A Guide to Wills, Trusts, and Power of Attorneys

www.AllegisLaw.com

(801) 938-4035

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Introduction

For Kathy it was as if she had to deal with her father's death not just one time, but twice.

His passing was hard enough, but arranging his estate was so heartbreaking that she found herself kneeling over his grave asking him why he had left things in such disarray. Kathy could barely mourn her father's passing when she was confronted with a nightmare of necessary legal actions to resolve his business affairs.

And her father had even left a will.

But he had not done enough to arrange the banking, the accounts, or even to consider the march of time; thus his long-ago will had listed provisions for "minor children," yet his three children were all in their forties at the time of his death. He simply had not kept his plan up to date.

Dealing with the loss of a loved one is hard enough without the administrative headache of navigating the legal maze to settle a poorly planned estate. It does not have to be that way: well thought estate planning makes living, and leaving your legacy, much easier for everyone.

Estate planning is the process of anticipating and planning for life's twists and turns so you can deal with them on your own terms. An experienced attorney (using Wills, Trusts, and Powers of Attorney) can ensure that your assets are managed according to your wishes, rather than through imposed requirements of state law.

A well-conceived estate plan allows you to provide for your family's specific needs, such as:

- Safeguarding your family and your finances from catastrophes,

- Providing for your spouse and dependents after your death,
- Protecting your finances from the burdens of disability,
- Avoiding fights and reckless waste,
- Allowing access to money and authority during times of incapacitation,
- Minimizing time and money spent in probate court,
- Preventing the IRS from taxing away your family's inheritance, and
- Ensuring you pass the best things you have to your loved ones.

Beyond your family, estate planning can even ensure that charitable organizations or causes will benefit according to your wishes.

More immediately, estate planning can help clarify appropriate tax, insurance, investment, and retirement strategies that support your immediate and long-term goals. Keep in mind that a good estate plan will let you use your assets while you are still alive without depleting what is available for the future. Intelligent use of a Will, Trusts, and Powers of Attorney will allow you to leave a greater portion of your wealth to your future generations.

"65% of American adults currently have no Will." -Harris Interactive 2010

If you fail to prepare a Will, Trust, or Powers of Attorney, you unwittingly make life more difficult for your spouse, family or heirs. In fact, your intended heirs may not end up with the assets you had planned to pass on to them. Without a Will or Trust as a guide, the state of Utah will require probate to distribute the assets. This means a Probate Court Judge can assign anyone of his choosing to administer your estate. Consequently, your wealth will be distributed as the court determines rather than according to your wishes.

John Denver died in 1997 with no estate plan. His estate (valued at $19 million) lost tens of millions of dollars after SIX YEARS in probate.

In the case when your spouse survives you, the largest share of your wealth may, in fact, be awarded to your spouse, to spend or give it away as she sees fit— even if you wanted it to go to your children or to other beneficiaries. In the case of a second marriage, dying with no Will or Trust can result in the children receiving no proceeds from your estate at all. This is why is best to begin an estate plan as soon as possible if you intend that your estate be disbursed to the people (and organizations) you have chosen.

Marilyn Monroe died at age 35. Her will left 75% of her estate to acting coach Lee Strasberg with wishes to donate to charity. Lee died some years later without a will, and his entire estate (including Marilyn's $1 million in annual royalties) went to his widow—a complete stranger to Monroe—and not to charity.

The best reason for engaging in the process of estate planning is that by doing so you will be able to maintain control your life throughout your time on earth and your life's legacy well past your time. You will be able to ensure that you don't burden your family with the struggles that brought my client to her knew at her father's grave. Without a good estate plan, you will be giving the power to make decisions for your loved ones to the discretion of someone else.

James Dean died at age 29 without a Will. His entire estate (including licensing fees worth $1-3 million per year) passed to his father who had abandoned him as a child.

Whether you are living or deceased, active or incapacitated, a Will or Trust allows you to determine how your assets will be distributed, by whom they will be distributed, and under what conditions distributions will occur. Also, by planning your estate you will be able to designate who benefits from your assets. This can be done while minimizing the taxes (as allowed by law), fees, and the time it takes for your estate's assets to be distributed to your love ones. You worked hard to build up your estate, and you should be the one to designate who benefits. Planning with a Will, Trusts and Powers of Attorney can ensure your intentions are honored.

How this Guide will Help You and Your Family

Safeguard your Family and Finances from Catastrophes

Life is full of unexpected and startling events, some of which are true family catastrophes. A good estate plan will help to safeguard your family and finances from unanticipated medical crises and financial catastrophes. This guide is intended to help you learn what type of estate planning might be appropriate for your circumstances in order to ensure that your wishes will be taken care of in the way you want.

This guide will also show you how to begin the process of estate planning so that your family will be secure regardless of unexpected events. By reading this guide and taking the recommended estate planning steps outlined here, you can safeguard your family and finances from catastrophe. Most important, you will gain peace of mind by knowing your family is safe and secure.

Provide for Your Family and Dependents after Death

A well-thought estate plan will ensure that your family has immediate access to the funds and resources they need to maintain their well-being after your death. In this way, all of the considerations you provided for in life will be honored as your legacy after your passing. If your family has specific concerns — such as health issues or a special-needs child — you can anticipate many of these problems and take steps to minimize red-tape or delays that would prevent proper care.

Protect Your Assets in the Event of Disability

Nothing can drain a family's assets quicker than the expense of dealing with a disability. Medical expenses, physician costs, and attorney fees can break the bank. The costs of recovering from a short-term disability may run into hundreds of thousands of dollars, and you can expect a long-term disability to cost much more.

Many who fail to plan for a possible disability end up losing everything they own. By learning how to set up a Trust for your assets, you will be able to protect your assets from the enormous expenses which coincide with disability.

"Only 20% of adults have medical directives to physicians." –US Trust Insights 2011

Prevent Family Fights and Waste

The distribution of assets without a Will can lead to some pretty bizarre behavior when decisions fall to a stranger or even a court judge. Money is, of course, usually the core problem, and since probate will require court appearances, it is common for families to hash out disagreements in the public courthouse in front of judges. You can avoid this ugly scenario by putting in place an estate plan which lawfully bypasses the probate processes. This is a way of exerting the control that is rightfully yours to distribute your assets as you see fit. Keep in mind that settling an estate

without a Will takes time and lawyers. Of course this can cost a significant portion of your money. This guide will show you how to avoid the whole sordid mess, how to keep people honest, and how to distribute your assets according to your wishes.

Prevent the IRS from Taking Away Your Family's Inheritance

Without effective estate planning in certain instances, the IRS can take a substantial amount of your assets before your family inherits a penny.

For years, the amount of assets exempted from the death tax has been changing on a yearly basis. Although Congress has, at times, temporarily repealed the tax, in all cases it has returned again. Since the beginning of the twenty-first century, Congress has taken a very unstable approach to death taxes, resulting in estate planning opportunity.

Fortunately, there are numerous estate planning strategies for avoiding and minimizing the amount of tax levied against your estate. This guide will introduce you a few of the simpler strategies for reducing the amount of the death tax, and increasing the amount of wealth you transfer to your family.

Give the Best of Your Life to Your Loved Ones

I have learned from my clients over the years that many people have a basic human need to pass on to the following generations those things that they found important in life. For various people, that can range from an inheritance to help the younger generation to better establish themselves, to a charitable mission or other values-based missions. While a skillfully crafted estate plan is certainly not the only way to pass on values, but is also a very effective means of sending forward the best of

what you came to value in life. This guide is intended spark an idea or desire in its readers to implement estate planning that accomplishes just this.

