: JOHN DOE OR JOE ROSS

Signature of either party will be accepted. Both signatures are not required. All owners involved must sign in the Legal Status box.

And: Ownership is tenancy in common. Names will appear on the title as in this example: JOHN DOE AND JOE ROSS

Signatures of both parties will be required. In the event of the death of either party, the interest of the deceased party must be handled by probate action, or by completing a Non-Probate Affidavit.

And/Or: Ownership is joint tenancy with right of survivorship. Names will be on the title as in this example: JOHN DOE AND/OR JOE ROSS

Signatures of both parties will be required, if both are living. Upon proof of death, the survivor may sign alone.

EXHIBIT 12
Property exempt from claims of creditors

§33-1126. Money benefits or proceeds; exception

A. The following property of *a debtor* is exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child on the life of a deceased spouse, parent or legal guardian, not exceeding twenty thousand dollars.

4. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on the policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings that would have been subject to that order and subject to any exemption applicable to earnings so replaced.

6. The cash surrender value of life insurance policies where for a continuous unexpired period of two years the policies have been owned by a debtor. The policy shall have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister. The policy may have named as beneficiary any other family member who is a dependent, in the proportion that the policy names any such beneficiary, except that, subject to the statute of limitations, the amount of any premium that is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1,¹ with interest thereon, is not exempt. The exemption provided by this paragraph does not apply to a claim for the payment of a debt of the insured or beneficiary that is secured by a pledge or assignment of the cash value of the insurance policy or the proceeds of the policy. For the purposes of this paragraph, "dependent" means a family member who is dependent on the insured debtor for not less than half support.

7. An annuity contract where for a continuous unexpired period of two years that contract has been owned by a debtor and has named as beneficiary the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except that, subject to the statute of limitations, the amount of any premium, payment or deposit with respect to that contract is recoverable or avoidable by a creditor

pursuant to title 44, chapter 8, article 1 is not exempt. The exemption provided by this paragraph does not apply to a claim for a payment of a debt of the annuitant or beneficiary that is secured by a pledge or assignment of the contract or its proceeds. For the purposes of this paragraph, "dependent" means a family member who is dependent on the debtor for not less than half support.

Exhibit 13

Affidavit for Transfer of Personal Property

Person Filing: _____

Address (if not protected): _____

City, State, Zip Code: _____

Telephone: _____

Email Address: _____

Lawyer's Bar Number: _____

Licensed Fiduciary Number: _____

Representing Self, without a Lawyer or Attorney for Petitioner OR Respondent

AFFIDAVIT FOR COLLECTION OF ALL PERSONAL PROPERTY

STATE OF ARIZONA)
MARICOPA COUNTY)

By signing this affidavit, I swear or affirm under penalty of perjury that its contents are true and correct.

1. INFORMATION ABOUT THE DECEASED (THE PERSON WHO DIED):

Name of person who died: _____

Date of death: _____

Place of death: _____

2. 30-DAY REQUIREMENT: More than thirty (30) days have gone by since the person died.

3. RELATIONSHIP: My relationship to the person who died is: (explain) _____

4. VALUE OF PERSONAL PROPERTY. The value of all the personal property in the deceased person's estate, wherever located, minus the amount of liens and encumbrances on the property, is not greater than \$75,000.00.

5. PERSONAL REPRESENTATIVE. To the best of my knowledge, no one has filed an Application or Petition for Appointment of a Personal Representative and no Application or Petition has been granted in any state OR if an application has been granted the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the amount does not exceed \$75,000.00.

6. ENTITLEMENT. I am the claiming successor to the personal property and I am entitled to payment or delivery of the property because I am. (Check all boxes that apply.)

- I am named in the Will of the person who died, a copy of which is attached to this Affidavit.
- The deceased had no Will, but I am entitled to the property under law because (check ONE)
 - I am the spouse of the person who died;
 - I am a child of the person who died, and there is no surviving spouse, or there is a surviving spouse but he or she is not my parent and the deceased had separate or community property;
 - I am the parent of the person who died, and there is no surviving spouse or child;
 - I am a brother or sister of the person who died, and there is no surviving spouse, child or parent.
 - The person died without a will and I am the sole heir.
- The person died without a will and the people with equal or greater right than I have to the property have all assigned their entire interests in the estate to me, which is proven by the copy of the documents they signed to this effect that I am attaching to this affidavit.
- The person died and left a valid Will and the people with equal or greater right than I have to the property have all assigned their entire interests in the estate to me, which is proven by the copy of the documents they signed to this effect that I am attaching to this affidavit.

7. DESCRIPTION OF PROPERTY. The person who died owned the following personal property. (List all property. Attach extra pages if necessary.)

