

What You Need to Know About  
**ESTATE PLANNING**  
In Arizona



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# INTRODUCTION



**DAVE WEED**

*Shareholder & Estate  
Planning Attorney*

*JacksonWhite  
Attorneys at Law*

Planning is the act of establishing goals and then aligning life accordingly to see that those goals are accomplished. Estate planning is no different. The primary goal of estate planning is to protect, preserve, and manage your estate should you pass away or become disabled and not able to make decisions on your own. An estate plan in accordance to your wishes is your chance to ensure your money and assets go to the people you choose. Estate plans can also diffuse conflicts over the distribution of your assets, minimize estate taxes, and help avoid the costs and delays of probate.

So why is it many people don't realize creating an estate plan could be one

of the most important documents they put in place for themselves and their family? Some people may not see a need for estate planning until they reach a certain age. Others might think estate planning is only for the wealthy. There are also claims that estate planning is too complicated, time consuming and costly. The reality is estate planning is for everyone, regardless of status, position, or size of estate. Even the simplest of plans can be extremely beneficial in circumventing future uncertainties and unresolved issues.

This guide was created to help you understand estate planning and the tools that could be useful to you and your family depending on your situation. JacksonWhiteLaw.com contains information on other topics related to estate planning including probate, guardianships and conservatorships, ALTCS/Medicaid eligibility, veteran's benefits, and special needs trusts. If you have any questions about the content of this guide or questions regarding any other elder law issue, please do not hesitate to contact JacksonWhite. Our Estate Planning Team has been assisting Arizona residents and their families with estate planning needs for nearly 30 years. We stand ready and able to help you with your legal needs.

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# PURPOSEFUL ESTATE PLANNING

When thinking about end-of-life goals, most people do not aspire to a future in which their family is left to quarrel about how their assets will be divided. Nor do many people hope for a future that includes uncertainty about important end-of-life medical care.

Rather, people prefer to think of a future in which they have preserved their assets for a quick distribution, so their family is ready to act on their behalf should the need arise. Without more preparation, however, aspirations alone are simply not enough to help a person accomplish his or her goals. A person who wants assurance that his or her end-of-life goals are secured must establish a thoughtful and purposeful estate plan.

An estate plan can protect and preserve a person's assets, while also giving them control over the management of his or her estate. While one might think of estate planning as a means by which he or she can leave the greatest inheritance for future generations, a comprehensive estate plan should also include management strategies for end-of-life issues.

For instance, an estate plan with only a will and/or a trust might adequately describe to whom a person's assets should be distributed, yet leave that person without any safeguards in the event of a serious medical emergency. Simply put, unforeseen events can un-

dermine an estate plan that does not prepare for difficult situations.

A purposeful estate plan goes beyond organizing the transfer of assets at death; it provides security and stability in life as well. With proper planning, it may be possible for a person to set aside a portion of their savings instead of spending it on long-term health care. A comprehensive estate plan can provide family members with direction for dealing with medical crises that may arise. A purposeful estate plan should aim to leave nothing to chance. A person with a comprehensive plan can be confidently prepared for most situations.

This expansive approach to estate planning is not just for people with sizeable estates. Rather, even an individual with a modest estate has much to gain from developing a purposeful estate plan. Preparing for the future can help a person preserve assets, no matter the size of his or her estate. The benefits of estate planning are simply not limited to the wealthy. Virtually everybody can benefit from making simple preparations for their future.

When creating an estate plan, an individual should customize that plan to meet his or her specific needs and goals. Further, a person should also use the estate planning process to prepare for expected future events, to minimize tax obligations, and to preserve assets.

In addition to these basic strategies, an individual can add layers of security to his or her plan that will cover events such as unexpected medical crises and long-term health care needs. Again, the key to all of this is that every estate plan should be custom-tailored to serve the individual for whom it was created.

By making preparations in advance, a person can prevent unnecessary complications and have security for the future. As this guide shows, there are a

variety of legal documents that a person may include in an estate plan to protect his or her wishes, no matter the situation. Because no two people have the same exact life situation, estate plans vary from person to person. At a minimum, every estate plan should include a valid will, powers of attorney, and a living will. And again, a person should not decide whether to create an estate plan based on the size of his or her estate, as even a person with a modest estate can benefit from a basic plan.

