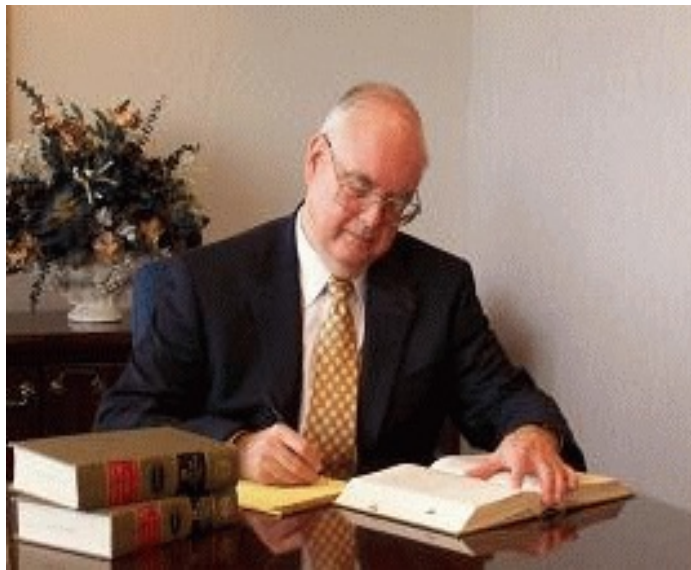


# **Your Personal Guide to Estate Planning**



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**Whether you are:**



**Retired Couple**



**Widowed**



**Blended Family or Domestic Partners**



**Couple with Children**



**Single Parent**



**Single**



**Young Couple**

## Why should you plan your estate?

You may ask yourself the question, "Why should I take the time and expense of preparing an estate plan? We will try to answer that question and explain exactly what is involved in estate planning.

Let's begin by saying that all of us actually have a "default" estate plan. We may not like it, but the State of Arizona and its courts dictate one for us - free of charge. The results may not be what you want, but because the state has only one set of choices and rules, **one size must fit all.**



**One size does not fill all!**

## What is Estate Planning?

The concept of estate planning is really very simple. It can be broken down into three elements:

1. You accumulate property;
2. You preserve the property you have; and
3. You distribute that property when you die to whomever you have chosen.

**Accumulation:** Most of us are in the accumulation stage. As we work hard to provide for ourselves and our families, we begin to find ourselves acquiring "stuff." During this phase, we also try to save for our children's education, our future retirement needs, and for the occasional rainy day.



**Preservation:** Once we have some property, we want to protect it from loss. We insure our house, our car, our boat, etc. We buy life insurance on our life to provide for our family. We seek advice from professionals regarding investment choices and protection of our property.



**Distribution:** Finally there comes a day when we are no longer here, and everything we have accumulated and preserved is distributed some way - either the way we want (if we plan in advance) or the way some judge says the law provides. It's up to you to decide.





## What Makes Up Your Estate?

Take an inventory of everything you have. Be sure to count everything, not just the obvious items. Also put a value for every item. Uncle Sam uses the fair market value approach. A list of the more common items making up your estate might include:

	<u>Value</u>
1. Personal residence	\$ _____
2. Other real estate	_____
3. Bank accounts	_____
4. Investment accounts	_____
5. Life insurance (face value or death benefits)	_____
6. Retirement Accounts	_____
7. Automobiles	_____
8. Personal effects (furniture, jewelry, "toys", etc.)	_____
<b>TOTAL:</b>	\$ <u>_____</u>



If you were to die tomorrow, what you have written down above would be your current net worth. If the total surprises you, ask what that total would be five or ten years from now. If you are in the accumulation years, chances are the total would be much greater.

## Estate Taxes

You've probably heard about estate taxes, also called "death taxes." You may be interested to learn that Uncle Sam counts just about everything you own in figuring how he can get a share of it. The **bad news** is that once you have a taxable estate, he wants 40% of the excess over the tax exemption amount. The **good news** is that most of you will not have to pay this tax. The 2017 Tax Cuts and Jobs Act increased the federal exemption amount to \$11,000,000+ per individual, adjusted yearly for inflation. Some states (not Arizona) impose estate taxes at a lower exemption.