Description	Value	Location, or Who Has Property Now
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

TOTAL VALUE: \$ _____

8. MONEY OWED: The person who died was entitled to collect on the following debts from persons located in Arizona. (List all. Attach extra pages if necessary.)

Description	Amount owed	Name of Who Owes the Debt
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

TOTAL AMOUNT OWED: \$ _____

9. This affidavit is made under Arizona Law, Sec. 14-3971(B), Arizona Revised Statutes, for the purpose of making claim to personal property of the person who died.

OATH OR AFFIRMATION: The contents of this document are true and correct under penalty of perjury.

Signature of Person Making Affidavit

Date

Printed Name

STATE OF _____

COUNTY OF _____

Subscribed and sworn to or affirmed before me this: _____ by
(date)

_____.

(notary seal)

Notary Public

4. **DESCRIPTION OF REAL PROPERTY.** The legal description as written on the deed of title of the real property is: _____

5. **INTEREST OF PERSON WHO DIED IN PROPERTY.** The interest of the person who died in the real property is (list how the decedent held title to the property or other interest in the property).

6. **VALUE OF ESTATE.** The assessed value in the estate of the person who died of all real property located in this state, including any debt secured by a lien on real property, less liens and encumbrances against the real property as of the date of the death, does not exceed \$100,000.00.

7. **SIX MONTH REQUIREMENT.** Six months have elapsed since the death, as shown in a certified copy of the death certificate attached to this affidavit.

8. **PERSONAL REPRESENTATIVE.** An application or petition for appointment of a personal representative is not pending or has not been granted in any jurisdiction OR an application has been granted but the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the \$100,000 limit on the value of the property has not been exceeded.

9. **FUNERAL EXPENSES.** Funeral expenses, expenses of last illness, and all unsecured debts of the person who died have been paid.

10. **REASON WHY** **I AM** **WE ARE ENTITLED TO THE PROPERTY.** The persons signing this affidavit are entitled to the real property because (check the boxes that apply):

I am the spouse of the deceased and I am claiming the allowance in lieu of homestead (\$18,000) exempt property (\$7,000) and family allowance (\$12,000). (A.R.S. §§ 14-2401 through 14-2405)

There is no surviving spouse and I am the dependent or minor child of the person who died. I am claiming the allowance in lieu of homestead (\$18,000) exempt property (\$7,000), and family allowance (reasonable allowance for maintenance of family during administration of estate, generally up to one year). (A.R.S. 14-2401-03). All other dependent children of my deceased parent with equal or greater right than I have to the property, have all assigned their entire interests in the estate to me, which is proven by the copy of the document they signed to this effect that I am attaching to this affidavit or they have signed this affidavit indicating their interest in the property.

There is no surviving spouse and we are the dependents or minor children of the person who died. We are claiming the allowance in lieu of homestead (\$18,000) exempt property (\$7,000), and family allowance (reasonable allowance for maintenance of family during administration of estate, generally up to one year). (A.R.S. 14-2401-03).

I am **We are** **named in the will dated** _____ of the person who died, the original of which is attached to this affidavit, or a certified copy of the Will which has been probated as follows (name of court and case number) _____.

- The person who died had no will, and I am** entitled to the property by law because (check one box)
- I am the spouse of the person who died;
- I am a child of the person, who died, and there is no surviving spouse, or there is a surviving spouse but he or she is not my parent and the deceased had separate or community property;
- I am the parent of the person who died, and there is no surviving child, spouse or parent;
- I am a brother or sister of the person who died, and there is no surviving spouse, child or parent.
- The person who died had no will, and we are** entitled to the property by law because (check one box)
- We are children of the person who died, and there is no surviving spouse, or there is a surviving spouse but he or she is not our parent and the deceased had separate or community property;
- We are a brother(s) and/or sister(s) of the person who died, and there is no surviving spouse, child, or parent.
- The person died without a will and** I am We are the sole heir(s).
- The person died without a will and the people with equal or greater right than I** have to the property have assigned their entire interests in the estate to me, which is proven by the copy of the documents they signed to this effect that I am attaching to this affidavit or have signed this affidavit indicating their interest in the property.
- The person died without a will and the people with equal or greater right than we** have to the property have assigned their entire interests in the estate to all of us. This assignment is proven by the copy(ies) of the signed documents, which we attached to this affidavit, or have signed this affidavit indicating their interest in the property.
- The person died and left a valid will giving the entire estate to me/us.**
- The person died and left a valid will**, and the people with equal or greater right than I have to the property **assigned their entire interest in the estate to me.** This assignment is proven either by the copy of the signed document attached to this affidavit or I signed this affidavit indicating their interest in the property.
- The person died and left a valid will**, and the people with equal or greater right than we have to the property **assigned their entire interest in the estate to us.** This assignment is proven by the copy of the document(s) attached to this affidavit or we have signed this affidavit indicating their interest in the property.

