

Estate Planning and Online Forms:

What's What, and What to Watch Out For

A teacher asks her class the following question: A woman dies with a \$10 million estate. She leaves one tenth to her housecleaner, one quarter to her brother, one third to her son, and the rest to charity. What does everyone get?

After a short silence, one of the kids raises her hand.

The teacher asks, "Yes, Jessie?"

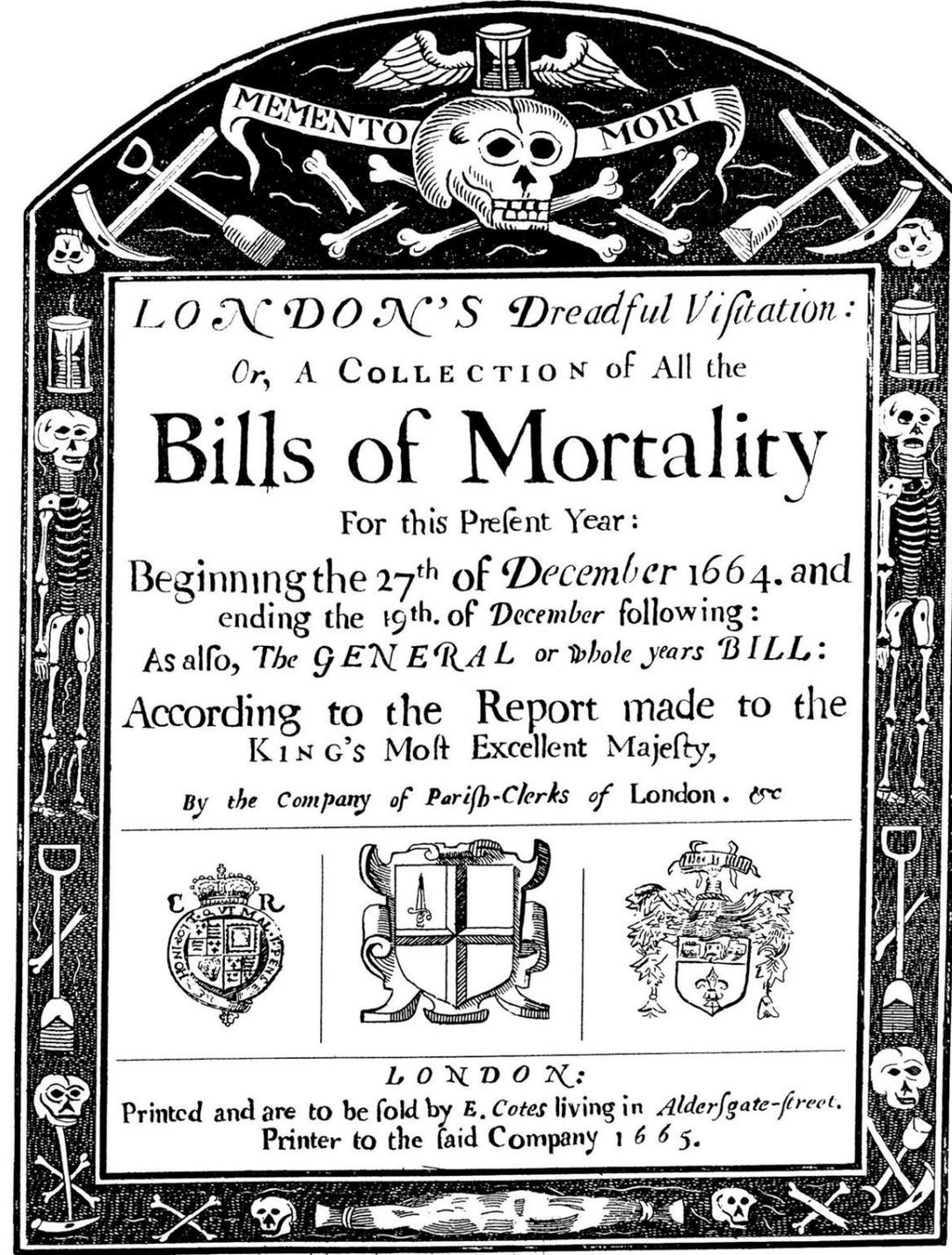
"A lawyer?"

DISCLAIMER

This presentation is to provide information for general purposes only, and does not cover all applicable law. It does not constitute legal advice.

