

LEGAL DOCUMENTS AND MEMORY CARE

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**LEGAL AID SERVICES
OF OKLAHOMA, INC.** 
Making Equal Justice for All a Reality

Dementia is Going to Affect Most of us...



Peggy Hoskins
Dec 10, 1934-June 8, 2012

1 in 3 Seniors dies with Alz or another dementia*

11.3% of those 65+ has Alz or Dementia*

Between 2000-2019 Deaths from Alz & Dementia increased 145%*

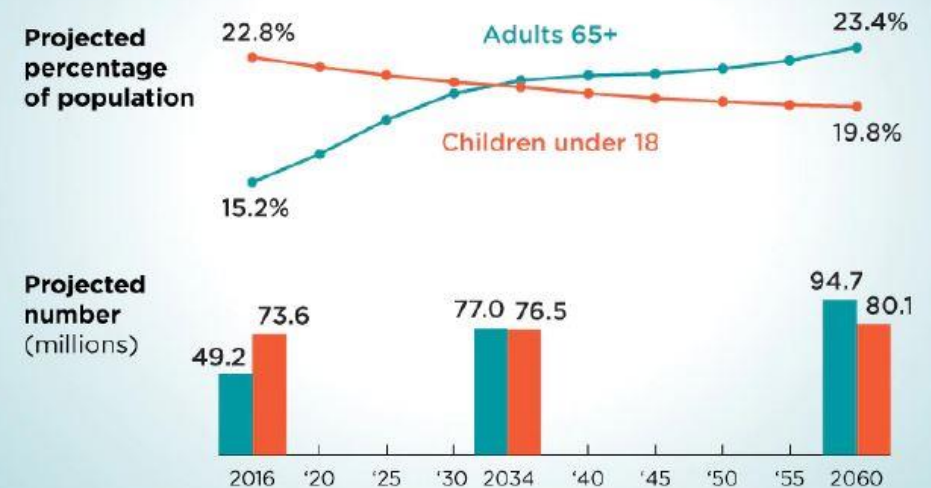
By 2030, 1 in 5 residents will be 65+



An Aging Nation

Projected Number of Children and Older Adults

For the First Time in U.S. History Older Adults Are Projected to Outnumber Children by 2034



Note: 2016 data are estimates not projections.

United States[®]
Census
Bureau

U.S. Department of Commerce
U.S. CENSUS BUREAU
census.gov

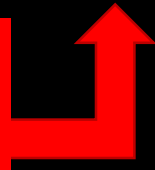
Source: National Population
Projections, 2017
www.census.gov/programs-surveys/popproj.html

*Statistics from alz.org

What Legal Documents would I use?

- Durable Power of Attorney

NEW LAWS
as of
11/1/21



- Advance Directives
- Guardianships when necessary
- Wills and other Estate Planning Tools



Power of Attorney

- Durable vs Non-Durable
 - Durable stays in effect once Principal loses capacity
- Allows appointed Agent to act on behalf of the Principal for various things
- Can be executed easily without an attorney necessary
- Principal must have capacity



Capacity with Dementia?



- Statute Def. – has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance
- Case Law Definitions
 - Scott v. Scott, 131 Okl. 144, 268 P. 245, 247 – “Grantor should have the ability to understand the nature and effect of the act in which he is engaged”
 - Antle v. Hartman, 193 Okl. 524, 145 P.2d 756 – “Fragmentary evidence of isolated instances indicating failing memory was insufficient to overcome evidence that grantor was mentally competent”
- No clear cut yes or no, but just having a diagnosis does not mean no capacity

NEW

Changes to Durable Power of Attorney

- House Bill 2548 went into Law on November 1, 2021
 - Created the Uniform Power of Attorney Act (OK Stat. Title 58 Chapter 29 §3001-§3045)
- New Form Templates for Power of Attorney available at §3041
 - Form for Agent Certifying Facts of Power Attorney at §3042

Most Notable Changes

Eliminates ability to make Healthcare Decisions completely

Witnesses may not be necessary

Can be electronically signed

POA is presumed genuine if signature in front of Notary

Advance Directive for Healthcare

Living Will

- Another name for Advance Directive

Appoints Health Care Proxy

- Someone that can make Healthcare Decisions on your behalf

Organ Donation

- You can specify any special organ donation requests

Life Support

- Allows you to make end of Life Decisions as to artificial food and hydration, etc.

