



ELYSIUM

ESTATE

PLANNING 101

WITH YOU EVERY STEP OF THE WAY



EVERYONE HAS AN ESTATE PLAN

Do you want to decide what yours is, or do you want it to be decided by default?

If you make no decision about where your assets go at your death, your state has created a plan for you. Also, if you designate people as beneficiaries or make them joint owner of accounts or property - that's an estate plan!

The important thing to consider is whether you want to make the choice on who gets your assets and who takes care of your affairs in times of incapacity and at death - if you don't, you leave it up to the court system to make those choices.

WHAT IS AN ESTATE PLAN

- It is the process of making intentional choices, in writing, using specialized documents, that describe how you want to distribute your assets at your death.
- It anticipates the unforeseen so that you can live your best life knowing that if the unexpected happened, those you love will be provided for.
- Avoids unnecessary confusion, misunderstanding, and expense during what is undoubtedly difficult and a stressful time for your partner, family and other loved ones.
- Should be done by a qualified professional.
- Makes your wishes known and provides your family comfort during those difficult times.
- Includes other planning tools to assist you during your lifetime as a convenience and for if a tragedy strikes.



COMMON ESTATE PLANNING TERMS

- **Intestacy** – This term is used to describe when a person dies without a Will. The state has created a method of distribution for your estate when there is no Will. It may be the same as you would specify, but without more information, it may not express your wishes at all.
- **Will** – This is the starting point for estate planning. It is the document by which you declare who will receive your property and who will be in charge of handling your estate. It becomes effective after your death. It is a very flexible tool to protect your family, including minor children and other dependents who may need more guidance in handling their inheritance. A Will is the only way to appoint a guardian for your minor children and dependents. A Will is a basic building block for all estate planning and may be modified anytime during your lifetime.
- **Personal Representative** – This is the person you put in charge of your estate when you die (often called an “executor”). Estate administration entails the collection and inventory of assets, payment of debts and obligations, and distributing your assets according to the terms you’ve provided. Note that your Personal Representative has no authority until after you die and your Will has been admitted to probate.
- **Guardian** – A guardian has legal responsibility for the personal care of your minor children in lieu of parents. Once a guardian is selected you should discuss your selection with that individual to ensure they are willing to act. You should always consider appointing an alternate guardian in case the first cannot act or changes his or her mind.
- **Living Trust** – Sometimes referred to as “Revocable Trust” or “Family Trust”, a Living Trust is a Trust created during your lifetime and continues in existence after your death. As such, it keeps you in control of your assets and allows you to change your estate plan during your lifetime. It continues that control of your assets after your death with special rules on distributions. At the same time, it avoids probate and provides for management of your assets if you become incapacitated. This is the most effective tool to avoid the necessity of a court appointed guardian or conservator to take control of your life and assets. To work properly, your assets must be transferred to the trust. It is a terrific tool for estate planning and becomes a necessity when you are older. Even though you have a Trust, you also need a Pour Over Will (explained later).

- **Trustee** – the person you appoint to take charge of your trust to act based on the trust’s instructions. During your lifetime, you are typically the Trustee. Usually we use “trustee” for the person who is in charge now and “successor trustee” for the person who will take over at the death, resignation or incapacity of the current trustee.
- **Probate** – this is an administrative process established by statute to provide for the asset distribution of your estate when you die. The process involves the court appointing a Personal Representative, provides for payment of debts and expenses, and provides for the distribution of your assets to the persons entitled thereto.
- **Special Needs** – any trust with provisions for dealing with the actual or potential disability of a beneficiary can be said to be a special needs trust. Usually, but not always a special needs trust is designed to provide benefits for someone who is on Medicaid, Supplemental Security Income (SSI), Social Security Disability (SSD), or other government programs, but avoids making the person ineligible for these benefits. It is usually established at your death, but if needed, can be created during your lifetime. In some instances, this may involve a specialized trust.
- **Pour Over Will** – this is a specialized Will that works in concert with your Trust. It makes sure that if property or other assets were not properly placed in your trust during your lifetime, those assets will be transferred to your trust at your death. It constitutes a failsafe device to make sure your Trust works correctly. The term “pour over” merely means whatever is not in the Trusts, pours into it at your death.
- **Power of Attorney** – a power of attorney is a document used to give someone legal authority to act in your place and on your behalf during your lifetime. That person is called your agent or attorney-in-fact. A power of attorney gives the agent that broad authority over your assets so they should be selected with great care. An agent’s authority under a Power of Attorney ends at your death. Most commonly a “durable” power of attorney, which means your agent continues to have authority even when you are incapacitated. In fact, that is one of the features that makes a power of attorney such a useful estate planning tool.
- **Advanced Health Care Directive** – this is a document that allows you to appoint someone to make health care decisions for you when you can’t speak for yourself. For example, if you’ve had a serious health care event, accident, or surgery, where due to your condition, you cannot give informed consent to medical care providers your agent will step in and make decisions on your behalf. You can select alternates in case your agent is unable to act at any given time. The second part of the health care directive allows you to state your end-of-life care wishes that your agent will abide by.