Also, I cover a few things to consider when deciding to use an online form. What I discuss is not exhaustive - forms have their own strengths and weaknesses, and may or may not suit your needs.

This can be a hard topic to talk about. But death is a good thing to plan for, even if it is unpleasant to think about your own passing.



Should I do my estate planning documents with online forms?

Cheap, quick, may be better than nothing.

Generally, the more complex your situation, the less appropriate generic, online forms will be.

We will discuss:

Commonly used documents

What if I don't have one?

What to worry about.

TYPICAL DOCUMENTS

Will

Tangible Personal Property List

Durable Power of Attorney

Health Care Durable Power of Attorney

Health Care Directive

OTHER DOCUMENTS

Trust

Community Property Agreement

Disposition of Remains

Mental Health Care Durable Power of Attorney

Mental Health Care Directive

POLST

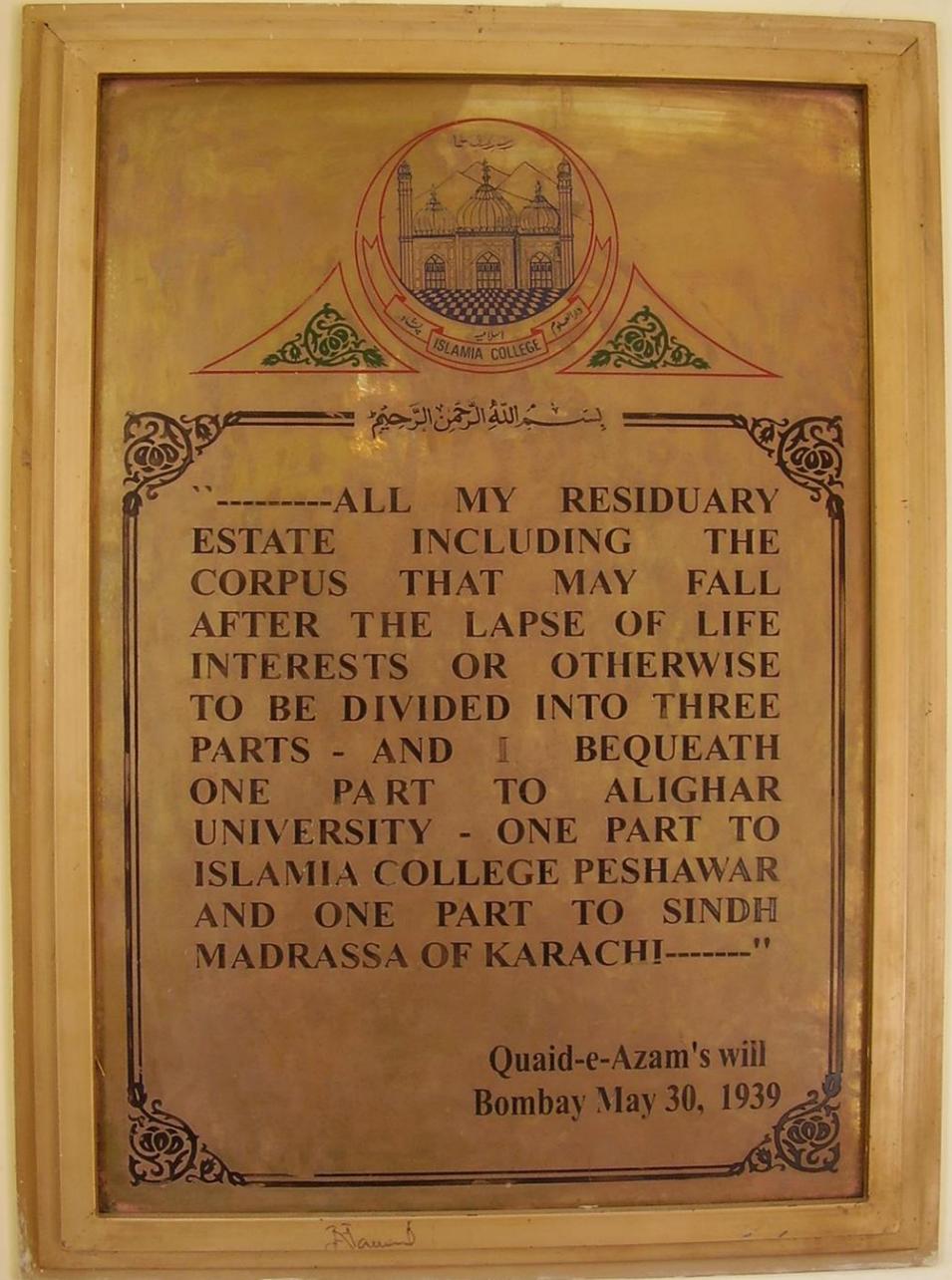
Digital Property Directive

Small Estate Affidavit

WILLS

11.12 RCW

- distribute property
- says who will care for your children
- may contain a trust to deal with your particular needs