Definition of a Will, Trust, and Power of Attorney

Before beginning the estate planning process, it is helpful to have an understanding of a few important terms, some of which may already be familiar. Three of the most important would include the following: (1) Will, (2) Power of Attorney, and (3) Trust. As the process of estate planning progresses, you will learn a number of terms that are necessary for obtaining a basic understanding of estate planning.

What is a Will? Although you may feel like you are familiar with Wills because you have heard about them all your life, many people are quite surprised to learn how complex these "simple" documents can be. At a basic level, a Will is a declaration, or a legal document, which gives instruction to an "executor" or personal representative as to which person, persons, or organization(s) are to receive the assets of an estate upon the death of an individual. As important as a Will can be, a Will is **not** an instrument that is helpful while you are alive, but only <u>after you have died</u>.

The Purposes of a Will:

- *Identifies an Estate:* What do you own?—money, investments, properties, items, etc.
- *Identifies Estate Decision-makers:* Who specifically is responsible for settling your estate?
- *Identifies Heirs of the Estate:* Which person, persons, or organization(s) will inherit assets?

- *Provides Asset Distribution Instructions:* How do you want your asset distribution to be handled?

The substance of the Will is to provide specific instructions for distributing your wealth to those whom you intended to receive it. The Will also names the executor or personal representative who will be responsible for settling your estate, and specifies the trustee who is responsible for managing any Trusts you may have set up.

Types of Wills:

- *Simple Will:* A single document with provisions executed by a single maker.
- *Joint Will:* Like the simple Will, a single document, but with provisions executed by more than one maker. This Will is NOT commonly used by a husband and wife, and is not valid in some states.
- *Pour-over:* This is a Will that is commonly used as a safety net to distribute non-trust assets in an estate plan where a person has placed most of his or her assets in Trust.
- *Complex Will:* In certain instances, people choose to create a trust from within their will, called a "testamentary trust." While this can be a useful estate planning technique in some instances, it is not the preferred method in a majority of cases.

Although there are many types of Wills, it is likely that only one type is appropriate to your situation, which is why it is recommended that you speak with an attorney experienced in estate planning prior to getting a Will.

What is a Power of Attorney? The Power of Attorney is a legal document of instruction and authorization giving another person (known as your "attorney-in-fact") the power to act on your behalf in the event of your incapacity or inability to act for yourself. For example, if you are incapacitated, in the hospital perhaps, the Power of Attorney can authorize others to take care of your affairs. The Power of Attorney can include a wide scope or very limited scope of power. Keep in mind the Power of Attorney, unlike a Will, is only valid while you are still alive and terminates upon your death.

Many people underestimate how important a power of attorney can turn out to be in the case of incapacity. They often assume that a family member will simply be allowed to step up without documentation. This is a big mistake. Even seemingly simple lives turn out to have many obligations during incapacity, ranging from paying bills, to dealing with the government, to filing taxes. Through a Power of Attorney, you can avoid the very costly and stressful legal hassle of a guardianship or conservatorship, for example.

Types of Powers of Attorney:

- *Springing:* This Power of Attorney applies when certain conditions are met, usually upon a certificate of disability or incompetence from a physician.
- *Limited:* A Limited Power of Attorney only applies to specific areas or during a specific time frame.
- *General/Durable:* Perhaps the most common Power of Attorney, applies all the time and covers a broad range of circumstances.

- *Living Will or Healthcare Directive:* Powers of attorney for healthcare, often called a Living Will or "Special Power of Attorney, provide instructions dealing with your medical needs.

A *Springing Power of Attorney* becomes effective only under certain conditions, such as incapacity. The disadvantage of this type of Power of Attorney is the person may have to provide proof such conditions exist before being allowed to act on your behalf.

A *Limited Power of Attorney* defines a limited area of power, conditions, and timeframe. It may be a one-time authorization or ongoing transactions, but the scope of the power of the attorney-in-fact is limited and specific.

A *General/Durable Power of Attorney* is also known as a *durable* Power of Attorney because it grants your attorney-in-fact the right to act on your behalf anytime and usually in regards to a number of matters. It is binding whether the grantor is competent or incompetent. It can include medical, financial, and personal decision-making authority.

A General/Durable Power of Attorney is generally preferred—provided that a trustworthy family member or friend is chosen to serve as your attorney-in-fact. In addition, a medical or healthcare Power of Attorney can help deal with important medical issues, such as HIPPA, getting a second opinion, or a living will.

What is a Trust? A Trust is a legal agreement where one person places assets under the management and supervision of another person (or organization) for the benefit of a third person. Trusts, similar to business entities, are designed to hold title rights

to property. This is accomplished by transferring the title of property or other assets to a trustee who will manage the assets. Trusts, unlike Wills, can be set up to manage assets while you are still alive.

Types of Trusts. Although many different types of Trusts exist that cover many different purposes (e.g., *Family Trusts, Living Trusts, Special Needs, Qualified Terminable Interest Property Trust, General Power of Appointment Trust, Credit Shelter "B" Trust, Charitable Trust, Insurance Trust)*, most Trusts can generally be broken down into two basic categories:

- *Irrevocable Trusts:* These Trusts remove Property from the Trust maker's name permanently and place them into a Trust so that the Trust cannot be easily modified or ended without permission from the beneficiary (the one who benefits from the Trust).
- *Revocable Trusts:* These Trusts hold Property for the Trust maker, but can be modified or ended by the Trust maker.

An *Irrevocable Trust* can be a powerful tool to protect assets or plan for taxes, but it is not flexible. In exchange for the advantages of the Irrevocable Trust, the Trust-maker gives up some discretion concerning the distribution of assets. Once assets are moved into an Irrevocable Trust, it is very difficult, if not impossible, to move them out of the Trust.

A *Revocable Trust* (often known as a *Living Trust* or *Family Trust)* is used more often than Irrevocable Trusts because it can accomplish most family goals while remaining flexible. Assets can be moved in and out of the Trust. A Revocable

Trust can be changed or amended, modified or abandoned, at any time by the Trust maker. Also, the Trust-maker(s) can be in charge of the trust as trustee(s).

Because Revocable Trusts are the most common type of Trust, this guide will focus on them because they are flexible and can provide many of the benefits most families seek in setting up a trust.

Benefits of creating a Revocable Trust include:

- *Ensuring a higher degree of privacy:* you can be the trustee of your own Revocable Trust or chose someone else you know and trust.
- *Reducing conflicts and litigation:* they are simple to manage and your (now protected) business goes on as usual.
- *Avoiding the need for court oversight:* your wishes are already legally spelled out, so the courts do not need to get involved.
- *Minimizing taxes:* many families use Revocable Trusts to take advantage of estate tax deductions that they might not otherwise have available.
- *Saving time and expense:* your family will really appreciate the organization, simplicity, and clarity of a well-drafted and implemented Revocable Trust.

A Revocable Trust can provide a safeguard against the risk of incapacity while you are alive, and it can avoid the need for probate after you die. This minimizes the time, money, and frustration of those to whom the assets will be distributed. Also, unlike Wills, Trusts are not as easily contested, which means they can reduce conflicts among heirs over asset distribution.

Note: Remember that three of the most important estate planning instruments are the (1) Will, (2) Power of Attorney and (3) Trust. The Will—used after your death—ensures that your estate will be distributed as you intend and your final wishes will be honored. Powers of Attorney and Trusts play an important protective role while you are still living--especially if you are incapacitated.

The 8 Best Estate Planning Tools for Everyday Situations

Many families face all-too-common challenges that can jeopardize their retirement. This reduction of wealth can occur while you are still alive or after you have died. Through foresight and proper planning, however, you can do much to leave your estate intact.

Some of these common challenges include incapacitation, probate, taxes, and unique family scenarios. To overcome these challenges will require foresight and planning. Take a look at these challenges and see how estate planning can help you and your family overcome these challenges.

