

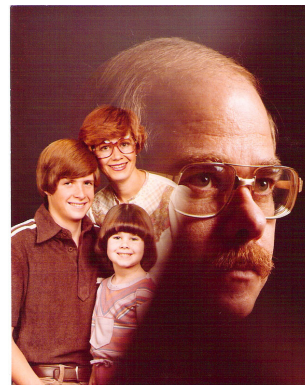
(Avoidable) Estate Planning/Probate Issues: A Case Study

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Bill, Mike and Mom... and that pesky family in Alabama

- Act 1:
 - Mike and Bill come to meet with my to discuss their Estate Plan.
 - They have been partners for a 20 years, never married.
 - Bill purchases 9 rental properties, over time, throughout Pinellas County.
 - Because Bill has always cared for Mom, on 3 of the properties Bill Mom listed on as a co-owner, so she would have something if he passed away.
 - Mom died in 1988.
 - Mom had a one page Will done Colorado in 1977 that left $\frac{2}{3}$ to Bill and $\frac{1}{3}$ to Bill's estranged sister in Alabama.



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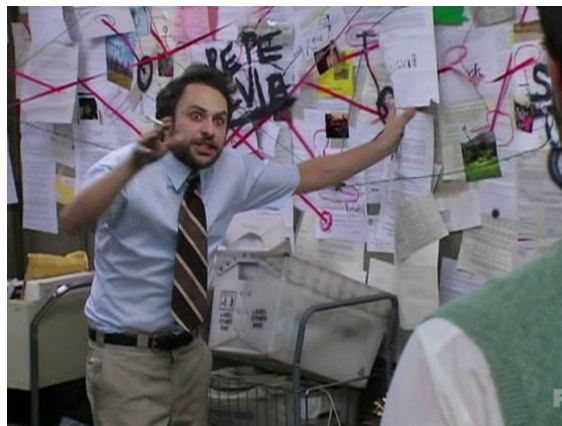
Bill, Mike and Mom... and that pesky family in Alabama

- Act 1 continued...:
 - Bill wants to clear title to his rental properties.
 - 3 of the rental properties are titled "Bill and Mom". There is no survivorship language.
 - Florida Law states: In absence of evidence to the contrary, co-tenant's each own an undivided one-half interest in the property. If one of the co-tenant's dies, their share goes to their Estate.
 - Mom died owning an undivided $\frac{1}{2}$ interest in 3 of Bill's properties. Her Estate (and her Will) now controls how the $\frac{1}{2}$ interest in those properties Will be owned.
 - Because of the language of Mom's Will, Bill will own $\frac{5}{6}$ of each of the 3 properties and his estranged sister will own $\frac{1}{6}$ of each of the 3 properties.

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Bill, Mike and Mom... and that pesky family in Alabama

- Actual photo of Kole as he tries to make heads or tails of this:



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Bill, Mike and Mom... and that pesky family in Alabama

- Act 1 continued...:

- After a heartwarming reconciliation with his sister, she agrees that Bill paid of the properties, maintained the properties, and it was never his intention that if he survived Mom his sister would get 1/3 of Mom's share... Sister agrees to sign off on whatever is needed to make sure her share of properties goes to Bill.
- Sister dies before Mom's Estate can be opened and property can be transferred to Bill. Sister's Will leaves everything to her family.



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Bill, Mike and Mom... and that pesky family in Alabama

- Act 2:

- To no one's surprise, Sister's family did not share the same opinion on Mom's share of the property.
- Bill and Mike get married.
- Negotiations begin with Sister's family as the get her Estate opened in Alabama.
- Bill dies. Has single page Will leaving everything to Mike.



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Bill, Mike and Mom... and that pesky family in Alabama

- What happens next...
 - Bill's Estate is opened with Mike as Personal Representative.
 - Mom's Estate is opened with Mike as Personal Representative.
 - Sister's Estate is opened in Alabama with her Son as Personal Representative.
 - Ancillary Estate for sister is opened in Pinellas County, because the real property is located in Pinellas County.
 - Negotiations/Litigation begins.