## The Importance of a Valid Will

Generally speaking, a will is the single most important document that a person can include in an estate plan. At a minimum, a simple will should:

- Designate a personal representative to handle his or her estate.
- Designate a personal guardian for any minor children he or she may have.
- Designate a property guardian to manage property for any minor children he or she may have.
- Designate to whom his or her assets should be distributed.

Although executing a will is many times the simplest way to handle certain matters, wills do have limitations. To begin with, assets such as pension plans, life insurance policies, jointly held property, trust assets, and payable on death accounts all take precedence over a will. Meaning, if one of these assets conflicts with a will by naming a different beneficiary than the beneficiary named in the will, the asset passes to that beneficiary without regard to the will instructions.

Also, assets passed under a will must go through probate, which is costly, time consuming, and invasive of one's privacy. And, lastly, wills may be limited when it comes to leaving conditional gifts and funeral instructions. With proper planning, however, a person can effectively solve each of these issues.

## Planning for Incapacity with Advance Directives

By not appointing someone to handle his or her affairs, a person can cause needless complications for family members who end up having to make medical decisions in the event of an accident or illness. Making preparations in advance, on the other hand, can help a person accomplish two very important goals.

First, a person who makes advance preparations can designate a trusted individual to act on his or her behalf, so that he or she does not inadvertently leave important decisions to the wrong individuals. A person who designates someone to act on his or her behalf also assists friends and family members by giving them a sense of clarity and comfort as to who should act and make decisions.

Second, a person who makes advance preparations can outline precisely the type of medical care he or she wishes to receive in the event that he or she loses capacity to communicate health care wishes. By taking just a little time to complete a handful of important documents, a person can prevent immeasurable future difficulties.

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## Health Care Powers of Attorney

When a person has lost capacity to make health care decisions, a court may appoint a guardian to act on that person's behalf if a health care power of attorney has not been designated. Guardianship proceedings can be time consuming, expensive, invasive of privacy, and embarrassing to the ward. To prevent this scenario, a person should establish powers of attorney while he or she still has capacity. In simple terms, a person called the "principal" uses the power of attorney to give an agent authority to make legally binding decisions on his or her behalf. Further, a person should establish both a health care power of attorney and a mental health care power of attorney, as an agent cannot admit a principal into an inpatient mental health facility without the latter.

A person can appoint the same person to act as agent under both the mental health care power of attorney and the health care power of attorney, or select two different agents altogether. Either way, a person must appoint an agent or agents in whom he or she has absolute trust. A person can also establish a power of attorney to only take effect if and when he or she loses capacity. So long as the principal is of sound mind, powers of attorney can be revoked or amended at any time, thus giving the principal flexibility if conditions change. A principal must comply with the following statutory requirements to make sure the power of attorney is valid and binding:

- The principal must clearly declare his or her intent to delegate authority to make health care decisions to a specific agent.
- The principal must be of sound mind and free from duress.
- The principal must have at least one witness and a notary present when he or she signs the power of attorney.
- The witness cannot be the agent, the principal's relative or heir, or directly involved in providing the principal's health care.



## Financial Power of Attorney

In the same way that everyone should appoint an agent to handle his or her medical decisions in the event of an emergency, everyone should also appoint an agent to handle his or her financial affairs. A person can use a financial power of attorney to appoint an agent to make financial decisions in the event that he or she loses capacity or is unavailable. The agent's authority can take immediate effect, or it can be reserved until the principal actually loses capacity to act. To establish a valid financial power of attorney, a principal must:

- Understand the nature and effect of signing a power of attorney.
- Sign the power of attorney willingly.
- Initial any paragraph in the power of attorney that benefits the agent.

- Have a notary and witness other than the agent, the agent's spouse, or the agent's children sign the power of attorney.

The valid execution of a financial power of attorney can avoid the costly and invasive need for the court appointment of a conservator down the road.

## Living Wills

A living will is another document that everyone should have in place. With a living will, a person can provide instructions as to the type of health care that is desired in the event that they lose the ability to communicate. A living will can be either very specific or very general. The living will can simply decline life-sustaining treatment in the event of a terminal diagnosis, or it can provide specific instructions as to pain relief, antibiotics, hydration, feeding, and cardiopulmonary resuscitation. Even a person who has a health care power of attorney should also have a living will, as an agent under a power of attorney may not know precisely what type of health care the principal wishes to receive. The living will can also be of comfort to family members who are often reluctant to make a loved one's end of life decisions.



