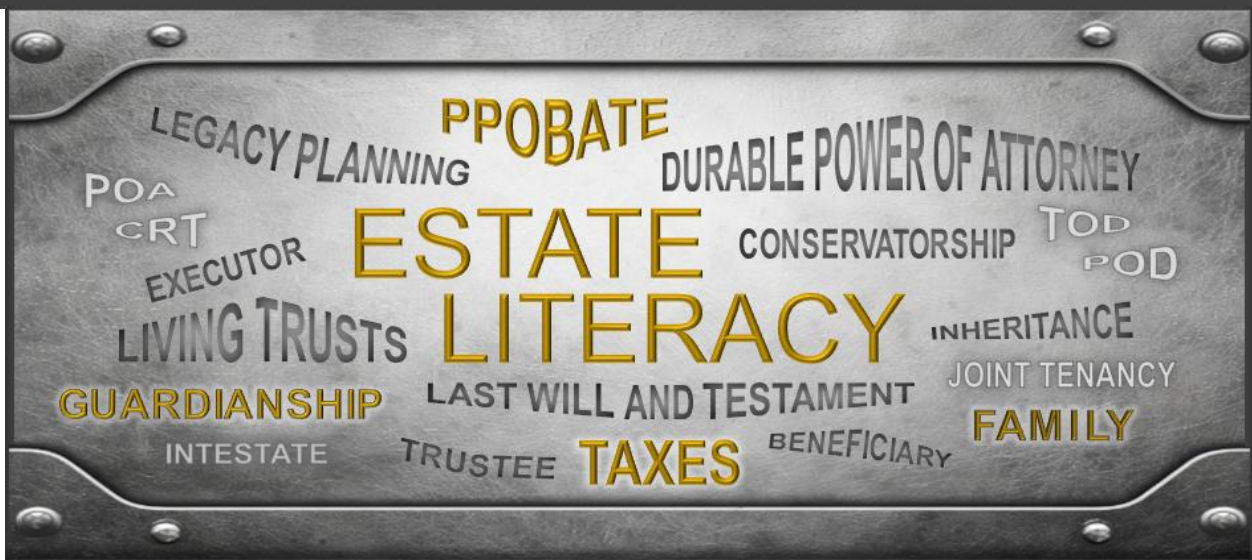




Optimized

THE ESTATE PLAN



KNOWLEDGE SERIES

This material is unbiased and intended to impart general information regarding Estate Planning and options for avoiding **PROBATE** for an optimized outcome in an easy-to-understand educational based format.



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WHAT IS ESTATE PLANNING ?

Estate Planning is the process of arranging how your assets, finances, and healthcare decisions will be managed during your life (especially if you become incapacitated) and distributed after your death using legal plan documents for an effectual Estate Settlement. It's about having a Plan in place.

NO WILL - NOT GOOD

If a person dies without a Will the State's Statutes or Intestacy Laws will determine who the heirs are and how much of a share in the estate, they are entitled to inherit. Dying without a Will is what is called "dying Intestate." When a person does not take the responsibility to make out a Will, the state statutes will decide how to distribute what took a lifetime to accumulate. By not making out a Will the person, by default, loses the right to select the beneficiaries, make special gifts, name the personal representative or executor, and designate a guardian for a minor child under custody at the time of death. In addition to losing control, there are the potential complications of losing the full marital deduction which could create probate administration costs and federal estate taxes to be higher.

Dying without a Will, as well as not having a Will up to date is less than desirable. Even a notarized hand-written Will is sufficient if the Testator had two witnesses sign the Will in front of each other that included a self-proving clause stating under oath that the Testator was of a sound mind at the time of the signing.

Understanding Probate

Probate is the court-supervised process for identifying assets for paying taxes, claims and expenses, transferring the title of a decedent's assets, and distributing assets to beneficiaries. States have different levels of Probate called either Formal, Summary or Disposition without Administration.

Formal Administration

Outline of the typical Formal Probate Process:

1. A Formal Probate Administration Begins with the reading of the Will which usually includes the burial instructions and the naming of the heirs.
2. The Attorney then takes charge of all affairs, meets with family and explains the work that lies ahead (filings, appraisals, hearings, and tax consequences).
3. The Attorney has the decedent's financial information gathered which includes insurance claims, business interests, and investments.
4. The Attorney files petitions with the court.