1. Providing for Family Members if You become Incapacitated

Unfortunately, many people simply do not plan for incapacitation or incompetence. These people end up paying dearly for this inaction. Incapacitation can lead to extraordinary expense and can even wipe out an estate's wealth.

According to government statistics, some 80% of people are incapacitated at least once during their lives, for an extended period of time (2+ years on average).

Why do so many folks fail to plan for this common challenge?

Reasons include: avoiding the merest thought of such a likelihood occurring, not wanting to pay fees associated with estate planning, not wanting to upset other family members, avoiding the work involved, avoiding the cost of an attorney, and finally, simple procrastination.

We all have many responsibilities that we take care of each day, but what would happen if you were suddenly incapacitated and unable to assume your

responsibilities – responsibilities that range from collecting your mail to paying your mortgage? Who would take care of things for you?

Keep in mind that in the event such tasks go unattended – such as paying the mortgage – your home could be foreclosed upon during your hospitalization. Without planning ahead to react to this possibility, the court would be forced to appoint a guardian to take care of these responsibilities for you.

Keep in mind that appointing a guardian as your representative is not free. It is, in fact, quite expensive: Appointing a guardianship can run between $5,000 and $10,000, although in some contested cases it can cost much more. Appointing a guardian is only the beginning of the expenses. There will always be accountants, financial professionals, doctors, and additional lawyers involved in maintaining the guardianship: an expensive proposition!

To appoint a guardian, generally at least two lawyers will have to contracted. One to represent you and one to represent your guardian. This means that you will have two lawyers billing you in order to ensure compliance with the law, and to prevent any problems with the guardianship. This requirement of dual representation is reflective of American notions of individual liberty, and our legislature does not want to place anyone under a guardianship unless he or she needs it. In any case, if you are incapacitated for any extended amount of time, the impact on your wealth and estate could be severe.

2 and 3. Two Effective Ways for Dealing with Incapacitation

Two documents will prevent the need for a court appointed guardian during incapacitation: A Power of Attorney and a Trust. Both will help your family overcome short and long-term challenges. Having a Power of Attorney in place and

creating a Trust *prior* to incapacitation can prevent a court-appointed guardianship from being established.

Intelligent legal planning will prevent others from making financial, medical, and personal decisions that may not be in your best interest. Under Utah Law, both Trusts and Powers of Attorney can help you avoid the need for a guardian to manage your affairs, and make decisions. (Utah Code Annotated, Section 75 "Utah's Uniform Probate Code.") Without an established Trust or Power of Attorney, your family will likely be subject to the laws of guardianship, which are costly and time-consuming, and these laws may not be advantageous in either the short-term or long-term. The only way to avoid this situation is having a good estate plan.

Take a look at how a Power of Attorney can avoid the establishment of a court-appointed guardianship, and then examine how Trusts can provide a further safeguard for incapacity.

4. Avoiding Guardianship with Power of Attorney

There are three important areas where granting Power of Attorney is vital: financial, medical and personal. Having an effective plan in place prior to an incapacitation can ensure that your affairs are transacted in a manner of your choosing. Failing to have a plan in place can trigger a guardianship action by the court that will create additional frustrations and expense for your family.

Now refresh your memory about the definition of Power of Attorney: *General Power of Attorney* (also known as *durable* Power of Attorney) grants your attorney-in-fact the right to act on your behalf at any time, and in any day-to-day area of your life (excepting medical decisions). It is binding whether you are competent or incompetent, but terminates upon your death.

To avoid the whole guardianship issue, you can prepare for a possible incapacitation by granting durable Powers of Attorney addressing both medical decisions and day-to-day matters to someone of your choosing.

5. Power of Attorney for Medical Decisions

You should set up a Power of Attorney for medical decisions. This involves sitting down with your lawyer and preparing a medical directive, which is often called a "Living Will." Your directives are your instructions to the physician in specific medical scenarios. Once these medical directives are established, the physician has Power of Attorney to act as attorney-in-fact on your behalf in those specific scenarios. If you have a spouse, it is advisable to have him or her be part of the medical directive decisions. That way, if the scenario takes place, your spouse will be fully aware of the medical decisions you have authorized the physician to make.

If you want, your spouse can act as your medical agent. Before granting Power of Attorney to your spouse or children for medical directives, however, please consider the mental and emotional strain they may be already experiencing during that time. A complicated search for additional medical records (as part of HIPPA) could be an additional burden on a family member.

Personal physicians are often the most qualified to make medical decisions, especially in the case of incapacitation. So, granting your physician Power of Attorney in medical decisions may be the best course of action. It is possible, however, that a physician may not be willing to serve as your attorney-in-fact, in which case, you would need to choose a family member(s). This is one reason it is important to sit down with your attorney beforehand and tailor your Power of Attorney to your individual situation.

Without the Power of Attorney a physician will be bound by state statute. This could result in decisions being made that are in direct opposition to a patient's wishes.

While there are many different medical directives, the most common are "do not resuscitate" (DNR) or the "life-support" directives. If a decision to resuscitate you needs to be made, your medical directive would be binding. If a decision whether to keep you on life support for any duration needs to be determined, the authorized medical directive would dictate your physician's actions. Most states, including Utah, require that DNR forms be prepared during direct consultation with one's physician, and that they be kept on file in your primary physician's office.

All Medical directives or "Living Wills" are legal documents that are binding on the parties involved; each directive includes Power of Attorney for the physician, or others to make decisions in your behalf. Of course, there are other medical directives, and only the two most common are mentioned here.

6. Power of Attorney for Decisions Involving Finances or Property

Granting Power of Attorney is important in financial decisions. The General Durable Power of Attorney is a valuable and effective tool to ensure your financial assets are protected, and your responsibilities are fulfilled regardless of your medical condition. Also, it creates a sense of security knowing decisions will be made according to predetermined wishes, and carried out according to your instructions.

The complexity of your financial affairs will probably influence to whom you grant Power of Attorney for financial decisions made on your behalf. Likely candidates for this, in simple financial affairs, would be a spouse, relative, or a trusted friend. Again, the complexity of your affairs should be considered. If you need to ensure

that your mortgage or your utilities be paid, for example, any of the previously mentioned people could get the job done.

But if financial responsibilities are more complex — investment properties, stock holdings, or business interests could be considered complicated — perhaps your attorney or CPA may be a more appropriate choice as an attorney-in-fact for handling your financial decisions. You need to make such arrangements ahead of time, and sign the appropriate documents giving these people the authority to make decisions for you.

This Power of Attorney would include conditions that would trigger and terminate these people's authority to make decisions on your behalf. The conditions for Power of Attorney would also be detailed and specific, so it is important to plan them Intelligently.

Setting up Power of Attorney for your financial affairs will give you peace of mind because you will know that your responsibilities will be taken care of in the event of incapacitation. Many people have experienced devastating losses because they failed to plan ahead, and as a result, their assets were diminished needlessly.

7. Power of Attorney Involving One's Personal Affairs

Another important area for granting Power of Attorney is the area of personal decisions. Setting up a General Durable Power of Attorney for personal affairs is often neglected. It may seem more obvious to set up a Power of Attorney for medical or financial decisions, and not personal ones. But granting Power of Attorney for your personal affairs is just as vital. A General (Durable) Power of Attorney should be set up to handle “day-to-day” matters.

Yes, it is easy to take for granted the help of friends in the time of need, but if you were incapacitated they would have no legal right to transact your personal business. This can be as simple as collecting your mail or taking care of your personal residence. Power of Attorney granted to a friend, neighbor, or relative would ensure that your personal affairs were handled during your hospital stay.

Who is going to sort through your mail, and make sure your bills are forwarded to those who will pay them? Bills sitting in your mailbox are not going to get paid by themselves. What if a tree limb crashed through your roof? Who would contact the insurance company and initiate repairs? Without timely action, something like a hole in your roof could amount to several thousands of dollars in damage.