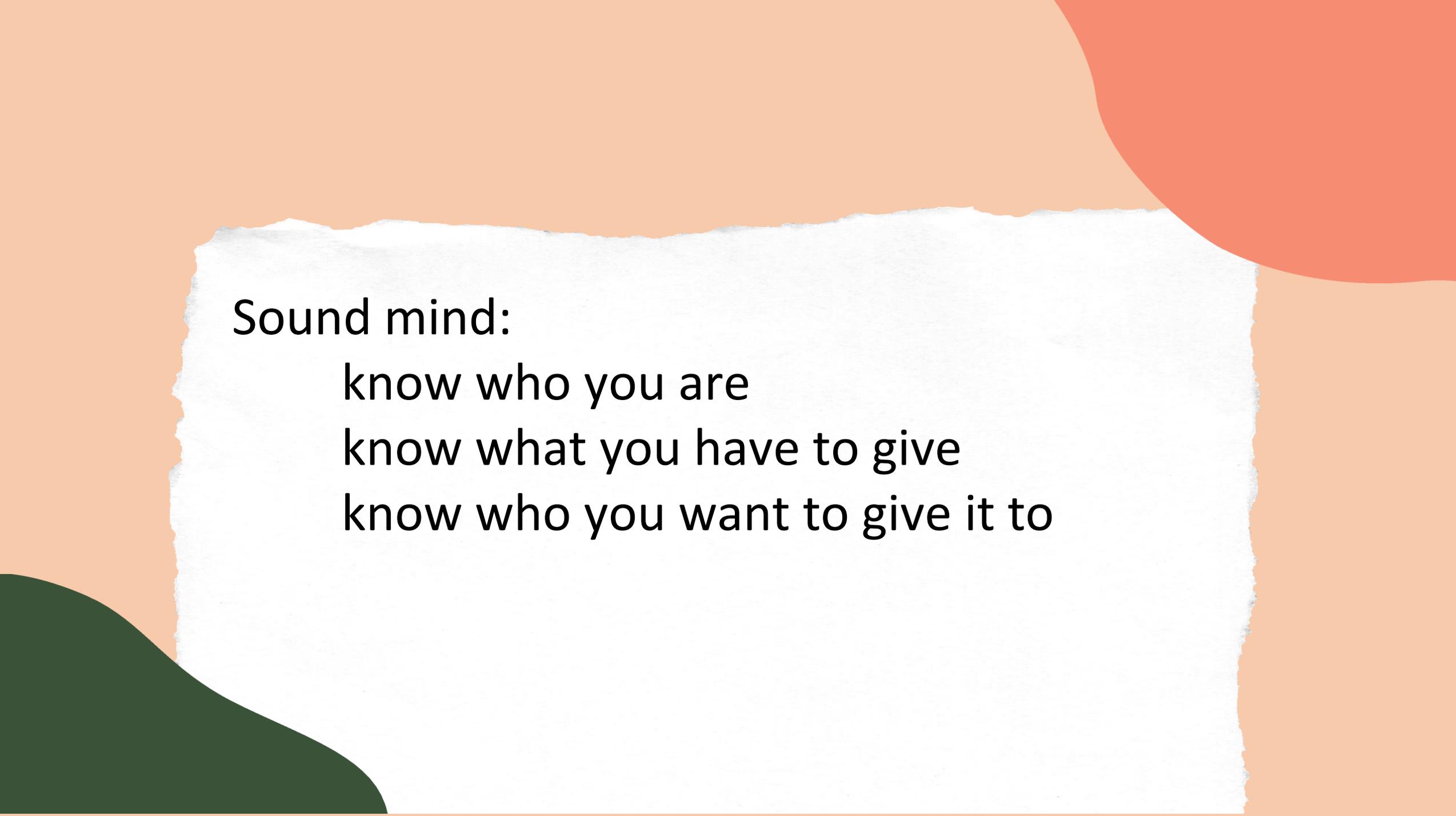


REQUIREMENTS

RCW 11.12.010

You must be 18 years old or older.