For those whose total inventory value exceeds the exemption amount, you certainly need to do an estate plan to minimize or even eliminate Uncle Sam from sharing your wealth. For all the rest of you, don't make the mistake of saying planning is unnecessary because your estate is too small. Remember that a judge administers all estates that aren't planned, even small ones, and it costs plenty to support the probate court system, including attorneys. As you read further, you will find there are many reasons other than paying taxes to do estate planning.

## **A Few Reasons Why We All Need to Do Some Planning**

Here are a few questions to ask yourself that demonstrate why estate planning is important for everyone to do:

1. Do you – not a judge – want to decide who gets your assets, and when, and how?
2. What if you become incapacitated?
3. Who takes the kids if something happens to both you and your spouse?
4. When do the kids get your hard-earned money? Do you want them to get a big check at age 18 (new car and party time)?
5. Who gets everything if your whole family dies in a common accident?
6. Do you want all your financial affairs made public and possibly be available on the Internet for anyone to see, as is the case with the probate process?
7. Do you want to protect your child's inheritance from predators (spouse in a divorce, creditors, etc.)?
8. Do you want to minimize income taxes for your beneficiaries if you have large retirement accounts?

## **Basic Objectives of Estate Planning**

There are a few basic objectives that will guide us in doing your estate planning. They are simple but very important to insure that you and your family are protected and provided for the way you would want, if you were not here to do it yourself. In helping you plan for your estate, we want you:

1. To retain control of your assets during your lifetime;
2. To provide instructions for your care and the management of your assets for you and your family if you become unable to do so;
3. To leave your assets to whomever you want, when you want, and with whatever restrictions you want;
4. To protect the assets that you leave to your spouse and children from creditors and unscrupulous persons, including the spouse of your child in the event of a divorce;
5. To have a business exit strategy if you have an ownership interest in a business;
6. To maintain maximum financial privacy for you and your family;
7. To eliminate high legal fees and other costs of estate administration and avoid lengthy probate court proceedings;
8. To save the greatest amount of taxes and post-death administrative costs as possible, not only in your own estate but in the estates of your spouse and your descendants; and
9. To bring all assets under one integrated plan with a Revocable Living Trust.

## Common Components of a Complete Estate Plan

At a very minimum, an estate plan will include:

1. A Last Will and Testament
2. A Power of Attorney Over Assets
3. A Durable Power of Attorney for Health Care
4. A Living Will

**But, a more thorough estate plan that would better meet your needs and goals will include a Revocable Living Trust.** In addition, certain specialized trusts may be included within the Revocable Living Trust or as separate stand-alone trusts. While every Trust is specially written to accommodate your individual needs, some of the more common additional types of trusts that **may be** required for more advanced estate planning include the following:

- A Survivor's Trust
- A Bypass or Decedent's Trust
- A Minor's Trust for young children
- A Special Needs Trust
- A Spendthrift Trust for beneficiaries
- A Preservation of Asset Trust

Don't let these additional trusts scare you. Most clients do not require these additional trusts, but they are available if you need them.



Minor Children



Special Needs Person



Blended Families or Domestic Partners



May Get a Divorce



Second Marriage



Family Farm or Business

The following paragraphs will briefly explain each of the above components of an estate plan and how they fit into planning for an individual or couple.

**Revocable Living Trust.** A Revocable Living Trust is often used as a substitute for a Will. Like a Will, a Revocable Living Trust can provide for the orderly disposition of the property. However, unlike a Will, which automatically controls all assets personally owned by the deceased person, the Trust controls only those assets that have been placed into the Trust by the party creating it. The process of placing assets into a trust is known as "funding" the trust, or naming the trust as the beneficiary of life insurance or retirement accounts. This is not a difficult task. A Revocable Living Trust can include provisions designed to save a wide variety of death-type taxes and it can easily be amended by executing a document known as a "trust amendment."

The **primary advantages** of a Revocable Living Trust are the savings in money and time it affords by avoiding the probate process and the privacy it offers, because the Trust does not involve public court proceedings. In addition, the Revocable Living Trust can help avoid the need for court-supervised conservatorship if you become incapacitated. The **primary disadvantage** of a Trust is its expense (which is more than a Will with similar provisions), and it requires funding to be effective. It is our experience, however, that the time, expense and effort involved in administering a Trust is substantially less overall than that involved with a Will.