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Bill, Mike and Mom... and that pesky family in Alabama

- Issues and How to Avoid them.
 - Titling of the property.
 - Tenants in Common vs. Joint Tenants with Rights of Survivorship.
 - F.S. § 689.15
 - Use of the Estate Plan.
 - Mom's Estate
 - The will from the 1970's.
 - Proof of Will
 - F.S. § 733.201
 - Negotiations with the Sister
 - Or her pesky family in Alabama
 - Bill's Estate
 - What if he had no Will? What if they did not get married?

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Bill, Mike and Mom... and that pesky family in Alabama

- Mike settles with Sister's family. They receive a chunk of money as a buy of the properties.
- Mike is now the sole owner of the properties.
- Mike's Estate Plan is updated and in place and will insure the proper distribution of the properties upon his death.
- Kole survives the ordeal with out a (Bad) drinking problem.



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The Family Home

- Mom purchased family home in St. Petersburg in 1967. (Dad passed away prior to purchase of the home.)
- Mom had 4 children. Child 1 dies in 1985. Child had no will.
- Mom dies in 2004. Mom had no will.
- Child 2 dies in 2019. Child 2 had no will.
- Child 3 dies in 2020. Child 3 had no will.
- Child 4 calls my office to get title cleared to home.
- Nothing has been done, legally, since mom passed away. Child 3 lived in the home from the time of mom's death until his death in 2020.



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The Family Home

- Child 1 was survived by one child, grandkid A.
- Child 2 was survived by 4 children: grandkid B, C, D, E.
- Child 3 was not married and had no children when he died.
- Child 4 still alive. Has 2 children: grandkid F, G.
- So who owns the home???



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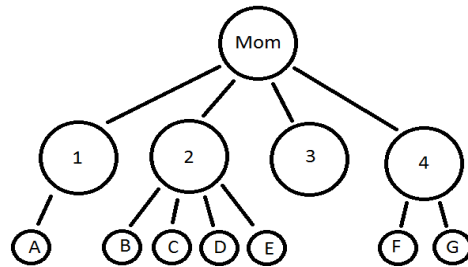
The Family Home

- The Law: F.S. § 732:
 - Surviving Spouse: If no descendant of the decedent, the entire intestate estate. If survived by descendant it depends on whether the descendant is also lineal descendant of surviving spouse. THEN:
 - To the descendants of the decedent. THEN:
 - To the decedent's father and mother, equally, or to the survivor. THEN:
 - To the decedent's brothers and sisters..... and the descendants of deceased brothers and sisters.



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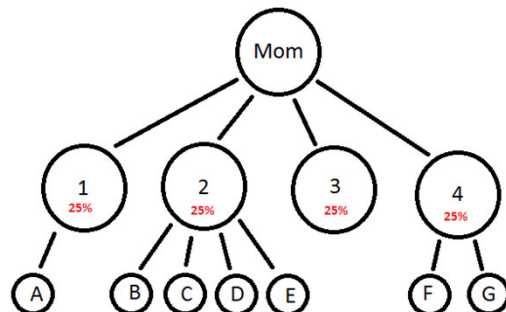
The Family Home



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The Family Home

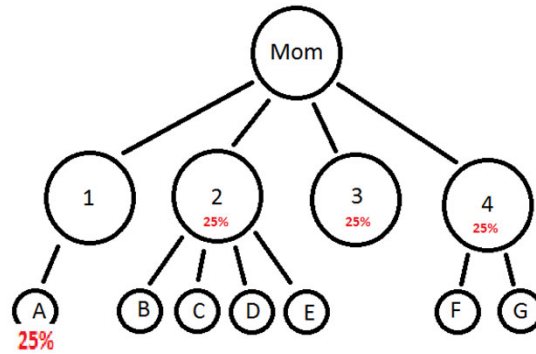
- Mom dies with 4 children and no spouse, so 4 children split evenly.