Simple situations such as these can easily be avoided by taking the time, thinking ahead, and having a plan of action. Granting Power of Attorney for your personal affairs is just as important as medical or financial Powers of Attorney. Be sure to think it through and plan ahead to be protected.

Note: Keep in mind that although a Power of Attorney is an effective instrument, there are limitations to what it can accomplish if you are incapacitated. Two such limitations are that neither the Social Security Administration nor banks honor a Durable Power of Attorney. This could create problems with Social Security Income requirements, or it may be difficult for your family to gain access to cash assets not held in joint accounts.

The best method for overcoming these limitations is the establishment of a Trust.

8. The Importance of Establishing a Trust

Now look at how a Trust can help your family better deal with incapacity, a state in which you would be unable to make the decisions necessary to safeguard your health, financial, or personal affairs.

While a Power of Attorney should be the first line of defense against needing a court appointed guardian, setting up a Trust prior to any incapacitation will help to avoid the need for a financial guardian. A Intelligently set-up Trust will be managing and protecting your property and assets in accordance with your instructions.

Before proceeding, review the definition of a Trust so it is fresh in your mind. A *Trust* is an agreement where a person places assets under the management and supervision of another person (or organization) for the benefit of a third person.

Think of a Trust as a neutral third party in which you place your assets for safekeeping. If created Intelligently, the Trust is able to protect and shield the assets from scenarios such as guardianship. With a Trust there is no need for a guardian: The Trust manages your assets. The Trust will take care of many things by providing your successor or "back-up" trustee to make decisions regarding Trust property following your written instructions.

By establishing a Trust and ensuring it is set up Intelligently, you can protect your assets and make certain your family's needs are met. Instead of a guardian being appointed, one who may not act in your best interest, the Trust will continue to manage your assets according to your instructions.

Keep in mind, a guardian may make financial decisions such as liquidation or distributions that you might never have approved, but with a guardian you have no say in the matter. This is why a Trust is so important: A Trust can ensure your

wishes are honored and carried out according to the plan you have previously determined to be in your family's best interest.

A Trust plan can be established to overcome a number of complications caused by incapacitation or even death. It can effectively and timely distribute or transfer assets to family members as you would have them distributed. This can include cash disbursements to your family for living expenses or funds for the children's college education.

Your plan would determine how your assets would be disbursed--not a guardian or court. In this way you would be able to provide for your family regardless of your medical or mental condition. When using a Trust, the need for a guardian would be a non-issue and your estate would avoid this kind of outside interference altogether.

Trusts are very useful for estate planning, and preparing for a number of challenges that may occur unexpectedly. There are hundreds of different kinds of Trusts, and you must create one that protects your assets and minimizes complications for your beneficiaries.

It is important a Trust be established Intelligently to be effective; otherwise, a Trust can trigger a number of liabilities or court actions. In the event of your death, if a Trust has not been Intelligently established it can become subject to probate--creating delays and additional costs. Seeking professional legal assistance is mandatory. Periodic updating the Trust should take place to reflect any relevant family, financial, or personal changes.

For example, a Trust can deal with real estate issues such as eminent domain or litigation or environmental concerns. Recently, for example, a pipeline burst along one of the creeks in Salt Lake City and covered the banks in oil. Homeowners who

had placed their homes in Trust were better able to deal with the environmental costs of clean-up than those who had to handle these things individually.

Note: Use of both the Power of Attorney and the establishment of a Trust is a very effective strategy for overcoming the challenge of incapacitation. In combination, you will be able to ensure your medical, financial, and personal affairs are handled according to your wishes. The amount of outside interference by entities, such as the court, will be reduced to a minimum. Time delays and frustrations experienced by your family and friends will be reduced, too. More importantly, you will be able to see that your family is taken care of, not only today, but in the future as well.

Case Study—Trusts and Powers of Attorney during Incapacity

A good example of how a Trust can help should you become incapacitated is a situation involving a family known as Adams. One of the Adams' concerns was having their teenage children taken care of if the couple should pass away, or become incapacitated or disabled.

The couple was doing their best to save for retirement while taking care of their children's needs. By investing in a plan through Mr. Adams' employer, they had managed to save almost $150,000 in a 401K. They also owned a home valued at about $200,000; although, their mortgage would not be paid off for four more years.

In addition, the Adams had two family cars and an assortment of other personal property, worth about $50,000. Mr. Adams also had a $500,000 term life insurance policy and they were expecting to one day inherit a parcel of land, money, and stock from their parents that would be worth about $200,000.

It is simple to calculate that with their home equity, 401k plan, vehicles, and other personal property, the Adams currently had assets of just under $400,000. After inheriting from their parents, and if Mr. Adams unexpectedly passed away, their assets could be as much as $1,100,000.

When asked what was most important to them, Mrs. Adams responded that they had three main goals:

1. Should anything happen to them, they wanted to provide for their youngest son and daughter who were currently high school students.
2. Should either of them pass away or become disabled, they wanted to take care of each other.
3. They wanted to protect whatever money was left over after they passed away and give it to their children without causing fights or contention.

The Adams had a pressing question: "What do we need to do to make sure that these things happen?"

The Adams had two estate planning options available: a will-based plan and a Trust-based plan. Having done some research on wills, they were familiar with some of the issues, but there were some clear disadvantages for using a will-based plan. However, they needed to explore the advantages and disadvantages of both types of planning.

The first thing to consider is that wills provide directions for people who are no longer alive, but Trusts are for the living. This means that your will takes effect after you are dead, but has no real value until then. Because of this, wills are limited to designating your wishes regarding what you want to happen with your Property after you die. (Keep in mind that Powers of Attorney are only valid while you are alive.)

These major shortcomings of wills and Powers of Attorney are why most estate planning attorneys recommend a Revocable Living Trust for my clients with assets of more than $100,000. Simply put, the Revocable Living Trust avoids probate and provides for total tax benefits. On top of that, it avoids the inherent problems of Durable Powers of Attorney and bypasses some of the potential administrative complexities that could arise from incapacity because your assets are owned by the Trust.

Trusts generally provide some amazing options to minimize taxes, protect your assets, and even create wealth in some situations. They are the best way to take care of your family.

The Adams, like most people, found that a Revocable Living Trust was a great fit for meeting their needs and goals. The Revocable Living Trust not only serves my clients during life, including disability, but also ensures that they provide for their family after death.

The Living Trust is a powerful planning strategy for anyone who (1) has more than $100,000 in assets that might be probated, (2) has appreciated homes or other Property subject to capital gains taxes, and (3) is a person who wants to protect themselves and their family from the burdens of future incapacitation or disability.

How Probate Works, Why It Is Difficult — and How To Avoid It

What is Probate? Probate is a court process of "sorting-out" an estate, and determining who is entitled to its assets. The word "Probate" is rooted in the Latin word *Probant*, which means "to prove" and is the process where the Probate Court

and a Probate Judge prove to whom they should distribute your estate's assets. Because Probate is a court process, it is public, and everything must be proven to the Probate Court. It must be proven that: the person being represented is actually deceased, there are assets in the estate, the heirs to the estate exist, and the assets will need to be distributed. In other words, it is the government intervening in your affairs.

Because Probate is carried out in courts, if children are going to fight you're your estate, what better place to do so than during the Probate process when the children have the audience of a judge. Probate can also slow down the sale of assets such as real estate. This can be very troublesome for your family when they have a solid offer to purchase a home or business. Depending on the total amount and type of assets in the estate, the probate process can be costly, complicated, and time-consuming.