You must be of sound mind.



Sound mind:

know who you are

know what you have to give

know who you want to give it to

REQUIREMENTS

RCW 11.12.020

in writing
signed by the testator
signed by 2 witnesses OR
accompanied by an affidavit signed by 2
witnesses

No exceptions! These formalities must be followed.

What if I don't have one?

Washington State has an
estate plan for you!

Intestacy

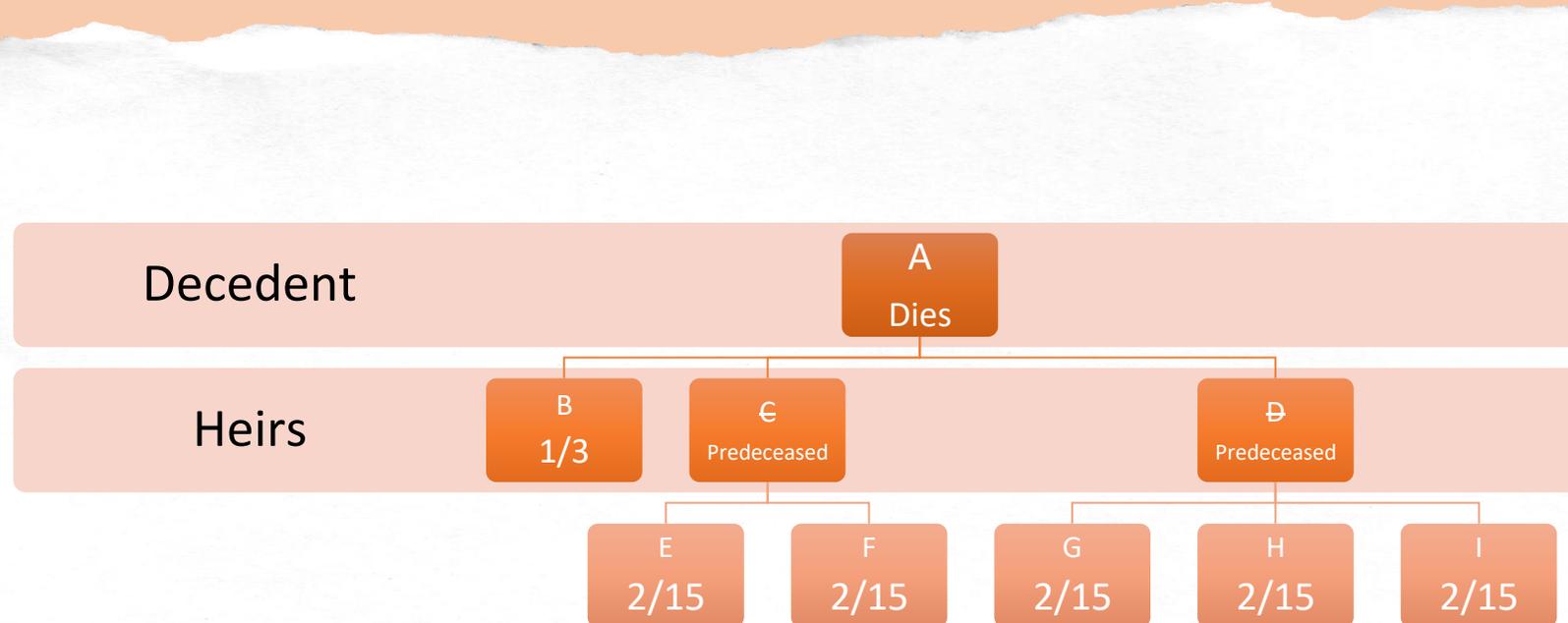
RCW 11.04

Who gets your assets?

Surviving Spouse is taken care of first.

Then kids, parents, siblings, kids of siblings, grandparents, descendants of grandparents. . . eventually escheats to the state.

Your heirs take "By Representation."



What to worry about with intestacy:

May result in an outcome you wouldn't have been happy with.