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The Family Home

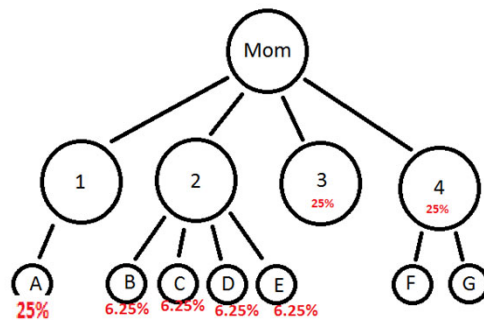
- Child 1 predeceased, therefore his share would go to grandkid 1 without need for Estate of child 1.



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The Family Home

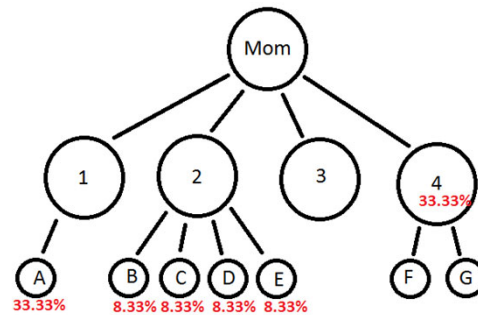
- Child 2 survived Mom. Therefore, Child 2's share will pass through their Estate. Child 2 had no will, no spouse and was survived by 4 children.



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The Family Home

- Child 3 survived Mom. Therefore, Child 3's share will pass through their Estate. Child 3 had no will, no spouse and no children.



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The Family Home

- Issues and how to Avoid them.
 - At least 3 Estate will have be opened to properly clear title to this property.
 - Had Mom's Estate been probated in 2004, there would not have to been multiple Estates opened.
 - Summary Administration vs. Formal.
 - Value of the property may not justify the cost.
 - Proper Estate Planning.
 - Trust vs. Will.
 - Grandkid E is on SSI.
 - Special Needs Trust? Pooled Trust?
 - What about creditors of Mom or Children?
 - Homestead. For who?

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The Family Home

- RPPTL Section of the Florida Bar “No Place Like Home” Program.
 - Joint cooperative project between RPPTL and Legal Aid organizations.
 - Will provide legal resources to perfect legal title to residential real property at limited or no cost to Florida residents whose imperfect title undermines their continued occupancy and ownership of, and rights and benefits to, their homes.



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Aunt Gladys and her Personal Property

- Aunt Gladys was married with no children. Her and her husband moved to Florida in early 2000's from New York.
- In 2005, Aunt Gladys and her husband each executed Wills.
 - Her will left everything to him then to her brother and her husband's sister, in equal shares, per stirpes.
 - Personal Property provision, however, said the following: “All Personal Property to my husband, and if he does not survive me, then to Brother and Sister-in-law, in equal shares, and if none of these beneficiaries survive me, this devise shall lapse and pass as part of my residual Estate.
- Husband passed away in 2008.
- When husband passed away, he owned one half of a property in the Bronx, NY. Husband's share of Bronx property passed to Gladys.
- Gladys brother passed away in 2012, leaving 3 daughters... the nieces.

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Aunt Gladys and her Personal Property

- Gladys never really like sister in law. Did not want sister in law to inherit anything from her Estate.
- Nieces visited aunt Gladys frequently and had a very loving relationship.
- Gladys calls my office in 2018 to have me do a new Power of Attorney. At that meeting, we discuss her Will and the fact that her sister-in-law would inherit if something happened without her changing her Will.
- Gladys was pretty sure she wanted everything to go to her nieces but wanted to think on it.

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Aunt Gladys and her Personal Property

- The next I hear from Gladys, she is in the ICU. I visit her at the hospital and we discuss the changes she wants to make to her Will. She wants to leave everything to nieces.
- I make changes and go to the hospital the next day for her to sign. By the time I get there, she is intubated and unable to sign the Will.
- Gladys passes away without ever signing a new Will.
- Nieces and Sister-in-law do not get along.