Who Needs to File Probate? If a person dies with or without a Will in the State of Utah, filing for probate is required. There are also different requirements for probate when an estate has under $100,000 in qualified assets and when an estate has over $100,000 in assets. The process for those estates with over $100,000 in assets is much more complicated than those with under $100,000, and can also be much more expensive.

Note: Probate must be filed by people in the State of Utah if their estate is over $100,000 who die WITH OR WITHOUT a Will.

How the Probate Process Proceeds: As mentioned above, Probate is a court process and a Probate Judge will oversee the transfer of your Property to your rightful heirs. Even though the Probate process can be confusing and complicated,

depending on whether a person chooses formal or informal probate proceedings, the basics can be explained in 10 steps:

1. **Locate and Interpret the Will:** Assets with a title solely in your name (e.g., real estate, life insurance benefits, personal Property, etc.) will be subject to the probate process. In the presence of a valid Will, the Will determines which individuals, or organizations (such as charitable organizations), shall receive your Property. In the absence of a valid Will, the court--in accordance with state statute--will determine who receives your Property.
2. **Identifying the Estate Representative:** In Probate, your estate executor is often known as the "Personal Representative." For clarity, this guide will refer to them as "The Administrator." The Administrator works with the Probate Court to complete the steps necessary to settle your estate and distribute the assets to your rightful heirs. An Administrator is required to be bonded to ensure they complete the steps competently and honestly. Your estate pays for the bond. The Administrator is also entitled to compensation for their time and work in settling your estate. The amount that is approved by the Judge is also paid from the assets of your estate.
3. **Determine Heirs of the Estate:** Your Will provides the Probate Court with the identity of your heirs. These may include your spouse, children, relatives, friends, or organizations to which you intend on giving the assets of your estate as instructed in your Will. In the case where there is no Will (known as an intestate probate), the court determines the heirs of the estate in accordance with state law.

4. **Locate and Inventory Property:** If the estate is large enough to be subject to estate taxes (over $100,000 in the State of Utah), then all Property including**:** real estate, personal Property, business interests, stocks, bonds, etc., must be located, inventoried and valued. Values are not arbitrary but based on the conclusion of professional appraisers. The necessary appraisal costs will be paid from the assets of your estate. This step in the process is the most time consuming and costly. Values assigned to specific assets may be challenged by the court, administrator, IRS, or heirs. This can cause further delays toward settling the estate.
5. **Identify Creditors and Lien holders:** At the onset of Probate, it is customary for legal notices to be published in newspapers informing those who may have a claim against your estate. These creditors may be mortgage companies, banks, auto financing firms, or anyone who believes they have a specific or general claim against your estate. These claims must be validated, valuated, and paid before the assets can be distributed to your heirs. The costs associated with the payoff of these claims are paid from your estate's assets.
6. **Resolve Disputes and Challenges:** It is very likely one or more disputes or challenges will be made against the estate. A dispute or challenge could be based on a number of factors (e.g., valuation or the amount of an allowable lien against an asset). Challenges to claims can be made by the court, administrator, heirs, IRS, or other creditors. To settle any disputes or challenges, formal hearings would be held in the Probate Court resulting in a binding court determination. Of course,

lawyers would be hired to represent the estate's interest that would be paid from estate assets.

7. **Pay Expenses, Taxes, Debts and Liens:** Before any Property can be transferred to the heirs of the estate, all expenses, taxes, debts, and liens must be paid in full. This may be troublesome. Ii there is a shortage of cash on hand, estate assets will have to be sold to provide the cash necessary. Often estate assets sold for cash are liquidated for less than retail to raise the cash needed. This step in the probate process can be frustrating, and can take a considerable amount of time.
8. **File Final Tax Returns:** At the conclusion of identifying estate assets, determining valuation, resolving disputes, and paying debts, your final tax returns will have to be filed. The Administrator will file the returns and submit them to the Intelligent entities. This necessitates an additional waiting period before the final step of distribution can be completed.
9. **Distribution of Assets:** At the conclusion and sufficient completion of Steps 1-8, the estate's assets can be disbursed to your heirs and a "receipt and release" obtained from each recipient. This will settle the estate and the Probate Court will close the case. Now keep in mind that the time spent to get to this step can be as little as a few months, or it can take years to finally settle the estate. Each estate is unique, so no one really knows how long it will take to settle an estate or the expenses involved. It is settled when it is settled; and, it costs what it costs.
10. **Close the Probate:** Last, but not least, a probate needs to be closed and the court will need to sign off on the process. Depending on

whether a probate is being conducted in a formal or informal way, the closing may require numerous filings.

Disadvantages and Problems with Probate: After reading the preceding steps involved in probate, it may be easy for you to identify some of the disadvantages and problems involved. Outlined below are a few of the complications that can be involved with settling estates through the process of probate:

- **Personal Information is made Public:** The probate process is a public civil function and all information associated is public information. Information that was once private and confidential is now a matter of public record. This means virtually all information is available for the asking. Have you ever wondered how reporters are able to report on the amount of an estate when someone famous has died? It is because the financial information of the estate became public information when it entered Probate.
- **Increased Tax Liabilities:** In step 4 you learned all the Property in an estate must be valued. Appraisers do this. So you can expect the value to be reported as the highest that the market can bear. Even though your Property may never sell for the appraised value assigned to it, the estate will have to pay the taxes that are based on that appraised value. This will only add further expense to the estate, and reduce the amount of assets available for disbursement to your heirs.
- **Claims Against the Estate:** Whenever money is involved there will be people who want a piece of the pie, and settling an estate seems to bring them out of the woodwork. It is amazing how many claims can come

forward from people you have never heard of, and who may not have a valid claim at all. Although these claims may ultimately be determined to be invalid, it will take time to resolve the claim, and of course it will cost the estate more money.

- **Disposal of Estate Assets:** In many probate cases, the estate is short of cash to pay for taxes, debts, liens, or claims. This requires the liquidation of estate assets to raise the cash. Have you ever been to an estate sale? These are auctions where it is well known that people can purchase items at half of their market value. Many people form businesses around the profits possible from such auctions. You worked hard to accumulate your assets so the assets could be passed on to your heirs; not so the assets would be sold at prices half of the market value. An estate could lose a substantial amount of value in the course of selling and disposing of assets.
- **Contested Wills:** It is amazing how easy it is to contest a will and how many people are anxious to do so. When your cousin (whom you have not seen in 20 years is upset you did not include him in your will) or your Aunt Betsy (who thinks you should have left her more money) contests the will, it brings to a halt the progress of the Probate. Hearings have to be set up; lawyers get involved; and, it increases the amount of time and money to settle your estate. Of course, these costs only further reduce the amount of assets you intended to leave to the heirs of your estate.
- **Administration Costs:** One of the biggest disadvantages of Probate is the cost involved to settle an estate. At each stage of the Probate

process, it is money that pushes the process forward. Lawyers have fees; appraisers have fees; the court has fees; there are transfer fees, etc. All of these costs or fees have to be paid by the estate. No one works for free and probate is no different. Depending on the size of the estate, costs, fees and expenses can be substantial. In the end it is the heirs of your estate who end up paying for them all.

- **Time Required to Settle an Estate:** One of the most common complaints about probate is the amount of time required to settle an estate. Furthermore, many heirs of an estate are dependent on the assets in the estate. This may be a spouse who needs funds for living expenses, or kids who need money for college tuition. During the probate process, some funds are generally available, but there are many restrictions placed on assets that prevent access or transfer to heirs who may also be dependents. It can take many months or several years before your dependents will be granted full access by the Probate Court to the assets that you intended on them having.

A Will, a Trust, and Probate: You are probably asking yourself: "Who in his right mind would want to subject his family and heirs to the Probate process if it was not absolutely necessary?" The fact is that with good estate planning going through a lengthy probate may not necessary. This planning involves the strategic use of both a Will and a Trust.