## Paying for Long-Term Health Care

Although a great number of people require long-term health care as they reach the end of their life, very few people actually prepare themselves financially to secure such care. An individual who does not make financial preparations could encounter serious difficulties in the event of an unexpected medical condition. To protect against unforeseen problems, an individual can either set money aside for long-term health care or make alternative plans for financing such care.

Long-term health care can cost more than \$6,500 per month, an expense everyone should be prepared to meet. There are three common ways in which a person can finance long-term health care, and determining which of these methods is most suitable is fundamental to developing a comprehensive estate plan.

First, a person who is healthy and has the means to afford it may purchase long-term health care insurance well in advance of needing long-term health care. Second, a person may pay for health care out-of-pocket, although this could obviously jeopardize his or her financial security. And, third, a person may cover long-term health care costs by applying for ALTCS, which is often the best alternative.

ALTCS is a branch of Arizona's Medicaid program designed to cover long-

term health care for eligible individuals. It is a needs based program, meaning that it has specific income and resource requirements that a person must meet to qualify. A person who does not initially qualify for ALTCS, however, may prepare to meet the requirements over a period of time, and thus preserve his or her assets to provide for a well spouse.

Whether or not a person presently requires long-term health care, he or she should discuss this type of planning with an experienced ALTCS Planning Attorney, as a medical emergency can develop rather unexpectedly.



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*provides additional  
information about Estate  
and Long-Term Health Care  
Planning.*

# ADVANCED ESTATE PLANNING

Having a will in place and preparing for incapacity issues are both integral pieces to preparing a comprehensive estate plan, but these basic strategies are not always enough to meet everyone's goals. An individual with a sizeable estate, for instance, may need to take special precautions to avoid probate, minimize tax liability, or leave conditional or staged inheritances. There are a variety of estate planning strategies that can help a person accomplish these goals.

## Avoiding Probate

Probate is the process by which a court proves a person's will and oversees the transfer of that person's assets upon his or her death. It is not an intrinsically bad process, but there are certain costs involved, and it can be time-consuming and invasive of privacy as well. To save both time and money, a person might consider a more advanced estate plan that will help avoid probate.

## Revocable Living Trusts

There are a variety of strategies for avoiding probate, but establishing a revocable living trust is by far the one most commonly used. Revocable living trusts are highly effective at circumventing probate because a person can transfer the title of almost any asset to the trust with the condition that the asset will pass directly to the beneficiary or beneficiaries upon his or her death. Beyond mere probate avoidance, a revocable living trust may also help a person accomplish a wide range of other planning goals.

Revocable living trusts offer certain protections that would be very helpful to a person who loses capacity. To secure these protections, a trust settlor must include specific trust provisions that dictate how trust assets should be used. These provisions remain in effect in the event that the settlor loses capacity. A revocable living trust can give a person a great deal of control over transferring assets, much more so than with a basic will.

For instance, an individual can choose to make conditional transfers, to retain assets in the trust until a specific date, and to release only a portion of their assets to beneficiaries at different times and in accordance with certain conditions. For instance, assets may remain in trust and still benefit a child or loved one who may not be able to handle finances well or are dealing with substance abuse issues or gambling addictions. This flexibility is often reason enough for a person to include a revocable living trust in an estate plan.

## Joint Tenancy Ownership

Owning property in joint tenancy with right of survivorship is yet another way that a person can avoid probate. The distinguishing feature of owning property as a joint tenant with right of survivorship is that when either of the joint owners passes away, the surviving owner immediately takes full title to the property. While any number of people can share joint tenancy in nearly any type of property, the most common joint tenancy scenario is one in which two owners share joint tenancy in property such as bank accounts, automobiles, or real property.

Before taking property in joint tenancy, a person should understand a few key

facts about this type of arrangement. First, because joint tenants are effectively co-owners, both joint tenants must join in the sale or refinancing of the property. Second, a joint tenant can unilaterally convey his or her interest in the property, which changes the nature of the property so that both owners lose the right of survivorship. Third, there can be tax disadvantages to owning property in joint tenancy. And, lastly, jointly owned property is subject to the liens and creditors of all co-owners.