Execution

- Must be signed in front of two witnesses
- No notary required

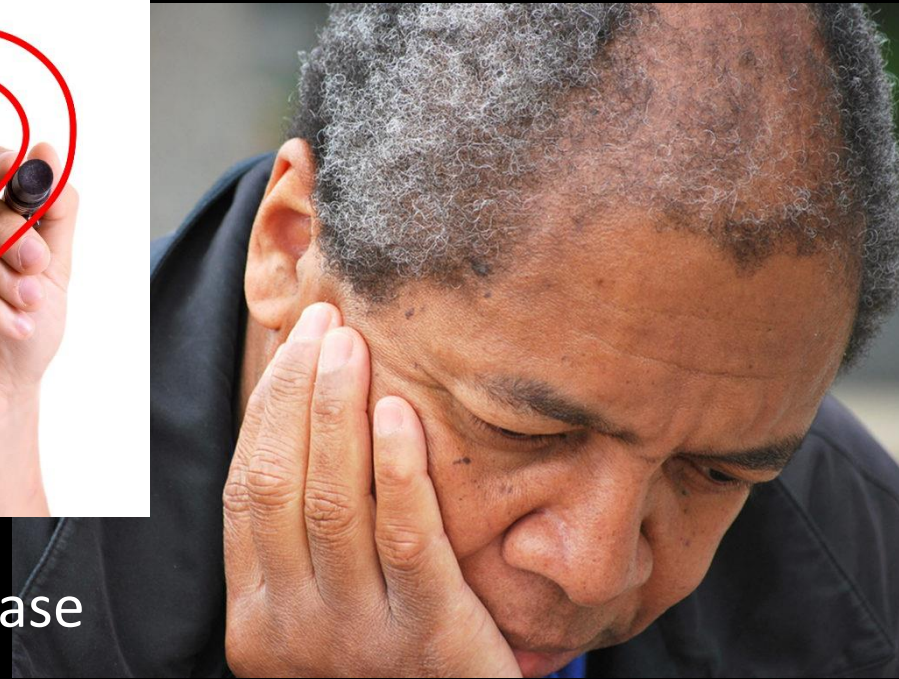


Really Important with Changes to Power of Attorney Law



- Granted by a Court over an adult considered mentally incapacitated as a matter of law
- Guardian can be required to provide a bond depending on the worth of the estate
- Can be reviewed by the Court on a yearly basis to determine if assets and estate are being managed correctly
- Usually Preventable by Planning





- Honest Answer...It depends on the case
- With New Law...Advance Directive needs to be in place
- Must take into consideration all facts and situations to determine what is best
 - Relatives who are likely to handle things
 - Ability to handle assets and property prior to incapacity
 - Each situation will be unique...
- Usually Guardianship is a last resort when nothing else has been planned
- IMPORTANT – you want to have something in place