First, the advantages for avoiding or minimizing the involvement of the probate court are many. Enjoying these advantages is a lot simpler than you might expect.

Advantages for avoiding and minimizing the involvement of Probate Court:

Reduced Time: Avoiding probate altogether is not possible, but with a Intelligent will you can limit probate's role to a procedural one. To do so effectively requires strategic estate planning on your part.

Reduced Cost: By strategically planning your estate to fit your specific situation, you can dramatically reduce the cost of distributing your assets to your heirs. These eliminated costs can include administration, appraisal, asset disposal and court costs.

Reduced Frustration: Your family, friends and heirs will be less frustrated when you effectively plan your estate to minimize the involvement of the Probate Court. By using a Trust to avoid the court you can make the process of distributing your assets much easier for the beneficiaries of your estate.

Asset Protection: The probate process can chip away at the value of an estate over time. Your assets are vulnerable during the entire probate process. Using a Will and a Trust will enable you to protect your assets, prevent a chipping away of their value, and pass on more of the assets to your heirs.

Basics for using a Will and a Trust: According to Utah law, estates with assets over $100,000 must go through a significant probate process. Estates with a Will but with under $100,000 in assets need only file a series of procedural documents and declarations, avoiding the usual time and cost associated with the entire probate process.

You want to have a valid Will that will give instructions for disbursing assets that total no more than $100,000. This would limit the role of the Probate Court, and minimize its involvement in your estate. It will also minimize the time, cost, and frustration associated with disbursing these assets to your heirs.

If your estate is valued over $100,000, then you should set up a Trust to manage your assets. For most people who own a home, a simple Revocable Trust is a very good estate planning option. In the event of your death those assets over $100,000 held in Trust would not be subject to probate because they are effectively removed from your estate.

Even though a Trust is usually the perfect tool for avoiding probate and passing on the best things of your life to loved ones, many people falter and attempt to avoid using a Trust by transferring assets out of their name. Some people try to avoid the legal system by never filing probate. If you are considering this, first read some of the following case studies before continuing.

Case Study—Transferring Property out of Your Name

Mom put daughter's name on investment account – now Mom must report gift tax and grandchild must report the investment account money when applying for federal financial aid.

Case Study—Putting Your Children's Names on Deeds

Dad put son's name on house… home is now at risk for son's problems: bankruptcy, divorce, accidents, etc.

Dad has also ruined son's exemption from Capital Gains Taxes, called "basis" by giving him a lifetime gift of the Property. Because of this, when son goes to sell the Property he will need to pay much more in capital gains taxes.

In talking about Capital Gains Taxes, it is appropriate to always say that "Uncle Sam Appreciates your Appreciation," and he wants to tax it!

If dad bought Property for $20,000 that's now worth $200, 000 (an appreciation of $180,000), his son could have inherited the Property and been exempt from paying taxes on the $180,000 appreciation. But by making a lifetime gift of the Property to the son, Dad has ruined is son's exemption and the son will have to pay capital gains taxes on the $180,000 of appreciation. This is no small matter: Federal rates are currently 15% and Utah's rate is 5% for a total of 20% tax on the $180,000 of appreciation. In other words, by putting his son's name on the title to his Property, Dad cost his son $36,000 in taxes!

In most cases, protecting the Property and minimizing tax liability can be accomplished most effectively by (1) simply creating Wills where in the event of both parent's deaths, the child would become heir to the Property, or (2) establishing a Trust where the child would be a succeeding trustee of the Property in the event of both parents' deaths. In this strategy the Property baseline would be established upon the death of the parents, not many years prior to it. This would result in a lower capital gains tax if the Property were sold.

Case Study—The Cost of Probate

Here is an example of a bad maneuver that was employed to avoid the time and cost involved with probate. A woman had inherited a house from her father in 1980s. His last Will and Testament had said, "My daughter gets 100% of my home." Well, this woman decided not to bother with probating the will. She wanted to avoid the whole process of attorney costs, taxes, etc.

So, she transferred ownership of the home to her name, with a new deed. When the title company did a title search, it found that because there had not been a probate

filing within a three-year-time frame, as required by law, the title company refused to insure her home.

In this type of case, where a Will has not been probated within the three years required by Utah Law, in order to legally settle the estate, the woman needed to go through a “Determination of Heirs” proceeding. During the Determination of Heirs proceeding, it was discovered that this woman was one of three children in her family. Consequently, despite what her father's will had said — that she had been given 100% ownership of his home — she had to go to great trouble and expense to prove that she was indeed the home's rightful owner of the home.

There are certainly many arguments for avoiding probate, but do not try to avoid it by making uninformed or ill-conceived decisions such as this woman did. Fortunately, probate can be legally avoided with a Intelligent estate plan, including a simple, Revocable Trust. This involves trust-based planning where the bulk of assets over $100,000 are placed in Trust. Intelligent estate planning with a trust-based plan will allow you to protect your assets and ensure they are disbursed in a timely manner, privately, and as you choose.

Three Ways To Minimize Estate Taxes

This guide explores how to take action now to establish an estate plan that minimizes the amount of time, money, and hassle involved in distributing your assets to your heirs. One of the most important areas to evaluate during estate planning is tax liabilities. Taxes levied on an estate can be a significant reason that an estate loses value.

An estate can lose value after assets have been distributed and the estate has been settled. Every estate will experience some degree of loss, but with insightful estate planning such loss can be kept to a minimum. Poor estate planning or no planning on the other hand can cause a significant loss to the value of an estate. Other factors contributing to loss can be administration costs, litigation, debts, legal fees, contested wills, etc.

Strategies to reduce, mitigate, minimize, or avoid estate taxes:

- *Increase Deductions and Credits:* Use exemptions and credits allowed by law.
- *Lower Estate's Gross Value:* Transfer assets before death through gifts allowed by law.
- *Create Trust Accounts:* Transfer management of assets to a Trust.

Increasing an estate's deductions and credits: This strategy involves taking advantage of the exemptions and credits allowed by law. This includes the marital deduction that will delay any taxation until after the death of the surviving spouse. This also involves taking advantage of each spouse's exemption from the federal estate tax through such means as credit shelter Trust. Charitable deductions will also lower estate tax for contributions to IRS-approved charities.

Lowering an estate's gross value: To lower an estate's value effectively requires transferring assets while one is still alive. This includes forgiving loans, gifts to children and spouses, such as cash, Property, or tuition for college. There are limitations for the amount of annual transfers or gifts allowed, but they are substantial and can reduce an estate's gross value significantly over time.

Creating Trust Accounts: By creating Trust accounts, it is possible to reduce, eliminate, or delay the taxation of estate assets. Examples of Trust accounts include the QTIP (Qualified Terminable Interest Property), insurance, and charitable Trusts. These Trusts, when set up Intelligently, are effective in taking advantage of exemptions, credits, and reducing an estate's tax liability.

Through Intelligent estate planning, tax implications can be evaluated and a strategy can be put in place to capitalize on exemptions and deductions. This will help you avoid many taxes or at least minimize the impact of taxes on your estate and your heirs. Good estate planning will allow your heirs to receive the maximum amount of assets from your estate while minimizing any loss due to taxes.

There is no substitute for Intelligent and legitimate estate planning. Where most people open themselves up to increased liabilities, including tax liabilities, is in failing to plan Intelligently or acting on bad advice. Many times a strategy may seem as if it will be effective (to avoid taxes, probate, etc.), where it only creates complications for both the estate and its heirs. All of this can be avoided if an estate plan is correctly created and completed.

