



Aging Adults & Estate Planning: How To Start The Conversation

PRESENTED BY

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Irma Nimetz is a partner in the law firm of McCarthy Fingar LLP, where she specializes in litigation. She is a member of McCarthy Fingar LLP's [Appellate Practice](#), [Commercial Litigation](#), [Surrogate's Court Litigation](#) and [Trusts & Estates](#) groups. In Surrogate's Court, Irma represents fiduciaries (executors, trustees and guardians) and actual or prospective beneficiaries of estates and trusts in a variety of contested proceedings, including, but not limited to, [Will & Trust Contests](#); [Property Turnover Proceedings](#); [Fiduciary Removal Proceedings](#); [Contested Accountings](#); [Spousal Rights Proceedings](#); [Kinship Proceedings](#); and Will or Trust Construction Proceedings.

Prior to joining McCarthy Fingar LLP, Irma was an attorney with the New York State Attorney General's Office, where she received the Louis J. Lefkowitz Memorial Award for outstanding performance by an Assistant Attorney General. Irma has experience handling governmental investigations against individuals, businesses and not-for-profit organizations, as well as defending actions and Article 78 proceedings brought against the State of New York and its agencies. Irma also has experience as a New York litigator with the Manhattan offices of two global law firms, Winston & Strawn LLP and Fulbright & Jaworski LLP (now Norton Rose Fulbright US LLP), where she handled all aspects of commercial litigation.

Irma is a frequent lecturer to community and professional groups on topics concerning Surrogate's Court litigation, trusts and estates, ethical issues confronting trusts and estates practitioners, and internet safety.

Irma has been recognized as a [New York Super Lawyer](#) in the areas of Estate & Trust Litigation, Estate Planning & Probate and General Litigation.

Irma graduated *magna cum laude* from Duke University in 1984 and from Cornell Law School in 1987. She is admitted to practice law in the State of New York, State of New Jersey, and the District of Columbia, and in the Southern and Eastern District Courts of New York.

She is a member of the New York State Bar Association (Trusts and Estates and Elder Law and Special Needs Sections) and a Vice-Chair of the Estate Litigation Committee of the New York State Bar Association, a member of the House of Delegates of the New York State Bar Association, a member of the Board of Directors of the White Plains Bar Association, and a member of the Westchester County Bar Association (Executive Committee, Trusts and Estates Section), and the Westchester Women's Bar Association.

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Introduction: Estate Planning





Estate Planning-What Does It Mean?

- What happens to your property when you die?
- Who makes decisions about health care if you become incapacitated?
 - What decisions do you want to make?
 - Whom do you want to make these decisions?
- Do you have a Last Will and Testament? a Trust?
- Do you have a Power of Attorney?
- Do you have life insurance?
- Do you have long-term care insurance?
- Do you have a list of and location of your assets?

Estate Planning Documents

- Last Will & Testament
- Trust Agreements
 - Revocable Trust
 - Irrevocable Trust
- Living Will
- Health Care Proxy
- Power of Attorney



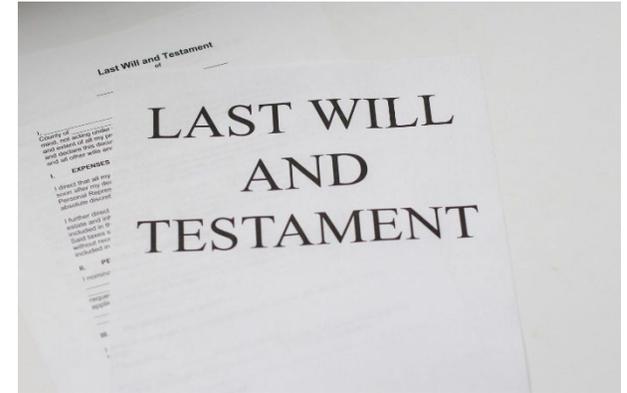


Surrogate's Courts in New York State

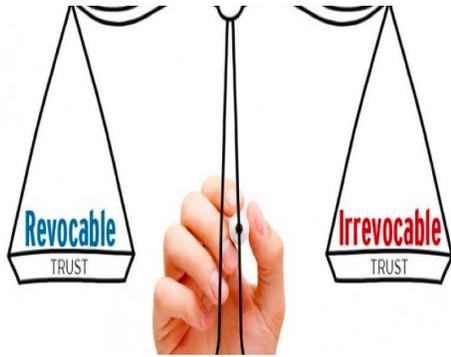
- There is a Surrogate's Court in every one of New York's 62 counties
- Judge is called the Surrogate
 - Two Surrogates in New York County
 - Two Surrogates in Kings County
- Elected to 10-year terms
 - 14-year terms for New York and Kings County Surrogates