5. The Attorney orders the appraisal of the assets.
6. The Attorney orders the decedent's personal property to be inventoried for the discovery of debts and assets.
7. The Attorney takes custody of the assets.
8. Then the administration of decedent's estate begins.
9. The Attorney supervises or handles the selling and disposing of assets, resolving liens, evaluating the estate, filing the Death Certificate, making sure all taxes are paid, and settling all debts.
10. Ending with distribution to the heirs.

The Personal Representative or Executor, the Attorney, and any professional whose services may be required in administering the estate (such as appraisers and accountants) are entitled to reasonable compensation by law. The five most common ways Fees are determined:

1. By the Will,
2. A contract between the personal rep. or executor and the decedent,
3. An agreement between the Personal Representative or Executor and/or Attorney and whoever bears the burden of paying the fees,
4. A reasonable amount calculated under law,
5. As determined by the judge applying the law.

Summary Administration

Summary Probate provides for a simplified Estate Settlement for Estates valued under a certain threshold which can range between \$20,000 to \$100,000 depending on where you live. The Attorney files an application to probate the Will exactly as in a formal probate. A hearing is then held to "prove" the Will. If the Will is proved valid, and it is shown that the Estate has no outstanding debts or other problems, the court orders a Summary Probate relieving many of the labor-intensive steps of a Formal Probate. Since the Will has been proved in court, the title to the property that is transferred is not open to a challenge. The persons who receive the Estate assets remain liable for claims against the decedent, typically two years after the date of death which could be reduced by publicizing a notice in a local newspaper.

Disposition without Administration (DWA)

A (DWA) involves an Estate with minimal assets and personal exempt property up to a determined value by the state, the decedent's personal automobile, and all reasonable and necessary medical and funeral expenses.

(DWAs) can be filed without an Attorney with help from a probate clerk.

Avoiding Probate

An estate that has more than minimum assets can avoid the probate process by either Title, Contract, or Trust.

Avoiding Probate by Title

The two most common ways to avoid probate by Title are Joint Tenants with Right of Survivorship and Tenants by Entireties.

Joint Tenants with Right of Survivorship

If property is held as Joint Tenants with Right of Survivorship and one of the owners dies, the surviving owner (or “joint tenant”) now owns the property. The deceased owner’s property interest is transferred to the other automatically without the need to “probate” the deceased owner’s share.

If an owner transfers their interest in property held as Joint Tenants with Right of Survivorship to some other person or entity without the participation of the other owner (when living), the joint ownership is broken and property ownership converts by law into Tenants in Common, which subjects that property to a potential probate after death.

Tenants by Entireties

Property held as Tenants by Entireties is an arrangement that can only be held between husband and wife. Upon the death of one spouse, the surviving spouse automatically by law becomes the owner of the entire property.

Avoiding Probate by Contract

There are three ways to avoid probate by Contract. They are by naming a beneficiary on Insurance Policies or Contracts, by naming a beneficiary on Retirement Accounts, and by naming a (POD) or (TOD) beneficiary.

Insurance Policies/Contracts

The types of Insurance Policies that require naming a beneficiary are Life Insurance Policies such as Term Life, Whole Life, Universal Life, Indexed Life, Variable Life, and Annuity Contracts, such as Fixed Annuities and Variable Annuities, and certain Immediate Annuities.

Retirement Accounts

The most common types of Retirement Accounts that require naming a beneficiary are Individual Retirement Accounts (IRA), Simplified Employee Pensions (SEP), Keoghs (HR-10), Tax sheltered Annuities (403b), Defined Contribution Plans (401k), and Profit-Sharing Plans.

POD and TOD

The way to avoid probate on traditional bank accounts is by naming a Payable on Death (POD) beneficiary, and for brokerage accounts and securities Transfer on Death (TOD).

Avoiding Probate by Trust

The Inter Vivos Trust is more commonly known as a Revocable Living Trust. The person(s) who establish the trust are titled either as the trust creator, grantor, settlor, or trustor, and are usually named as the trustees and referred to as the trust managers. Also worth mentioning, the trust creator(s) usually name themselves as the beneficiary(s). The trust document provides for contingency planning by naming successor Trustees and Beneficiaries. The purpose of a successor Trustee is to fulfill the wishes of the creator(s) in the event of death or incapacity. Property must be titled in the name of the trust to avoid probate. There are multiple benefits besides avoiding probate with a Living Trust:

Privacy

No announcements must be placed in newspapers thereby eliminating a public invitation to contest the trust. No information must be of public record about the trust assets, Trustees, or the Beneficiaries because Living Trusts are not required to be part of the public court records.