What to worry about with a will:

- Careful who you name as the personal representative
 - Don't know what you don't know
 - An online form may not do what you want it to do
 - Check the company's privacy policy
 - Errors can be costly
-

Tangible Personal Property List

RCW 11.12.260

Distributes items to friends
and family, or whoever

Non fungible items only!!!

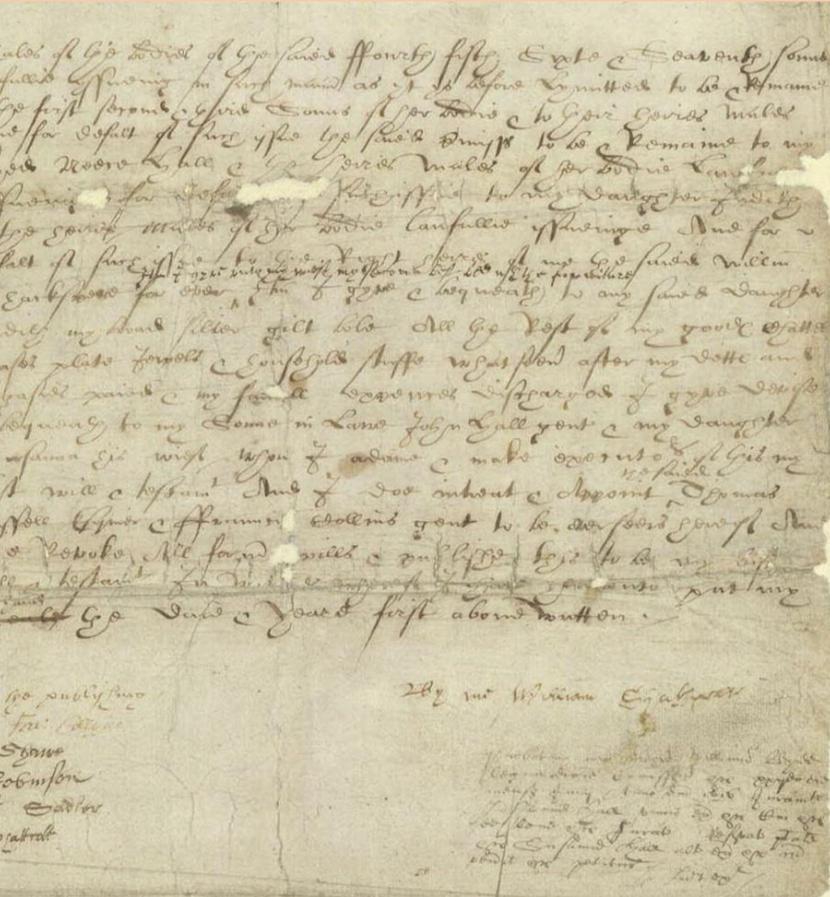
Nice because you can change
it whenever you want.



REQUIREMENTS

- Must be referenced in your will
- Must be in your own handwriting or signed by you
- Must describe the property and recipient

What if I don't have one?