Last Will and Testament

- What Is A Will?
- Who Can Make A Will?
- Summary of Formal Requirements



Trusts: Revocable and Irrevocable

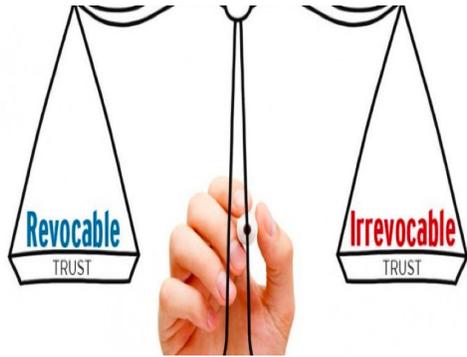


- Revocable Trusts
 - “Lifetime Trusts” or “Living Trusts”
 - In effect while you (Grantor) are alive
 - Can change or revoke
 - Control
 - Grantor can be trustee, beneficiary
 - Can avoid probate
 - Time
 - Expense
 - Public
 - Becomes irrevocable after you die



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Trusts: Revocable and Irrevocable (continued)



- Irrevocable Trusts
 - Grantor cannot be trustee
 - Give up control
 - Protection from creditors
 - Irrevocable Medicaid Asset Protection Trust
 - Special Needs Trust
 - Life Insurance Trust



Living Wills

- Living Wills
 - Unable to make/communicate decisions regarding medical care
 - Irreversible Persistent Vegetative State
 - Permanent Unconsciousness
 - Withhold/Withdraw Treatment
 - Direct treatment to make comfortable
 - Maximum pain relief
 - Organ Donation
 - Release physicians/hospitals from legal liability
 - Witnesses (2)/Addresses



Health Care Proxy

- Health Care Proxy
 - Appoint agent and successor agent
 - Makes health care decisions in accordance with wishes and instructions
 - HIPAA Release
 - List health care decisions - optimal
 - Enter into agreements with caregiver
 - Authorize admission into facility
 - Give consent to, authorize or refuse or withhold or withdraw consent to medical care
 - Authorize health care provider to withhold or withdraw nutrition and hydration
 - Witnesses (2)/Addresses



Powers of Attorney

- Principal appoints Agent(s)
- Powers of Agent
 - All matters
 - Examples of specific transactions
 - Real estate transactions
 - Banking transactions
 - Estate transactions
 - Claims and litigation
 - Tax matters
 - Retirement benefit transactions



Powers of Attorney (continued)

- Gifting Transactions (Optional)
- Modifications (Optional)
 - Digital Assets
 - Name guardian
- Effective during lifetime
- Principal signs before notary public
- 2 Witnesses sign and list address
- Agent signs before notary public
- Power of attorney expires upon death of principal



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Starting The Conversation



When, Where And With Whom To Have The Conversation

- **When?**
 - **NOW!**
- **Where?**
 - **Personal Choice**
- **With Whom?**
 - **Parents**
 - **Partners**
 - **Siblings**
 - **Friends**



Why Do You Need To Start The Conversation?

- Accident
- Sudden Illness or Death
- Memory Loss
- Ability to Pay Bills
- Access Financial Accounts
- Passwords



Conversation Starters

- Books
- Newspaper Articles/Op Eds
 - “My Father Didn’t Want to Live if He Had Dementia. But Then He Had It.” Guest Essay by Sandeep Jauhar, MD, *New York Times*, October 23, 2023
- Movies
- Recent Current Events and/or Events Concerning Friends/Family



What Do You Want To Determine?

- What to Find Out
 - Do they have a Will or Trust?
 - Do they have a Living Will or Health Care Proxy?
 - How do they Pay Bills?
 - Online?
 - Automatic Bill Pay?
 - Mail/Paper Bills
 - Do they have a Power of Attorney?
 - Do they have Long Term Care Insurance?
 - Do they have Life Insurance?
 - Where are their bank/brokerage accounts?
 - What and/or where are their passwords?



Estate Planning – Checklist

- Will?
- Trust?
- Living Will and Health Care Proxy?
- Power of Attorney?
- Life Insurance?
- Long Term Care Insurance?

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