

# Get Your Ducks in a Row!

Estate & Long-Term Care Planning News  
from Carolina Family Estate Planning

June 2020

## QUESTIONING YOUR QUESTIONS: HOME EDITION

When you don't know what you don't know, asking good questions can be vital to gaining a better understanding of the subject -- and better results.

When we meet with current or prospective clients, they often have a limited understanding of estate planning and what can be accomplished through great planning. This is often reflected in the questions that they ask us.

For example, one of the most frequent questions we are asked by prospective clients is: "How do I avoid probate?"

Perhaps a better question, a question that really gets to the individual's underlying goal might be: "How do I make things as stress-free and easy for my family as possible?"

By the way, in our last newsletter, I shared several examples of how to make things easier for your family by "government-proofing" your plan as much as possible--if you missed it, you can read it here: <http://vip.carolinafep.com/govtproof>.

This month, I want to start with a common concern that we hear:

### Frequently Asked Question: Does my home have to go through probate?

It depends (yes, every lawyer's favorite response!). Real estate is a bit quirky in North Carolina. By default, it is not subject to probate. However, if your estate has debts or taxes that need to be paid, your executor may be required to initiate a special proceeding to pull the home into the probate so that it can be sold in order to pay the debts and taxes that your estate owes. (Don't forget--even if you don't have significant debts currently, most people die with some debts or claims

against their estate. This could be due to hospital bills from a final illness, taxes, and partial month balances for utilities, credit card bills and similar.)

Even if it's not necessary to sell your home to settle the debts of your estate, the home remains subject to estate claims for two years after your death. This means that if your family wants or needs to sell the home, there are still some steps and filings that will be required, though it may not be a "full" probate. As a result of this process, it may take a few months before the home has "clear title" to be sold.

### "Should Ask" Question: What's the easiest or best way to leave my home to my children?

We've seen many estates in which focusing on keeping the home out of probate has actually created more problems for the children instead of less. Here's why:

If the home isn't subject to probate, then from your date of death forward, the assets of your estate cannot be used to pay any expenses relating to your home. This means that your children or heirs must immediately start paying all expenses relating to the maintenance of your home--mortgage, utilities, property taxes, insurance, etc. We've seen many instances where this creates a financial strain for the heirs and is more likely to result in a "fire sale" of the property.

Furthermore, we've often seen this lead to very inequitable results among the children or heirs. Consider the situation we encountered with one family (names have been changed for confidentiality purposes):

Larry and Alma established "sweetheart" wills leaving everything to each other and then to their two children, Marianne and Adam. Marianne lives locally and her brother lives on the west coast. Marianne has always been the "responsible one" in the family. She took care of both of her parents in their later years. She went with them to their medical appointments. She helped out around the house. As they got older, she managed their finances and paid their bills. When Alma's health declined, Marianne helped move her to a nursing home and visited her daily. Alma passed away in the nursing home and a few years later, Larry died.

Larry and Alma's home did not have to go through probate, but before it could be sold, there were some required steps and filings to ensure "clear title" to the property. Further, both siblings had to agree to which realtor to hire to sell the property, the terms of the sale, etc. {Continued on page 2.}

### Carolina Family Estate Planning

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The process was slowed because all documents had to be signed by both siblings.

In the interim, while waiting for the home to sell, there were numerous expenses relating to the home that had to be paid--the mortgage, utilities, property taxes, and so forth. Adam was not in a position financially to be able to help with these expenses, so Marianne paid them.

When it was time for the closing on the sale of the home, Marianne gave the real estate attorney an accounting of all of the expenses that she had paid to maintain the home between the time of Larry's death and the closing. "I'm sorry, Marianne. I cannot factor those expenses into the closing. The Will says that the property goes to you and your brother equally, so I must divide the sale proceeds equally. You'll have to work this out with your brother," said the closing attorney.

By now you may be able to guess where this is heading: Adam refused to reimburse Marianne for his half of the expenses. So Marianne ended up footing thousands of dollars of expenses out of her own pocket. Frankly, the rift between them became so deep that it continues to plague their relationship.

Now, if you're sitting there thinking to yourself: not my children--they would never do that, I implore you not to take that gamble. Unfortunately, we see these types of situations play out over and over again in our office.

**So, you ask, what's the better solution if your actual goal isn't about avoiding probate but is truly about making things easy and equitable for your children?**

Consider using a trust. If you think that most estate planners are biased towards preferring trusts to a Will, you're right! And there's good reason for it. (Again, see last month's article on "government-proofing" your plan for additional examples: <http://vip.carolinafep.com/govtproof>.)

While our office helps clients with both will-based and trust-based plans, we believe that trusts are a far more powerful tool. Here's just one example of why:

Let's reimagine what things could have looked like for Marianne if her parents had used a trust instead of a Will. If the home was titled to the trust, it would not be subject to probate, although Marianne, as Trustee, still would have had to go through a few steps to ensure clear title to the home before selling it.

Assuming that Larry and Alma's other assets, such as their bank accounts, were also titled to the trust, Marianne would have been able to use their bank accounts to pay the expenses relating to the maintenance of the home rather than having to pay them out of her own pocket. As Trustee, Marianne would have been able to handle the hiring of the realtor and the sale of the property without a bogged-down long distance process with her brother.