Generally the Revocable Living Trust contains the provisions and instructions you want for governing the administration of your property. Property is usually retitled in the name of the Trust. Where beneficiary designations are used to transfer property, such as life insurance, the Trust is named as the primary beneficiary on your policies so that the specific instructions you put in the Trust about the use of the money are followed.

**Last Will and Testament.** A Will is a document which is used to control the disposition of one's property at death. A Will is effective only at death and must be probated in order for the property to be distributed to the heirs. In a Will you provide instructions to the court as to how you want your property to be distributed. You also express your wishes as to who should be guardians of your minor children. However, a Will controls only the disposition of your property that is in your name alone. It *does not* control or override joint tenancy property or property where you have designated someone to be a beneficiary, that is, a named beneficiary for your life insurance or retirement plan. When a will is prepared in conjunction with a Revocable Living Trust, it "pours over" into the trust any assets not already transferred to the trust; however, such assets will still need to be probated.

**Durable Power of Attorney Over Assets.** This is a document under which a person may appoint an agent (known as the attorney-in-fact) to act on his or her behalf. A Durable Power of Attorney remains effective (or becomes effective) if the person becomes incapacitated. It allows the agent to conduct a wide range of personal financial transactions on the incapacitated person's behalf.

**Durable Power of Attorney for Health Care.** The agent appointed under a Durable Power of Attorney for Health Care is empowered to give medical consent for the person when he or she is unable to do so. This Power of Attorney gives the agent legal authority to make health care decisions on the person's behalf and to enforce the provisions of the Living Will.

**Living Will.** Unlike a regular Will, a "Living Will" carries out your wishes while you are alive. It is a statement of your desire not to be artificially sustained when certain death would occur if not for the use of machines or other artificial methods to keep your body functioning. One of the primary reasons for having a Living Will is to avoid a spend-down of resources to keep a person alive in a vegetative or comatose state. In the Living Will, you provide guidance to the person making medical decisions for you so that your family can follow your wishes.



## Additions to the Revocable Living Trust may include:

**Decedent's Trust and Survivor's Trust.** Most often, a Decedent's Trust and Survivor's Trust are included within a Revocable Living Trust when estate taxes are an issue. These trusts will take advantage of the exemption available to the first person in a marriage who dies to minimize taxes. These trusts are also used when there are children of a prior marriage or when a person wants to be sure that a new spouse cannot get ownership of the deceased person's share of the property. Under these conditions, certain limitations are placed on the surviving spouse's ability to use the principal of the trust. A Survivor's Trust is used to hold the survivor's share of the property while a Bypass or Decedent's Trust is used for the deceased party's property. The survivor generally can do whatever he or she wants to do with all the property in the Survivor's Trust without limitation.

**Minor's Trust.** A Minor's Trust is desirable whenever you have potential beneficiaries who are under the age of 21. It is typically incorporated inside the Revocable Living Trust. A well-planned Minor's Trust will provide guidelines to the persons who will be guardians over your young children. It is a place for you to state your desires regarding aspects of raising your children. This trust will also control the property you leave behind to take care of your children. Again, you provide guidelines to the person controlling the money (the trustee) as to how you want money spent to support your children and what you don't want money spent on. A well-developed Minor's Trust is a set of instructions for the person you have chosen to do what you would do if you were still alive and able to raise your children. Most often the person who is the guardian (this is the person your children will live with) is not the same as the person who is the trustee (the person who manages the money for the children).

**Special Needs Trust.** A Special Needs Trust can be utilized whenever a beneficiary suffers from some disability, such as substance abuse, has a bad marriage, is easily influenced by others, etc. It is typically incorporated inside the Revocable Living Trust. A specific form of Special Needs Trust (Supplemental Needs Trust) is also used when a beneficiary is currently receiving, or will receive, government benefits and can lose such benefits if the person has too much income and/or assets.

**Spendthrift Trust.** A Spendthrift Trust, or what we call a Personal Adult Management (PAM) Trust, is a trust designed to protect the beneficiary from various creditors. It must be established by someone other than the beneficiary and may be included in a Revocable Living Trust. If properly designed and administered, this trust can be established for your beneficiaries (say, your children) and will protect the assets that you leave them from creditor claims in the event the beneficiary of that trust runs into financial problems. This trust can also protect the assets from a spouse in a divorce action (except for certain claims allowed by state law which are generally for child support and spousal maintenance), and the property of this trust can be excluded from the beneficiary's estate for estate tax purposes when the beneficiary dies.