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Aunt Gladys and her Personal Property

- Issues and how to avoid them.
 - The unsigned Will.
 - F.S. § 732.502. Execution Requirements.
 - F.S. § 117.05. Notary Statute.
 - Capacity to make a Will.
 - F.S. § 732.501.
 - Testamentary Capacity: "Ability to mentally understand in a general way (1) the nature and extent of the property to be disposed of, (2) the testator's relation to those would naturally claim a substantial benefit from her will, and (3) a general understanding of the practical effect of the will as executed."
 - Residue clause.
 - New York Property. Tenancy issue.
 - Personal Property clause.
 - Anti-lapse Statute. F.S. § 732.603.
 - Moral of the story.....when you want to make changes, make them.



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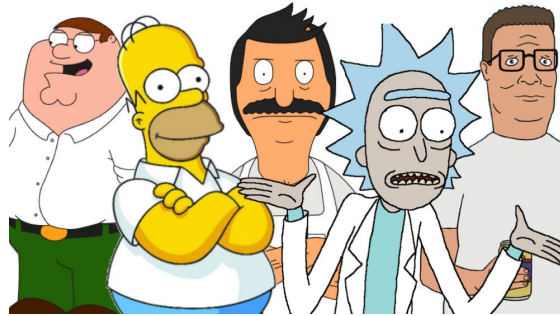
Dad as a Creditor

- Dad took care of disabled son for all of son's life.
- Son lived with dad. Was on SSI/SSDI and Medicaid for most his life.
- Dad would put money into Son's bank account.
- Son passed away with \$10,000 in his bank account. Most of the money was from Dad. Account was solely in son's name when he passed away.
- Dad paid for son's funeral for about \$17,000.
- Dad calls my office and wants to know how he can get the \$10,000 in son's account.

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Dad as Creditor

- Dad opens Estate.
- Dad files claim for funeral expenses he paid.
- AHCA files claim.



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Dad as a Creditor

- Issues and how to avoid them.
 - Order of payment statute. F.S. § 733.707.
 - Money to an individual on benefits.
 - Trust.
 - Make payments directly to third party.
 - Claims of creditors barred after two years. F.S. § 733.710.
 - Who can open an Estate. F.S. § 733.202.
 - Interested person. F.S. § 731.201(23).

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My sons in France

- Mom calls my office to have me do Estate Planning.
- She is recently widowed. Her only children are two sons that live in France.
- We discuss her assets and what would be the best way to have them distributed when she passes away. We went back and forth about what to do.
- Among other things, we did a Lady Bird Deed for her home that left the remainder interest to her two sons.
- COVID hits and travel between countries is locked down.
- Mom passes away.
- The two sons want to sell the home but are not able to get to the USA to prepare the home for sale or to execute closing documents.

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My sons in France

- Issues:
 - Getting the closing documents signed in France.
 - US Embassy or Consulate.
 - Online Notarization. F.S. § 117.265.
 - Proper Identification. F.S. § 117.05.
 - Trust.
 - Foreign trust beneficiary. Potential tax issues.
 - Directive.
 - Beneficiary on the deed is someone who is US citizen but signs directive or agreement to give proceeds to foreign beneficiary.

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Out of State Witness

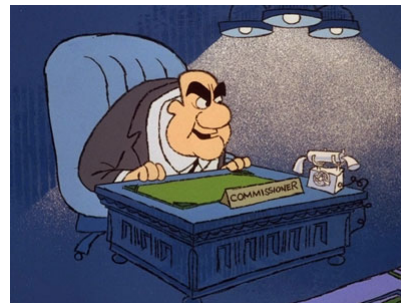
- Husband Dies in Florida.
- Wife is alive in nursing home with very diminished capacity.
- Will is not self proving. No witnesses can be found.
- Will names wife as Personal Representative.
- All other family lives in Kentucky.



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Out of State Witness

- Issues:
 - Proof of Will.
 - F.S. § 733.201.
 - Fla. Prob. R. 5.230.
 - Appointment of a Commissioner.



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Thank you!