An individual can avoid many of these problems by using a beneficiary deed, which allows for the transfer of real estate upon his or her death without going through probate. A beneficiary deed does not limit an owner's ability to sell or finance the real estate. It can be beneficial for a person to consult with a professional before altering the nature of his or her ownership in property.



## Giving Assets Away

A person might be able to reduce probate expenses by simply giving assets away before he or she passes away. An individual who gives assets away, however, risks incurring a heavy tax on gifts that exceed \$15,000 per year to any one person, as of 2019. Further, single individuals who give away more than the current federal lifetime limit of approximately \$11.4 million as of 2019, as well as married couples who give away more than the federal lifetime limit of approximately \$22.8 million, are subject to the federal gift tax. An individual should also be particularly aware that certain gifts could render him or her ineligible for the ALTCS benefit for a period of time. To avoid these types of issues, a person should counsel with a professional before giving away substantial assets.

## Other Methods of Avoiding Probate

There are several other strategies that may help a person transfer assets directly to beneficiaries, and thereby avoid probate. Many of these strategies require nothing more than completing the necessary forms. Depending on the asset in question, the form may have a different title, but the effect is very much the same. For instance, a person can have bank and retirement accounts transfer to beneficiaries immediately upon his or her death by converting the account to a "payable on death" account. A person can reach this same result with brokerage accounts, stocks, and bonds, by registering the account in "transfer on death" form. And, lastly, a person can cause real property to transfer to beneficiaries without going through probate by executing a beneficiary deed. Beneficiaries under any of these designations do not acquire ownership rights to the asset until the person who made the designation passes away. All of these methods can be modified or revoked at any time, so long as the owner is living and has capacity. However, using these strategies to leave assets to one's heirs may have some unintended consequences, so it is advisable to counsel with a professional.

## Planning to Minimize Tax Liability

A person with a larger estate should include strategies in his or her estate plan to help reduce his or her tax obligation. Under the current law (through 2019), estates valued at greater than \$11.4 million are subject to the federal estate tax, at a maximum rate of 40 percent. In certain situations, however, this exemption is transferable to a surviving spouse; so, married couples may actually qualify for an exemption of up to \$22.8 million.

## Life Insurance Trusts

Ordinarily, proceeds from a life insurance policy are subject to the federal estate tax. By establishing a life insurance trust, however, a person may reduce his or her tax obligation substantially. When a person transfers a policy to a life insurance trust, the trust acquires ownership of the proceeds to the life insurance policy, and the proceeds are thus exempt from the estate tax.

Although life insurance trusts do have certain drawbacks, such as loss of control and liquidity, these drawbacks are often worth the benefit of avoiding the estate tax. A person who establishes a life insurance trust, however, must be sure to purchase the optimal policy with which to fund the trust, so that he or she can retain as much flexibility as possible while minimizing tax liability.

## Charitable Gifting

Yet another way that a person can minimize tax liability is by charitable gifting. Not only can charitable gifting help a person preserve more assets for his or

her heirs or beneficiaries, but it also allows for charitable gifting. By planning carefully, an individual can help a charity or charities while he or she is still living, secure an income for the remainder of his or her life, and leave a legacy as well. Depending on a person's particular circumstance, this type of strategy can be quite advantageous to all of the parties involved.

## Leaving Conditional Gifts or a Staged Inheritance

A person has many options when creating a revocable living trust. This freedom allows a trust settlor to place conditions on gifts and to leave staged inheritances. For instance, an individual could establish a trust to provide funds for a favored nephew on the condition that he graduates college. Likewise, an individual could establish a trust to release funds to his or her daughter on her 18th, 25th, and 30th birthdays. Within reason, a trust settlor has complete discretion as to how his or her funds will be dispersed. It may be, however, that an individual hopes to accomplish more than what a revocable living trust can offer, in which case he or she can turn to a variety of other estate planning tools.



# OTHER ESTATE PLANNING CONSIDERATIONS

It is next to impossible to create a meaningful estate plan by following a scripted formula. To get the most from an estate plan, a person needs to customize his or her plan. When creating an estate plan, a person should include strategies and tools that provide the greatest benefits, and should not include documents and strategies that fail to accomplish a specific goal. Further, a person with unique needs should also consider strategies that will bring him or her closer to accomplishing these specific planning objectives.