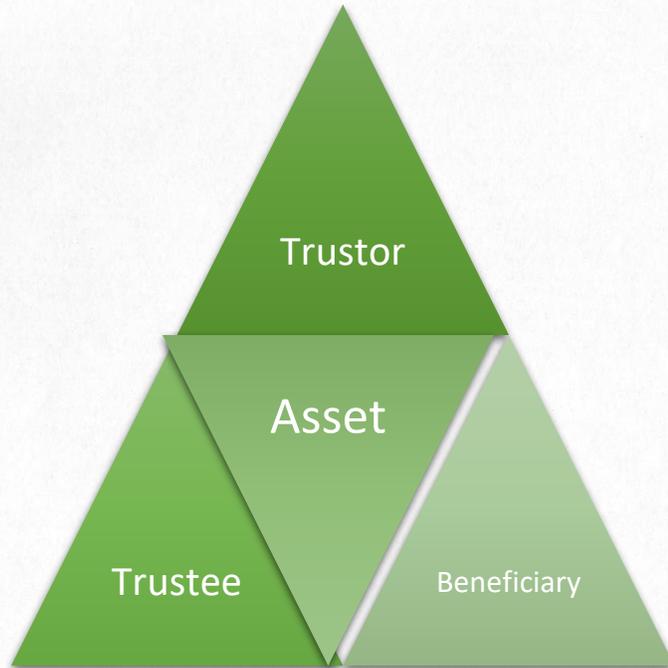


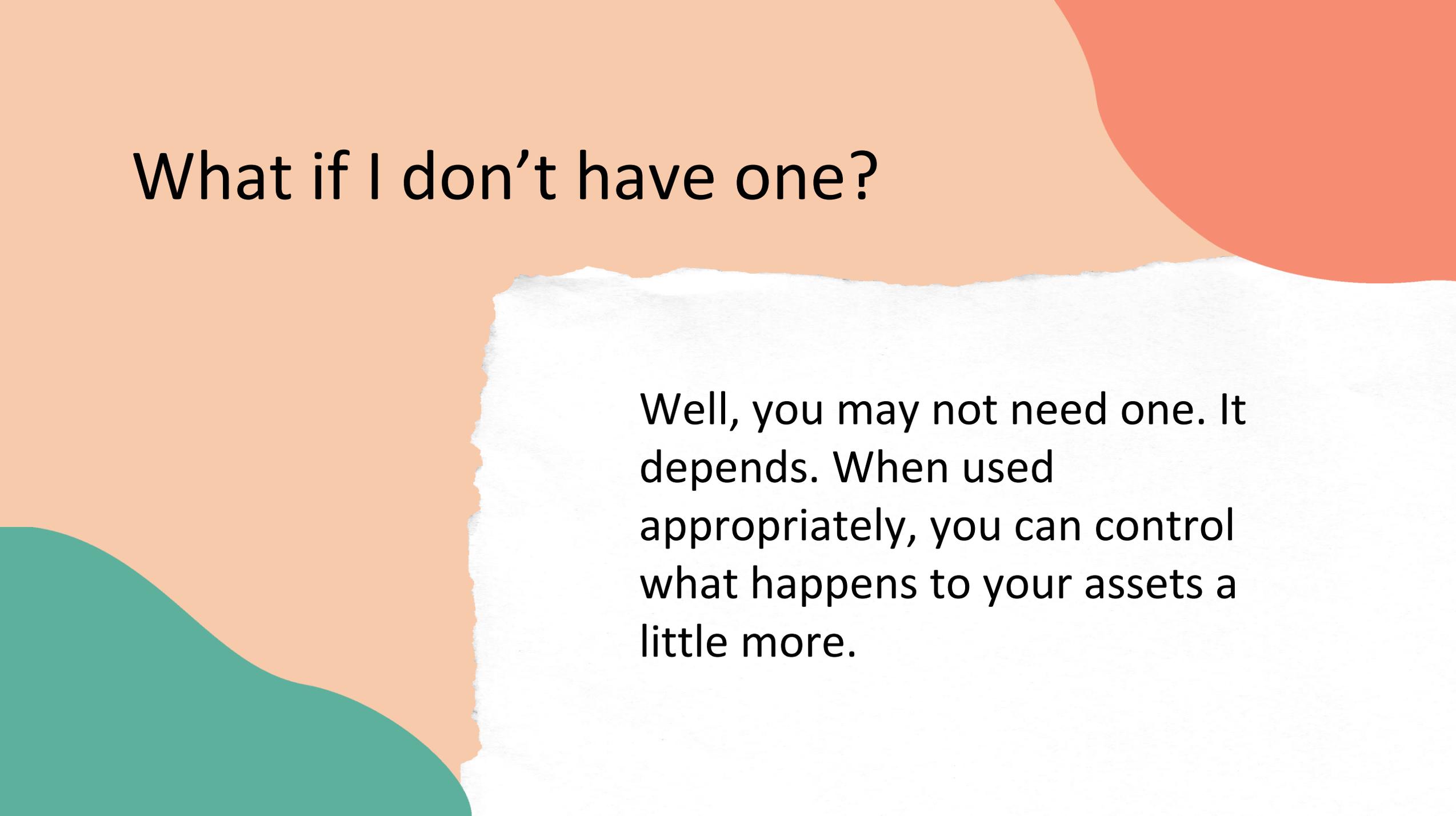
You don't get to
decide who gets your
second best bed.

What to worry about:

- Fraud: someone changing your list without your knowledge or permission
- Ivory
- Endangered/threatened species
- Guns
- Your family and friends being upset that they didn't get what they thought they were going to get

TRUSTS





What if I don't have one?

Well, you may not need one. It depends. When used appropriately, you can control what happens to your assets a little more.