Bad Plans Always Fail

Many people believe they will be able to avoid taxes, costs, or probate by deeding their real Property to their children while they are still living. Sometimes the transfer is for full ownership rights and at other times the children are listed as joint tenants. Not only does this open up a host of other liabilities, it creates an immediate tax liability for the children. This type of transfer will be viewed by the IRS as a gift from you to the child. Depending on the value of the Property, and deduction limits, the transfer could invoke a substantial gift tax or other taxes. In some planning

schemes touted by clever salesmen, tax-evasion schemes that hid or veiled assets in unlawful ways have led to jail time for the unwary person.

Using untested plans for tax reduction or putting the names of your children on assets (which may seem effective at first) can not only backfire, but also opens you and your heirs to greater liabilities, including tax liability. Refer to the previous chapter's example of a father putting his son's name on his Property, which cost the son tens of thousands of dollars in capital-gains taxes. A good estate plan can eliminate these liabilities and make certain your assets pass to your heirs efficiently and intact. To accomplish this, there is no substitute for a Intelligent estate plan.

Case Study: A Good Plan: Remember the Adamses who, by investing in a retirement savings plan through Mr. Adams' employer, had managed to save almost $150,000. They also owned a home valued at $200,000, with a small mortgage. In addition to those things, the Adamses had a couple of cars and some other personal Property that was valued at about $50,000. Mr. Adams had a $500,000 term life insurance policy. And, the Adamses were expecting to inherit a parcel of land, money and stock from their parents that would probably be worth about $200,000.

With their home equity, 401k plan, vehicles, and other personal Property, the Adams family had assets of just under $400,000. After inheriting from their parents, and should Mr. Adams unexpectedly pass away, their assets could be as much as $1,100,000.

Initially the couple thought a Will-based estate plan might be right for them even though it involved having the estate probated. They also considered deeding their real Property to the children while they were still alive, thinking this would be advantageous toward minimizing taxes and time.

There were disadvantages to using a Will-based plan and of deeding their Property over to the children while they were still living.

If the Adamses absolutely insisted they use a Will-based plan, they will be forced to make a decision of whether they want your kids to (A) go through the trouble of probating the estate at a cost of six months' time and $2,000 to $5,000 or (B) be forced to pay capital gains taxes on the sale of the house--probably amounting to $20,000-$30,000.

If the Adamses wanted to avoid probate by designating, deeding, and transferring all of their assets to your children ahead of time, it will cause some tax issues. By putting their children on their home's deed, the Adamses capital gains tax basis in the property will carry-over to their children, which is to say that if the children later sell the home after the Adamses die, the children will need to pay capital gains taxes on any amount over the price (plus improvement) the Adamses originally paid for the house.

This plan had obvious disadvantages and could have some undesirable tax, probate, and transfer implications.

If instead the Adamses left the home to their children in the Will, they would need to go through the trouble and expenses of probate, but they would get a 'step-up' in basis. The 'step up' means that if they sold the house, they would only be taxed on any increases in the house value at the time they inherited."

A will-based plan was a much more effective plan for reducing liability and taxes, but does not have the advantages of a trust-based plan.

Trusts generally provide you with some amazing options to minimize taxes, protect your assets, and even create wealth in some situations. Also, a Trust will avoid the liabilities that can be created by deeding your Property to your children while you are still alive. Generally, only Property contained in the Will needs to be probated as the remainder is held in Trust to be disbursed according to the Trust's provisions and plan.

In the end, a combination of Wills, Powers of Attorney, and Trusts is the best way the Adamses can take care of their family, reduce tax liabilities, and ensure their assets are distributed in the manner they desire. The Adamses would be wise to make a decision that a Living Trust was the estate plan most suitable for them to accomplish their goals and reduce cost, time and liability.

Protecting Your Family, No Matter What

The flexibility of Wills, Trusts, and Powers of Attorney allows for effective estate planning. These instruments can help you meet the needs of unique family scenarios. These scenarios can include providing for special needs children, single individuals, second marriages, and Incentive Trusts for children who need an extra push in the right direction.

Protecting a Young Family Members with a Will

A premature death that occurs in the absence of a Will can make life complicated for your surviving family. Many people with dependents feel that one family member is better equipped than another to take care of their children in the way they want, and a Will is essential to provide guardianship for your children. (Don't forget to designate a temporary guardian in your Power of Attorney). Furthermore, in the

event of your death, a Will can make it much less complicated for your family to access funds for daily living and for medical expenses. Depending on the size of your estate, having a Will can also make probate much easier and less frustrating for your spouse and family.

Through the instructions of the Will you can ensure your loved ones are taken care of and you can be certain that the assets of your estate will be disbursed according to your wishes. If you fail to prepare a Will, it will be Probate Court and a Judge who determine who will be guardian of your children and who will get your assets. That is why it is important to have a Will in place today! If you don't have one, don't put it off any longer.

Planning for Second Marriages

In various situations a simple Will alone may not be able to guarantee that all of your last wishes are granted. There are a number of scenarios where second marriages can present challenges if Intelligent estate planning has not been completed. These challenges can be overcome easily if you take the time to plan your estate. It requires you take the steps necessary to direct your assets adequately prior to your death or incompetence.

Many people in second marriages are concerned simply about passing assets to a surviving spouse, hoping that the assets will later be distributed as they wish. In a number of situations the surviving spouse liquidated the assets quickly, effectively disinheriting the deceased spouses' children as the money evaporated. People may have the best intentions when it comes to money, but it is very easy to spend it. This is not the scenario you want when it comes to setting up provisions for your estate.

This is where a QTIP Trust (a Qualified Terminable Interest Property Trust) can be very helpful. Working in conjunction with your Will, this Trust can be established to manage the assets and provide an income for a surviving spouse, while delaying taxes on the QTIP money and preserving assets for your children. While a QTIP Trust is often used to preserve assets for children and to delay taxes, it can have a specific purpose, depending on how it is set up. The beauty of a QTIP Trust is its ability to look after a surviving person while maintaining oversight of assets. It can be managed by a professional organization, keeping assets safe according to your instructions.

Couples of foreign nationality should consider the QDOT (Qualified Domestic Trust), which is often employed to ensure that the surviving spouse has full access to all of the assets of the deceased spouse rather than being required to pay tax bills when the first spouse dies. Similar in nature to the QTIP, the QDOT does carry with it a few additional rules, but nothing of great difficulty.

Appointing Decision-Makers with Powers of Attorney

Circumstances can get pretty confusing for relatives who may not have been involved in your life; and therefore, they may have no idea what choices you would make unless you provide them with instructions. So it is vital that you make provisions with a Intelligent estate plan. The best thing you can do is to provide your family with the necessary Power of Attorney in the areas of healthcare, daily living, and finances. This is especially important should you become incapacitated or disabled.

Medical Decision-Makers

To ensure the Intelligent medical Power of Attorney is in place, one approach would be to meet with the major care providers (e.g., primary physician, therapist, etc.). A discussion about the care scenarios that may take place is necessary for the purpose of drafting medical directives with your lawyer. These medical directives are listed in a Power of Attorney for making your care and medical decisions should you become incapacitated or incompetent.

Now, the medical Power of Attorney need not cover an indefinite period of time, but should include the care specifics that may be necessary for the next year. You can always go back later and modify the directives as your care needs change. However, the directives may contain instructions that could be irreversible--such as "do not resuscitate." Keeping care directives up to date is important as your level of care evolves.

Daily Living Decision-Makers

Granting Power of Attorney for personal decisions is another important step. This ensures that day-to-day matters will be handled according to your wishes should you become incapacitated or incompetent.

Granting a trusted friend or family member durable Power of Attorney for daily-living decisions will give that person the legal right to transact your personal business. This can be as simple as collecting your mail, or something more complex such as initiating insurance claims on your behalf.