11. OTHER PERSONS. No other person has a right to the interest of the decedent in the described property.

12. TAXES. No federal or Arizona estate tax is due on the person who died estate.

• I certify under penalty of perjury that the contents of this affidavit are true and correct.

Signature of Person Making Affidavit Printed Name of Person Date

STATE OF _____

COUNTY OF _____

Subscribed and sworn to or affirmed before me this: _____ by
(date)

_____.

(notary seal) _____
Deputy Clerk or Notary Public

• I certify under penalty of perjury that the contents of this affidavit are true and correct.

Signature of Person Making Affidavit Printed Name of Person Date

STATE OF _____

COUNTY OF _____

Subscribed and sworn to or affirmed before me this: _____ by
(date)

_____.

(notary seal) _____
Deputy Clerk or Notary Public

Where There Isn't A Will, There's Still A Way

Non-Probate Transfers
and Will Substitutes



Hillary P. Gagnon, Of Counsel
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I forgot to
write my will!



© Tracy 2007

Intent vs. Formalities

- Concerns about
 - Capacity
 - Forgery
 - Undue Influence
 - Coercion
 - Etc.

Testator's Intent

- 14-1102. Purposes; rule of construction
....
- B. The underlying purposes and policies of this title are:
....
- **2. To discover and make effective the *intent* of a decedent in distribution of his property.**

Formalities: ARS § 14-2502

- A will must be
 - In writing
 - Signed
 - Two witnesses
- Holographic will
 - In testator's handwriting
 - Signed
 - No witnesses required

Holographic Will

THEY WERE SAD WHEN THEY
FOUND OUT THEIR WEALTHY GRANDFATHER
HAD DIED IN AN EARTHQUAKE.

THEY WERE DEVASTATED WHEN THEY
DISCOVERED HE HAD WRITTEN HIS
WILL ON AN ETCH A SKETCH.



Holographic Will

- ARS § 14-2503: “**material provisions**” in testator’s handwriting
- “We believe that our legislature, in enacting the present statute, intended to allow printed portions of the will form to be incorporated into the handwritten portion of the holographic will as long as the testamentary **intent** of the testator is clear and the **protection** afforded by requiring the material provisions be in the testator's handwriting is present.”
Matter of Estate of Muder, 1988

Intestacy

ARS §§ 14-2102, 14-2103

- Married, no children
- Married, three children, all from this marriage
- Married, one child from this marriage, two from previous marriage
- Unmarried, three children
- Unmarried, no children
- Can intestacy be an appropriate intentional plan?

Jane

- Widow
- Three adult children
- No will
- Wants to leave everything to her children, equally

Jane's Assets

<u>Property</u>	<u>Value</u>
House	\$300,000
Vacant Land	\$40,000
Mutual Funds (non-qual.)	\$200,000
Savings Account	\$30,000
Checking Account	\$3,000
IRA	\$350,000
Deferred annuity	\$37,000
Life Insurance	\$25,000
Car	<u>\$15,000</u>
Total	\$1,000,000

Real Estate

- Will
- Intestacy
- JTROS
 - With one child (to share)
 - With all three children
- Beneficiary Deed

Mutual Funds

- Will
- Intestacy
- JTROS
 - With one child (to share)
 - With all three children
- Pay On Death