What to worry about:

Do you need one?

What terms to use?

Will it do what you want it to do?

They can get complex.

DURABLE POWER OF ATTORNEY 11.125 RCW

Gives someone else the authority to
manage your financial affairs

Durable is a key word.

Can be effective immediately or upon
incapacity.



REQUIREMENTS

RCW 11.125.050

- Must be signed and dated by the principle
- Must be notarized OR witnessed by 2 disinterested parties

Disinterested = no family, no care providers

What if I don't have one?

Guardianship

- lengthy
- invasive
- expensive
- often difficult

What to worry about:

Will you need your agent to have specific powers not included in a general version?

Who to name as your agent

Health Care Durable Power of Attorney

RCW 11.125.400

Gives another the power to make health care decisions for you

*Your agent cannot over rule you

Gives access to your health care information

Gives you a place to put specific instructions regarding your health care



REQUIREMENTS

Same as the general Durable Power of Attorney

For a deep dive into Durable Powers of Attorney, look at the presentation on KCLL from December 9, 2020:

“Having It Your Way: Creating a Durable Power of Attorney for Finances and Healthcare”

What if I don't have one?

Surrogacy

RCW 7.70.065

1. Court appointed guardian
2. Your agent through a Health Care Durable Power of Attorney (if you have one)
3. Spouse or state registered domestic partner
4. Kids (no minors)
5. Parents
6. Siblings. . .

What to worry about:

You may not have the person you want making health care decisions for you.

Your wishes may not be respected.

Your family may not know what your wishes are.

Health Care Directive

RCW 70.122.030

States clearly what life sustaining treatment you want if you are in a permanent unconscious state or a terminal condition and cannot express your wishes

Covers hydration, nutrition, pain medication



REQUIREMENTS

- Must be signed by you
- Must be notarized OR signed by 2 witnesses

Witnesses= no family, no one who takes in your will, no one who has a claim against your estate, not your attending physician, and no employees of your physician or your health care facility

What if I don't have one?

You may not receive the end of life care that you want.

What to worry about:

Not having one and needing one.

You can use a free one. Just use one generated by a Washington based organization so that it uses the right verbiage.

You can also do a Mental Health Care Directive.

*Some procedures still require a court order.

OTHER DOCUMENTS

Small Estate Affidavit (Hi, KCLL!)

Community Property Agreement

Mental Health Care Durable Power of Attorney

Mental Health Care Directive

POLST

Digital Property Directive

Disposition of Remains

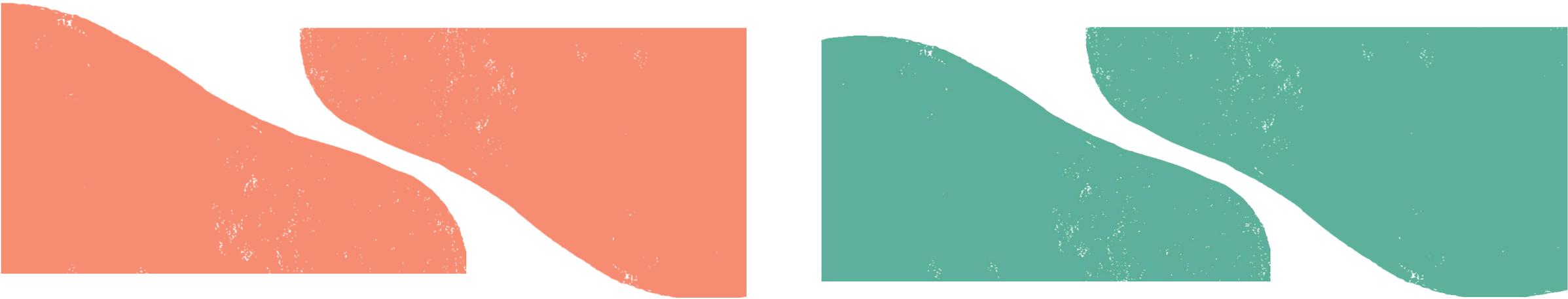
A FEW FINAL THINGS

We are a Death with Dignity state.

Redo your estate planning documents after big life changes (e.g. you move to out of state, divorce, someone named in your documents passes away)

Don't do weird stuff with your will.

See The Guardian's article "10 of the Strangest Wills of All Time"



Thanks for listening!



Any questions?