## Special Needs Trusts

A parent of a child with special needs would be remiss to create an estate plan without considering a special needs trust. This is particularly true if the child depends on Social Security, Medicaid, or other governmental benefits for support. A sudden increase in a recipient's income or assets could disqualify the recipient from the program. It is important to note, even an inheritance can cause a recipient of public benefits to lose eligibility for the benefit upon which he or she relies.

Public benefits typically provide enough to cover basic necessities, but not much else. As such, a person with a special needs child might wonder whether he or she can leave an inheritance to supplement the child's public benefits without jeopardizing the child's eligibility. Fortunately, special needs trusts provide a means by which a person can accomplish this goal. As long as a person complies with strict

rules when establishing a special needs trust, and the trust funds are only used for approved expenses, the trust will not interfere with a child's ability to receive benefits.

## Insurance Products

There are a wide variety of insurance products to consider when establishing an estate plan. For instance, although it is certainly not for everyone, life insurance can be particularly important for a person who is married or who has children. Family members many times rely on the proceeds from a life insurance policy to help pay for things such as long-term health care, funeral costs, and burial services. The size of a person's policy should depend on the amount of his or her dependents' total income, as well as how much money his or her dependents will need to maintain a comfortable lifestyle.

Disability insurance is another product to consider, as it can replace a por-

tion of a person's income in the event that he or she loses the ability to earn a living. Disability insurance policies vary significantly from one to the next, so a person should carefully review coverage options before deciding on a particular policy. Some policies may replace up to 75 percent of a person's income, even if that person takes a less demanding job, while other policies replace a much lower amount of income, and only if the insured does not return to work in any capacity. Given the wide degree of variation between insurance products, it is important for a person to shop around for the policy that best suits his or her particular needs.

## Appointing a Personal Representative or Trust Administrator

The primary purpose of a will or a trust is to allow a person to pass assets to specified beneficiaries upon his or her death. Given the importance of deciding who gets what, it can be easy for a person to overlook the significance of yet another decision he or she must make when creating a will or a trust – determining who will handle the probate estate or administer the trust. Even after a person leaves an inheritance, the gift cannot be completed unless somebody actually transfers the property from the estate to the beneficiaries. With wills, this person is known as the personal representative.

With trusts this person is known as the trustee.

Neither the role of personal representative nor the role of trustee is easy to fill. These jobs are typically time-consuming and demanding, and require a great deal of attention. When considering whom to appoint, an individual should select somebody that will understand his or her legal duties, and will carry out his or her obligations to the estate. Selecting just the right person to act in this capacity can spare future complications to both the estate and to the family.

## Updating an Estate Plan

To get the most from an estate plan, it is important for a person to keep the plan current and up to date. There are several reasons why a person should regularly review his or her estate plan:

- The laws are always changing, and sometimes changes in the law give cause to update the documents that constitute an estate plan.
- Family circumstances change, which can give reason to make any number of changes to an estate plan. For instance, trustees, personal representatives, and agents may pass away, lose capacity to serve, or become

- untrustworthy with the passage of time. Likewise, children may grow old enough and responsible enough to serve in capacities in which they were not able when the original plan was adopted.
- An individual may decide to change beneficiaries or allocations.
  - Original documents may be outdated, or may have been created in a state in which the relevant laws differ from Arizona's laws.
  - An individual may acquire more assets that should be transferred to his or her trust. Properly funding trusts is a huge issue, as even a person who properly funded a trust in the first instance must update the trust as he or she buys and sells assets. A person whose goal it is to avoid probate must take particular care to transfer all assets into the trust.



## Why Plan Now?

Although it is difficult to tell for certain what the future may bring, a person can get his or her affairs in order, and become as prepared as possible for even remote exigencies. Failure to prepare can cause a person to lose control and flexibility, incur unnecessary costs, and generally have more difficulties than is necessary. On the other hand, a person who creates a purposeful estate plan that eliminates legal, financial, and medical questions can leave his or her family with what is perhaps one of the greatest gifts of all.

An individual may have to confront many tough questions as he or she makes these important legal and financial preparations. An experienced estate planning attorney can answer questions and develop strategies that are best suited for a person's particular situation.

Ultimately, with the assistance of an estate planning attorney, a person can create a customized estate plan that meets his or her specific needs. As a person works with an attorney to create a comprehensive plan, he or she will find a sense of security that comes only from purposeful planning.





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