Flexible

The Trustees can buy new assets for the trust and sell existing assets in the trust at any time. Also, the Trustees can modify or terminate the trust at any time. Therefore, there is no reason to not transfer the title of property into the name of the trust, because the creator(s) as Trustee(s) can control and manage the property and/or assets.

Property in Multiple States

If a person dies owning property subjected to probate in more than one state, there would be separate probate administrations needed in each of the states. This would only add to the costs and delays when settling an Estate. This is avoided when the property is held in a Living Trust.

Conservatorship

What is a Conservatorship? If a person or their spouse were to become physically or mentally incapacitated and were no longer able to take care of their own personal or financial affairs, the incapacitated person would most likely be declared incompetent and placed under the control of the probate

court. This is to prevent someone from taking over and going on a shopping spree.

When a person becomes incompetent, they can no longer sign their name concerning any transactions. Therefore, whether the person is single or married this creates a problem. Now the court would step in to decide who the conservator or guardian will be, and the court will take control and oversee the incompetent person's financial and real estate holdings from that point on.

A Conservatorship can often be the result of somebody other than a family member reporting the handicap.

What if the incapacitated person has a **Durable Power of Attorney (DPA)**? If a petition is filed to determine competency. The Durable Power of Attorney will be (temporarily) suspended. If the person is adjudicated (judgment rendered) by a court of law to be "incompetent" the Durable Power of Attorney will expire.

Conservatorships are not good because the family loses control, and it is very stressful due to the emotional strain. All proceedings are of public record, and it is an expensive process.

A Conservatorship can be avoided by the Living Trust having in place a Joint Trustee or Successor Trustee(s) named to immediately fill an incapacitated Trustee's position due to either incapacity or death.

Effective Pre-Nuptial

Any property that you title into a Living Trust before you marry remains the property of that trust and stays separate from property acquired after marriage.

Reduce or Eliminate Estate Taxes

Although the Estate Tax laws will consistently change with our new governmental leaders and administrations, a Living Trust can still help those individuals with a high net worth and who could benefit from strategic planning due to future tax law changes and/or uncertainty.

Hazards of a Joint Tenancy

Titling assets with two owners may be an appropriate planning arrangement between a husband and wife, but it's usually not a good configuration between anyone else. Joint Tenants with the Right of Survivorship is the result of titling a non-spouse onto property or financial accounts. This creates an immediate gift of one-half of the property or asset when titled as joint owners. Although there are annual gift tax exemptions. Gift taxes are due on any excess transfers and have to be reported on (IRS) Form 709. A common mistake is not reporting the excessive

gift over the annual gift tax exemption. Take the following example of a widow who has a (CD) down at the local bank valued at \$100,000. The widow's health is failing, and she decides to put her daughter on the account as a safeguard. Since this is a common occurrence at the bank, no red flags are raised, and without realizing it the widow has just gifted \$50,000 to the daughter. If the widow reports the gift for that year on Form 709, the gift tax due would be subtracted from her Unified Credit and no tax should be due. If this is overlooked, the widow's good intentions just created a "potential" future tax problem unless it slips through the cracks. The (IRS) can discover unreported gifts when an Estate is probated subjecting unreported gifts to potential penalties and interest.

Then there is loss of control. When placing someone as a Joint Owner on property or financial accounts that person now owns 100% of that share. Should that person be married and go through a future divorce. The judge can do whatever they think is fair. Property acquired during a marriage is considered "marital property" and is commonly divided 50/50 as equitable distribution. Also, if the Joint Owner is involved in an accident or is sued and has a judgment entered against them. The holder of the judgment can execute the judgment against the assets owned in the Joint Tenancy.

Finally, there is the potential loss of a "stepped-up" basis. A step-up in basis allows the heirs to sell certain property at fair market value upon the death of a property owner and pay no income tax. If the property is titled as a Joint Tenancy, up to 50% of this valuable income tax benefit could be lost.

Advanced Directives

An Advanced Directive is a legal document that provides a record of an individual's preferences for care during incapacity or illness. Advance Directives can help prevent family anxiety and conflict. They can help the doctor understand exactly what a person's desires, authorize the doctor concerning medical treatment decisions, and provide clear and convincing evidence of the patient's personal values and interests regarding medical treatment. There are four common Advanced Directives.