Bank Accounts

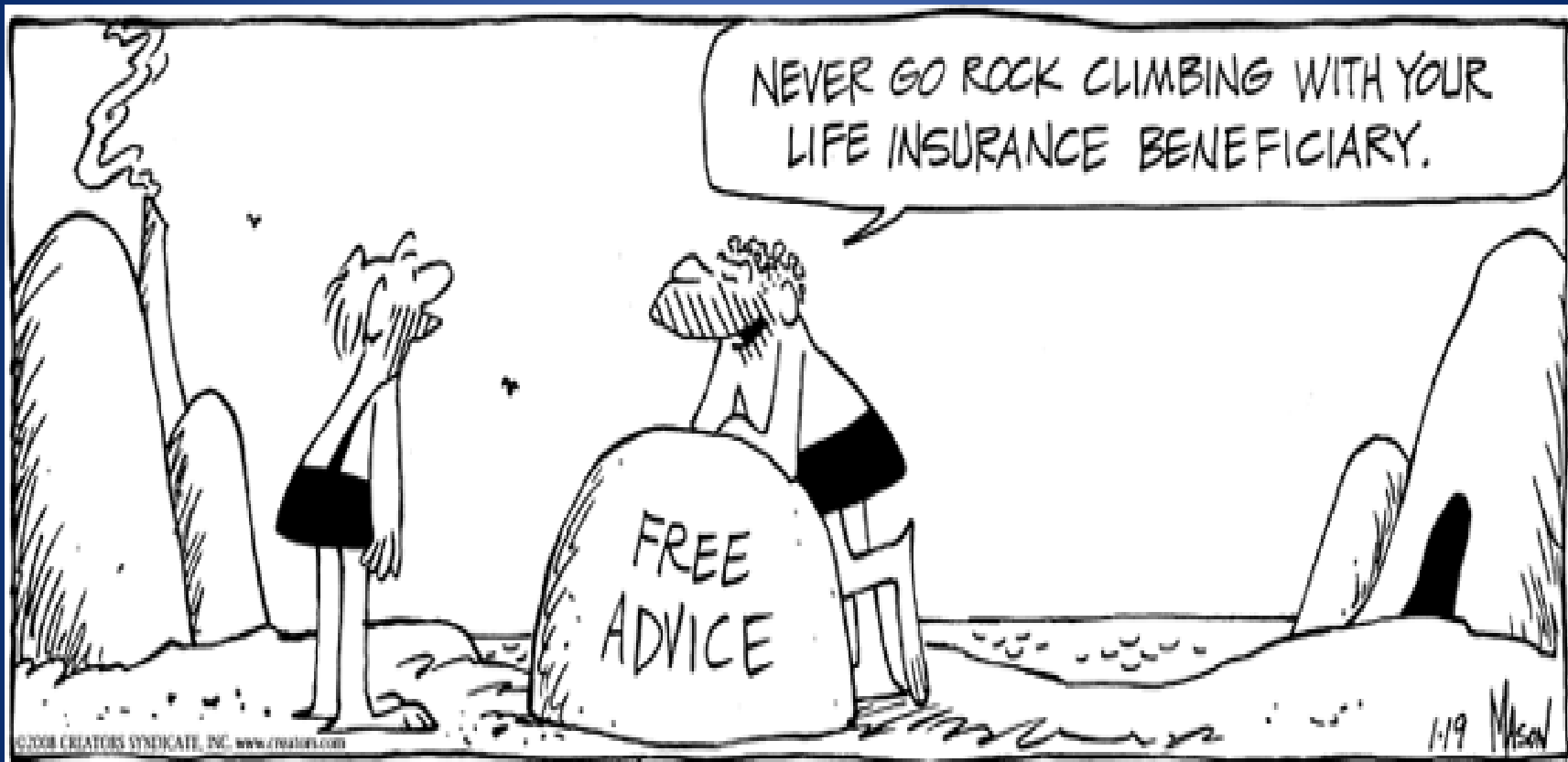
- Will
- Intestacy
- JTROS
 - One child
 - All three children
- Pay On Death
- Small Estate Affidavit

IRA

- No Beneficiary Designation
 - Estate / Intestacy
 - Income tax issues and creditor claims
- Beneficiary Designation
 - Estate
 - One child (to share)
 - All three children
 - Contingent

Life Insurance

- Same Options as IRA
- Contingent Beneficiaries
- No concern about income tax
- Creditor protection? ARS § 20-1131



NEVER GO ROCK CLIMBING WITH YOUR
LIFE INSURANCE BENEFICIARY.

FREE
ADVICE

1/19 Mason

Motor Vehicles

- Will
- Intestacy
- Small Estate Affidavit
- MVD Beneficiary Designation form (land vehicles only – not used for boats or planes)

Affidavit – “Small” Estate

- “Small” =
 - Not more than \$100,000 RE (equity)
 - Not more than \$75,000 personal (non-RE)
- “Estate” means “probate” estate only;
Affidavit can be used even if property passing by beneficiary designation, POD, etc. exceeds the dollar limits.

Limited Liability Companies

- ARS § 29-732.01 says OK to use JTROS or CPROS with LLC
- Is there such a thing as Transfer On Death for an LLC interest? Maybe, see ARS § 14-6101

Creditors

- Non-probate beneficiaries liable for claims by probate creditors
- Some (most) life insurance proceeds exempt
- Retirement plan proceeds exempt
ARS § 33-1126(B)

Will Alternatives v. Wills?

- Fewer formalities (good or bad?)
- Easier or harder to contest?
- What is the objective? Easier or more certain?
- When contest expected, add formalities not required by law?
- **USE BOTH**

Summary – Will Alternatives

- Intestacy
- JTROS/CPROS
- Beneficiary Deed
- Beneficiary Titling (Pay On Death)
- Beneficiary Designation
- Small Estate Affidavits

WE SHOULD TALK ABOUT OUR FINAL ARRANGEMENTS SO THE KIDS AREN'T BURDENED WITH IT.

WHY SHOULD WE CARE? THAT'LL BE THEIR PROBLEM.

RIGHT. WELL, AT LEAST WE TALKED ABOUT IT.

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WIFE/ALDRICH