EVERYONE NEEDS AN ESTATE PLAN:

- If you're alive and you own anything – YOU need at least a will (if you need a trust, a will comes with a trust as well)
- If you have minor children – a will is the only document where you can appoint a guardian for your minor children if you are unable to care for them. Without a will, your children's guardian will be selected by the court.
- If you would like to ensure your assets are collected and distributed – in your Estate Plan you name a Personal Representative (or Successor Trustee in a Trust) to do this after you pass away.
- If you want to ensure those assets are distributed how you want them to be – you can leave instructions in your Estate Plan, including at what age and how your beneficiaries inherit your assets.
- If you need to protect your beneficiaries because of their age or financial aptitude – an Estate Plan can create testamentary trusts for your beneficiaries that allow you to provide that protection.

WHEN TO CONSIDER A TRUST:

A trust is like a "bucket" which is used to hold title to your assets during life and then passes them on at your death. As you fund your bucket it fills up with your assets. Your assets are yours to use as your desire during your life. Then upon your death, these assets can be distributed according to your instructions, outlined in your trust. You remain in complete control of the Trust unless you become incapacitated or die.

Reasons to consider a Trust (in addition to your Will):

- To avoid probate
- If you are age 60 or over – as we age the risk of incapacity increases, having a trust in place is essential to ensure there's someone to take care of things for you in case of incapacity
- To assist with the handling of your affairs when you do not have a partner – a Trust avoids having to go to court for a conservatorship or adult guardianship if you were to become disabled or incapacitated
- If you own real property in other states – without a Trust, you would have to go through probate in each state where you own real property.
- If you want to protect inheritance for your beneficiaries
- In case of Spouse remarriage or failed marriage
- If you own a business – you can provide a survival and transfer plan

MISCONCEPTIONS

TAXES: Many people believe that state and federal governments have an automatic right to take a part of your estate at death. Here's the truth: the state and federal governments do not have an automatic right to come in and tax or take part of your estate at death. In fact, in the State of Utah, there is no inheritance tax. There is a threshold on federal taxes, that many states (including Utah and Arizona) have adopted as well, that exempts all estates from any gift or estate tax if they are under approximately \$12.92MM. Under this threshold you can pass all of your assets to your designated heirs tax free.

PROBATE: People may have unreasonable fears of the probate process. Utah adopted the Uniform Probate Code which provides for a very user-friendly approach to probate an administration of estates. Probate is typically an informal, unsupervised, administrative process to pass your assets to those persons you want to have them. It is not excessively costly, and it is protective of the heirs and beneficiaries of a person's estate.

A WILL AVOIDS PROBATE: Some people believe that if you have executed a Will, the probate process is not necessary, that is not the case. The probate process is necessary to give effect to a Will, appoint your Personal Representative, and transfer your assets to persons you've designated. In addition, if used in combination with a Trust, a Pour over Will is used to transfer assets to your Trust, just in case something wasn't put into your Trust during your lifetime.

JOINT OWNERSHIP AND CHILDREN: People often place their children's names on bank accounts or even their homes or other property in an effort to try to pass their property on without tax or probate. The legal effect of this can be disastrous. The biggest hazard results from your exposure to creditors of your children. Your children cannot always control events in their lives and may lose a job or have a massive medical expense that overwhelms them and judgments may be taken against them or they may file bankruptcy. If they are part owners of accounts or property, their creditors may have the right to satisfy their debts from your assets. That means you may be purchasing your property from the creditors of your children. We strongly urge you not to place your property or accounts in joint ownership with children.