Medical Durable Power of Attorney

A Medical Durable Power of Attorney (DPAHC) is a health care power of attorney. The (DPAHC) is a document that appoints a trusted person to make and communicate decisions about medical treatment or care in the event of incapacity. Unlike a Living Will, a (DPAHC) empowers someone to act as your agent. The (DPAHC) addresses additional issues besides terminal illness and life support. For an example, Instructions to an agent can be made concerning

the preference of Home Health Care versus Nursing Home Confinement, about feeding tubes and organ donations, experimental drug usage, and comfort care. Without a (DPAHC) a doctor is left to guess what the individual would have wanted. A (DPAHC) is usually only valid in the state in which the document was created.

Medical Proxies

If a person does not have a (DPAHC) or guardian appointed by the court and becomes incompetent, the family can choose a proxy medical decision-maker to speak on the behalf of the incompetent person. The difference between a (DPAHC) with agent and a Proxy is who selects the decision-maker. The Proxy cannot decide to stop tube feeding unless two doctors agree that it is only prolonging the patient's death.

Living Wills

A Living Will addresses terminal illness. A Living Will helps an individual to plan for the type of care they would want should they ever become seriously ill by instructing the physician to provide or withhold artificial life support in the event of a terminal illness. A Living Will provides a statement of the individual's wishes about medical care in the event they are unable to make decisions at a time of need. It defines the degree to which aggressive medical treatment should be applied if the individual is close to death or if there is little chance for recovery. Special language written into a Living Will can stop tube feeding, but not the withholding of food and water from those who desire to discontinue receiving nourishment. A Living Will cannot stop any necessary pain medication and usually focuses on comfort of care over aggressive life-prolonging treatments. A Living Will requires two witnesses, and the witnesses cannot be a doctor, health care employee, an estate beneficiary, or an inpatient in the same facility.

CPR Directives

A (CPR) directive allows a person to signal their refusal of Cardio-Pulmonary Resuscitation. (CPR) is an emergency procedure that is used when somebody stops breathing or when the heart stops beating. There are two types of (CPR) directives. (1) Do not resuscitate (DNR) which limits the use of resuscitative measures in the event breathing stops or the heart stops beating. (2) Out-of-hospital (OOH) directive which is used by people having a terminal illness and want to ensure resuscitation measures are not used if paramedics or rescue personnel are summoned to the home. Neither a (DNR) or (OOH) directive will keep a person from receiving other medically necessary treatment or pain relief.

Optimization

Optimization begins with understanding your options. Everyone has two options. A legally enforceable Estate Plan, or no Estate Plan.

No Estate Plan - No Estate Plan becomes your plan by default.

State Statutes determine what happens to an Estate when the First Spouse dies without a legally enforceable Estate Plan, e.g. Will. Intestacy Laws determine what happens to an Estate when the Surviving Spouse dies without an Estate Plan.

Estate Plans

Estate Plan choices are either a Last Will and Testament, or a Revocable Living Trust. When it comes to Plan Creation you have two options. Do It Yourself (DIY) using boilerplate software, or Legal Services for creating customized documents. When it comes to Legal Services you can either hire an Attorney for Full Service or use Assisted Legal. A Full-Service Attorney Service is when you hire an Attorney for Full Representation and Legal Advice, and the Lawyer or Attorney assumes responsibility over the entire process. While Assisted Legal offers a scrivener (Scribe) service for Plan Creation. Assisted Legal can also offer Legal Review, but No Legal Advice as the client represents themselves as (Pro se).

Estate Analysis

Once you understand your options you begin to look at Plan Selection. Plan Selection is when you decide on your foundation of either a Will or Trust. An Estate Analysis helps identify what type of Legal Services could be suitable.

- Helps identify what level of Probate you could likely experience.
- Helps identify any Financial Assets that need to be reviewed to confirm the beneficiary designations are titled to avoid probate.

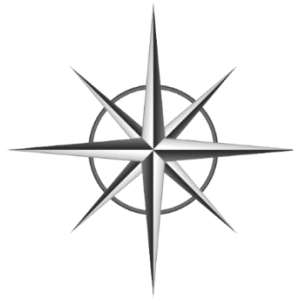
Everyone's situation is different. Once you understand your options and have analyzed your choices you should be able to determine whether you only need a Last Will and Testament, or if you could benefit from having a Revocable Living Trust as your foundation.

The Estate Plan Optimized

A Plan is optimized by adding any necessary documents, e.g. (POA's, or Advanced Directives) to your foundation. Financial Assets are optimized by your beneficiary designations being titled to avoid probate. Revocable Living Trusts are just a piece of paper unless you Fund (transfer) any purposed property into the name of your Trust.



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This material is an easy-to-understand Educational Based Resource to be used as a reference, and not as a substitute for **Qualified Professional Advice.**