Trust

Wills

*ESTATE
PLANNING*

*Revocable &
Living Trust*

*Alternatives to
Wills and Trusts*



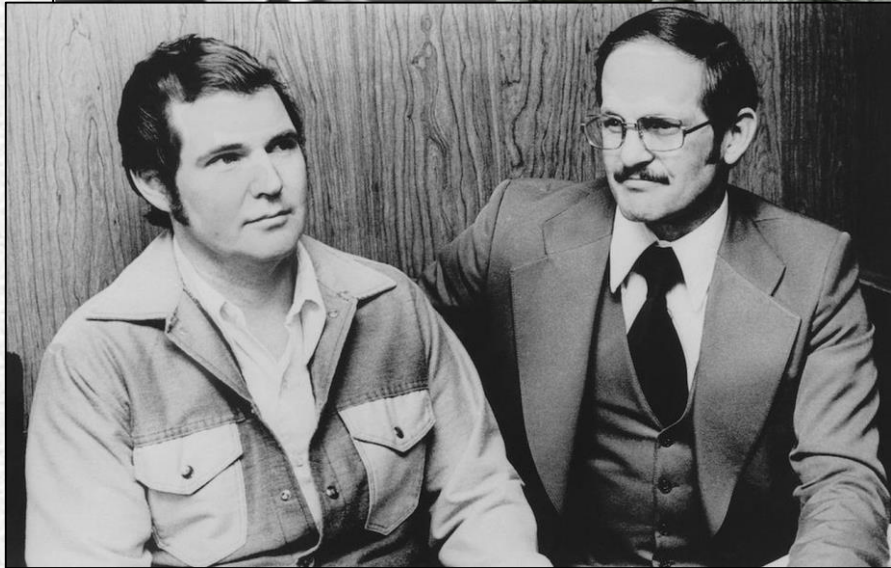
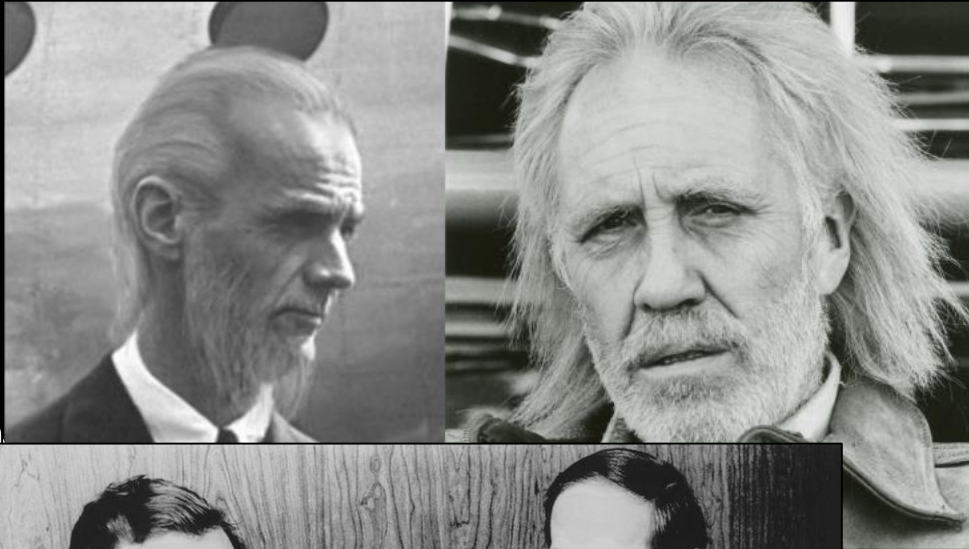
WILLS

- A will is a written instrument by which you provide for the disposition of your property after your death. In Oklahoma, if you are of sound mind and 18 years or older, you may dispose of your property by will.
- How to Create One
 - Using online form is NOT recommended
 - Can be completed by licensed attorney
- Holographic Will
 - OK Law allows handwritten will
 - Does not need to be witnessed or notarized
- Wills can be filed with County Clerk or Court Clerk



Mormon Will

Howard Hughes



← Melvin Dummar

- Howard Hughes, billionaire recluse, died in 1976 apparently leaving no Will
- Search for the Hughes Will intensified and speculation that a Holographic Will existed somewhere. This was confirmed by Hughes' Attorney who said he had asked of holographic Wills validity.
- A Will appeared on the Desk in the Morman Church HQ in Salt Lake City that was deemed to have probably been written by Hughes
- The Will gave \$156 Million to Melvin Dummar, a small gas station owner, who had once given Hughes a ride into Vegas when Hughes' car broke down
- It was later determined that Dummar had forged the Will by looking at The Hoax, a book about the forged autobiography of Howard Hughes
- It took a 7 month trial and millions of the Hughes Estate to prove his handwriting had changed and this was another Hoax