Importantly, when the home finally sold, the proceeds of the sale would have been paid to the trust. Assuming all debts and claims had been resolved, the net proceeds would have been split equally between Marianne and Adam. All of this would have made things so much less stressful for Marianne and would have ensured that the home was split equitably without Marianne having to pay thousands of dollars in expenses out of her own pocket and damaging her relationship with her only sibling in the process.

If you'd like to learn more about estate planning tools to protect your future health and well-being and make things easier for your loved ones, consider registering for one of our upcoming seminars (see page 3 for more information) or give us a call at 919-443-3035 to discuss.

*Jackie Bedard is the founder and senior attorney of Carolina Family Estate Planning. When she's not washing her hands and disinfecting surfaces, she's loves reading biographies and playing board games to win against her husband Dan.*





## Coronavirus Community Care



Please keep in mind that as schools close, there are a number of children who have lost two meals a day who depend on those meals. Please consider increasing or beginning donations to local food pantries.

Check in on your neighbors, especially if they are elderly, and make sure they have food, medications, and supplies.

Small business and restaurants are already feeling the impact and if the trend continues, many won't be able to support their families. When possible, shop and eat local. Order takeout or stop by your favorite place and buy a gift certificate for future use when things settle down.

Thank you

### For introducing your Friends and Family to Carolina Family Estate Planning!

We're devoted to delivering first-class service to our clients. As a result, our valued clients, partners, and friends refer their friends, family, and associates to us.

**Collins Law Firm**

Ashley Crane, First Command Financial Services

Mary Duffman, Merrill Lynch Wealth Management

Eirk Kuthe & Andrea Gocke Grant Haase

Jim & Janet Hanley

Elizabeth Stephenson, New Direction Family Law

**SAS**

Linda Ward, Ward Family Law Group

Robert Feisee, InSight Law

Justin Brellenthin

Josh Self and Mike Perkins, PLC Wealth Management

Dwight Thompson

# Nala's Nook

Nalsworth Dogglethorp, III, Esq. here (but you can call me 'Nala'). I'm catching up on my reading list and spending some time outside while reminding my humans that we're all gonna be okay.



## Less booked up?

*Social distancing got you trapped inside? Here are a few pop culture recommendations from our team. Predictably, we've stuck to an estate planning theme...*

### Sycamore Row *John Grisham*

**What Would the Rockefellers Do?  
How the Wealthy Get and Stay  
That Way, and How You Can Too**  
*Michael G. Isom & Garrett B. Gunderson*

**When Breath  
Becomes Air**  
*Paul Kalanithi*

**The End of Alzheimer's**  
*Dale Bredesen*

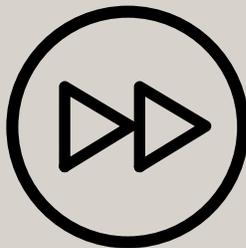
**Middlemarch**  
*George Eliot*

**Life Will Be the Death  
of Me:...and You Too!**  
*Chelsea Handler*

**Man's Search  
for Meaning**  
*Viktor E. Frankl*

**Being Mortal: Medicine  
and What Matters in the  
End**  
*Atul Gawande*

**Prefer  
something  
watch-able?  
Try these!**



**The Good Place**  
*(Netflix & Hulu)*

**Succession** *(HBO)*

**Forever**  
*(Amazon Prime)*

**Lemony Snicket's A  
Series of Unfortunate  
Events** *(Netflix)*

**Knives Out**  
*(Rent on Amazon)*

When it comes to protecting everything you've worked a lifetime to build  
**WOULDN'T YOU RATHER GET IT RIGHT?**

Carolina Family Estate Planning Invites You to Attend Our Free Seminar

## **11 Threats to You, Your Family, and Your Assets**

AT THIS SEMINAR, HERE'S SOME OF WHAT YOU WILL DISCOVER:

- How to avoid the common mistakes Baby Boomers make when planning for the second half of life.
- How to avoid having your life savings or retirement plans wiped out by the cost of care as you get older.
- Uncover the secret sources of paying for long-term care costs that may lie hidden in your retirement plan.
- Important differences between Estate Planning and Long-Term Care Planning and how they coordinate.
- How to care for yourself and your spouse and how to maximize the assets you leave to your children...plus how to protect their inheritance from divorce, less-than-trustworthy spouses, creditors, and other wealth wasters.

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Register at: [seminars.carolinafep.com](http://seminars.carolinafep.com)

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## What's New at Carolina Family Estate Planning?

- April 2nd was Jennifer Mercer's two year anniversary as Probate and Estate Administration Paralegal extraordinaire! Happy Anniversary, Jennifer!
- May 1st was Dan Bedard's four year anniversary as Executive Director. Way to go, Dan!
- Our legal clerk, Abbey Hudson just finished her second year of law school and will be spending more time with us over the summer. Congratulations on finishing exams, Abbey!
- CFEP (once again!) won Cary Magazine's Best Attorney category via online voting-- a huge thank you to everyone that voted. As our way of saying "Thank you!" and paying it forward, CFEP made a charitable donation to Meals on Wheels of Wake County. (P.S., if you're in a position to help, Meals on Wheels is greatly in need of drivers and volunteers due to the pandemic.)