**Preservation of Assets Trust.** A Preservation of Assets (PAT) Trust is a trust that is used to preserve and keep an asset intact for use by the beneficiaries. It is most commonly used when a person desires to keep a family business, farm, ranch, cabin, etc. for the benefit of future generations. It may also be used to establish trust fund for future generations to assist them in obtaining a college degree or as an emergency fund to provide security. By delaying time when estate taxes are imposed more assets are available to future generations. Also, with assets in trust, future generations will not lose their property to divorces, bankruptcies, lawsuits, etc.

## Frequently Asked Questions

- **Isn't Estate Planning needed only by elderly and wealthy people?** *We have daily reminders that death and disability do not respect age. Even if you have a modest estate, you still wish to pass it to your loved ones when and how you want.*

- **Doesn't a simple Will last a lifetime?** *A Will may have been a good foundation for an estate plan, but an overall plan covers more tools than a will. Also, your needs and lifestyle may have changed since the Will was created. Also, a Will is only effective at death and does not cover your needs during your lifetime.*
- **Doesn't the state have laws to protect my estate?** *It would be a rare coincidence for the state's laws to fulfill anyone's desires completely. Additionally, court-supervised settlements cost time, money, and, generally produce more problems than when an estate is well planned.*
- **Isn't joint ownership a practical substitute?** *Joint ownership may impose the joint owner's liability upon you, cause you to lose your share to your joint owner's creditors, create an unequal distribution of an estate to the heirs, or fail to properly deal with taxes and estate costs. Generally, it should only be used with a spouse and not with other persons.*
- **I have everything in joint ownership with my spouse, isn't that enough?** *No. What if either one of you becomes incapacitated? The other spouse can't sell, transfer, or mortgage that jointly-owned house without both signatures. If your co-owner becomes incapacitated, you could find yourself with a new "co-owner" — the court. It does not avoid probate, it just postpones it. When one joint owner dies title passes to the other joint owner, but when the other joint owner dies, probate is needed to transfer title.*
- **If my spouse and I die in a common accident, who will take care of our young children?** *The courts will appoint a guardian to raise your children. If you have made no recommendations in a Will, the court will appoint someone. The court also will appoint a conservator who will control the property. A court-appointed conservator has limited choices where the money can be invested (federally-insured bank accounts and U.S. Treasury bonds) and must get prior court approval for expenditures of funds for your children for nearly everything but basic living needs. Periodic accounting must also be submitted to the court.*
- **When will our young children receive their share of the property?** *In Arizona, the court says a child is mature at age 18 and is entitled to his or her full share of the inheritance without restrictions. If properly planned in advance, distributions can be made at later dates when the trustee you name follows your instructions after the child has received an education and is truly more mature.*
- **How costly is probate?** *Probate can be as inexpensive as \$1,500 to \$2,500 if there is very little to file. Generally it costs more than this. Court filing fees, court accounting fees, etc. can often add \$500-\$1,000 or more to the cost before any attorney fees are incurred.*
- **Why can't someone take care of my property and bills without probate?** *Probate is the only legal process to take your name off the title to property and put a new person's name on the property. Just having a will is not enough. The Probate Court must issue court orders to validate any transfer.*
- **How costly is guardian-conservatorship for young children?** *Guardianship and conservatorship for young children can be very costly. A very simple case may cost \$2,000-\$4,000 yearly in court costs and attorney fees plus fees paid the court-appointed guardian or conservator.*
- **Who controls the property in my Revocable Living Trust?** *You do. You continue to do everything you could before with your property. You can make changes or even cancel the trust. Nothing changes but the names on the title. A Revocable Living Trust avoids probate and prevents costly court control if you become incapacitated or die. You make provisions in the trust so your spouse, or whomever you name, can take over and follow your instructions without court supervision.*
- **How long will it take to administer my estate?** *Probate can take as little as six or eight months and up to two or more years. However, with a Revocable Living Trust, your successor trustee can act within days and put your decisions into effect immediately without first obtaining approval of a judge. Property and money can be made available to your beneficiaries within days, not the weeks or months that may occur with the probate process.*