**LIVING
TRUST**

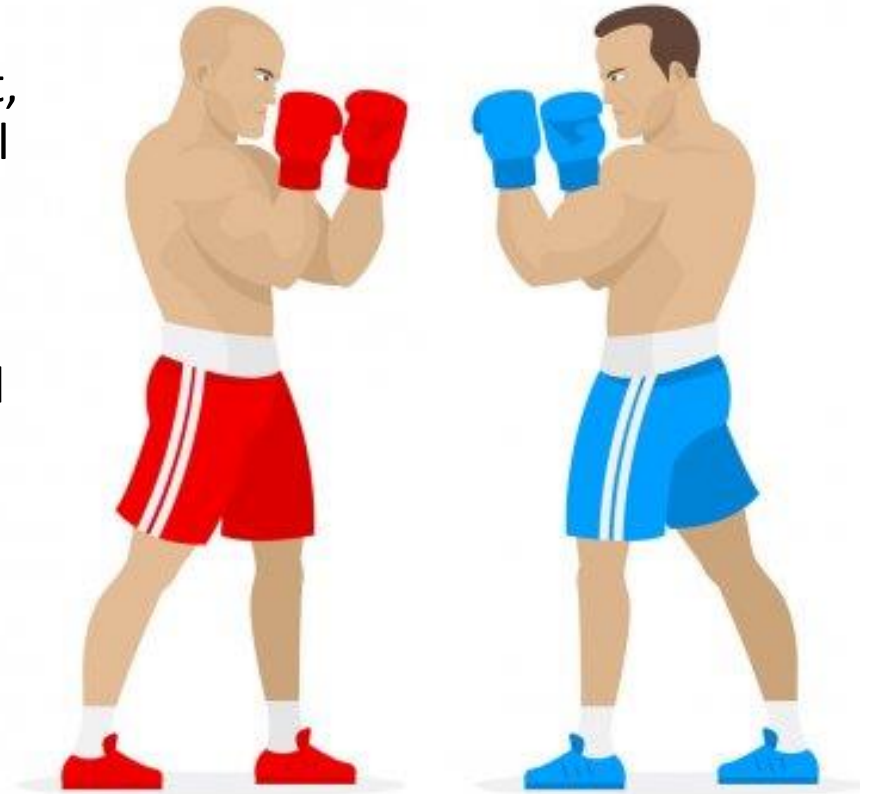
Revocable and Living Trusts

- What is a Revocable or Living Trust
 - A revocable or living trust is a written document providing for the management of your property which becomes effective while you are living.
 - A trust is set up for a trustee to manage your property for your benefit during your lifetime or in the event of your incapacity
- How are they created
 - Using online forms are NOT recommended
 - Contacting a local attorney to set this up is best
 - There is no option to create or write your own trust like you can a Will
- Trusts need to be continually updated and maintained to ensure all of your assets and property are correctly titled and listed

WILL vs. Trust

- Cost less to prepare
- Easier to prepare
- Does not need to be updated as often as a Trust
 - If property is not correctly titled or included in a Trust, it then must be probated and can not be distributed through the Trust

- Your estate does not go to Probate Court
- Trust is a private document, and a list of your assets will not become public record
- You can continue the Trust after your death for the benefit of a spouse or child
 - Especially useful if spouse or child is disabled



Alternatives

Payable on Death Accounts

- Allows you to place a beneficiary on all accounts and CDs

Small Estate Affidavits

- Available for accounts under \$50,000
- DMV Title Distribution Affidavits

Transfer-on-Death Deed

- Originally enacted in 2008
- Allows the bequeathing/giving of your property to someone after you die without probate!
- Form is similar to a Quit Claim Deed and is kept on file at County Clerk
- Can be revoked at any time prior to death
- Allows transfer of property subject to inheritance taxes and any existing liens



KEEP
IT
SIMPLE

**“If you fail to plan,
you are planning to
fail.”**

- Benjamin Franklin



Questions?



Resources:

www.oklaw.org – Legal Aid Information Site

www.okbar.org – Senior Law Resource Center

Legal Aid Services of Oklahoma, Inc.

Application Line 1-888-534-5243

Senior App Line (60+) 1-855-488-6814

Online App: oklegalconnect.org