Financial Decision-Makers

Just as vital as medical and daily-living Power of Attorney is financial Power of Attorney. There will have to be someone to make financial decisions for you. This

may be for a limited period of time, or it may be for an unlimited period of time depending on your capacity. Someone is going to have to pay your bills and make financial decisions that will affect your life. The attorney-in-fact could be a spouse, sibling, relative, or friend who you trust with that responsibility.

In many cases, your spouse is a good candidate for the financial Power of Attorney. This is not always the case, but many times your spouse will be ideal for handling the day-to-day financial concerns. If your spouse is to be granted financial Power of Attorney, you both should sit and discuss the situations at length and come to an agreement on the decisions. This is important because bills will have to be paid in order to continue care and maintain a lifestyle.

One of the most effective aspects of estate planning is that a plan can be designed to meet many different scenarios. Using the Power of Attorney, a Will and a Trust, an estate plan can be put into place to accommodate your ongoing or final wishes. Engaging in the process of Intelligent estate planning, you can ensure your assets are used in a manner that will be most effective to meet your needs and that your intentions are honored.

Caring for Special-Needs Children

If you are the parent or guardian of a special-needs child, it is especially important to have an estate plan in the event of your premature death. Without a specific and effective plan there is no guarantee the needs of your child will be met efficiently or timely. Additionally, if you are incapacitated, someone else will have to make decisions for your child. Who this individual will be should be set up now, while you are competent, not after something may have happened to you.

Prior to your premature death or incapacitation, there are two primary considerations or steps that must be taken for guaranteeing your special-needs child is cared for Intelligently. These include:

1. *Appointing a Guardian:* Naming the person who will care for your child in this situation
2. *Establishing a Special Needs Trust:* Putting your assets in a position where the guardian can access them in order to care for your child, where those assets won't disqualify the child from government benefits he or she might otherwise be entitled to receive.

Completing these steps as soon as possible is important for dealing with any unforeseen events. This is how you will safeguard your child and put a series of instructions into action should anything happen to you.

In the event both parents should die prematurely (or if you are a single parent), a Guardian would need to be appointed. This individual would take over the responsibility of caring for your child. This can be a difficult decision to make, but it must be done. It is advantageous to name successor guardians in the event the priority individual is unable to fulfill the responsibility. Guardians should be appointed not only in the Will but also in the Power of Attorney. This is because a Will only works after death, but it is important to consider that you could be incapacitated and unable to care for a child before your death.

There are a number of situations where establishing a Trust is advantageous, and establishing a Special-Needs Trust for children with special needs is extremely important. Many state and federal programs are available to those with special needs—if they qualify. This often means that the individual with special needs

cannot have more than a set amount of assets. Because leaving Property to a child with special needs could disqualify this child from aid, it is important that a Trust be structured to keep Property in a way that it will not be considered an "available asset."

Preparing an estate plan for a special needs child can be difficult, both mentally and emotionally, but planning ahead is especially vital for people whose children have special needs. The sooner you begin the earlier you will experience the peace of mind that comes with taking steps to provide for your child.

Keep in mind the above steps are only outlines for how to set up an estate plan to take care of your special needs child. Consulting with an attorney is essential to plan, prepare, and document your estate plan.

Estate Planning for Single Individuals

It may seem more important for married couples with children to engage in estate planning, but it is just as important for single individuals. Taking the time to plan your estate will give you control over scenarios that may occur during your life or after you have died. Failure to engage in estate planning will only shift decision-making power to others who may not have the same intentions as you.

If you are single, young, and have meager assets, it may seem counterintuitive to prepare an estate plan. But many things could occur in your life where you would want to retain decision-making power. This guide will discuss some of these scenarios and how to prepare for them. (If you are an older, single individual with substantial or even modest assets, it is equally important to prepare a Intelligent estate plan.)

***Example*:**

If you are a single individual, your estate plan would include provisions in the event you become incapacitated. If this occurs, you will want to have a medical Power of Attorney prepared so your medical wishes will be honored. With no provisions in place, decisions will be made for you according to state statute—despite the fact that those decisions may be contrary to your wishes. Even worse, your family and other loved ones might be left to fight over how your medical decisions ought to be made. There are some cases where a significant other was even barred by the family from entering the hospital room.

A single individual's plan also includes granting medical Power of Attorney by assigning this decision-making power to another. This can be your doctor, sibling, relative, or friend. You would discuss your medical preferences with him or her, and communicate under what conditions this person or persons would have the power to make decisions for you.

When you have assets such as a home or business, it is important to have someone oversee management of those assets should you become incapacitated. This can be an attorney, CPA, trusted relative, or friend. It is really up to you who is granted financial powers under your General Durable Power of Attorney. It would be a shame if you lost your home during a long hospitalization because no one paid the mortgage, taxes, insurance, etc.

Another long-term option for managing your assets is to set up a funded Trust. This should be done with the guidance of a good attorney. A Trust plan can be put into place where, in the event of your incapacitation or death, a successor Trustee would

continue to manage the assets in the Trust. This includes paying bills, maintaining trust assets, or distributing assets to heirs.

This brings up the final point for estate planning: Preparing a Will. In the event of your death, any assets not held in Trust will be taken care of under the Will. Although it is highly recommended to Intelligently transfer all major assets to the Trust in order to avoid probate, the Will is a valuable safety net to your Trust. Should probate be required, your Will is the instructions for how you want the Probate Court to distribute your assets.

Co-Habitation*:* Today, there are often single individuals who live together without being married, so it is important to take steps to avoid legal problems in the event that one of the individuals should die. Without directions for financial responsibility, Property ownership, and disposition of the residence, you could be in for a long and expensive battle with other possible heirs of the estate. Protecting yourself is not difficult or expensive. It just takes planning and follow-through.

In a co-habitation scenario, there are significant benefits to having a Property and financial agreement in place. This will identify and define who owns what Property and who is responsible for which debts. A division of assets and their ownership should be itemized in detail. Your Wills should reflect how you want the assets to be distributed if either of you should die or become incapacitated.

For the single individual, regardless of age, having a Intelligent estate plan is essential. Whether it is planning for life's challenges or a premature death, estate planning is instrumental to provide the protection needed to retain decision-making power, and protect your assets during unexpected events. Your attorney is an

important ally in effective estate planning and can provide guidance at every stage of planning.

Incentive Trusts

Throughout this guide, Trusts have been referenced for their use in avoiding probate, cutting costs, and reducing time-consuming delays. These strategies may seem reactive in nature, but keep in mind Trusts can be used proactively, as well. Trusts can be very effective in motivating individuals to take action with specific directions.

Incentive Trusts can be established to meet a variety of objectives and ensure certain outcomes will be accomplished. The way an Incentive Trust is able to do this is generally three-fold: (1) an objective is identified, (2) an outcome is defined, and, upon completion, (3) compensation is awarded. In brief, compensation held in Trust is used as an incentive for motivating an individual to accomplish certain actions specified in the Trust plan.

Examples:

A common outcome that many Incentive Trusts contain is directing children (or grandchildren) to complete a college degree. The Trust not only will provide the funds to pay for tuition, but provides an incentive payment once the degree is awarded. This is the motivation needed for many children to work hard and exercise the discipline needed to complete a degree program.

Perhaps you have a successful business and want to prevent it from being sold upon your death. The Trust could be set up with provisions for periodic cash, stock, or Property incentives for operating, managing, or directing the business. Unless the

terms of the Trust plan are met, no compensation is distributed. Actions are central, so only a Trustee who will enforce the specifics of the plan should be appointed.

A son who is concerned about the welfare of his mother and does not want her to end up in a nursing home prematurely, can provide incentives in a Trust for the family to continuing caring for her. Where he might worry about the family placing her in a nursing home if he dies prematurely, an Incentive Trust could provide motivation for family members to continue care for her at home.

The Incentive Trust can be set up not only to include professional and educational objectives, but personal ones, too. Maybe you are concerned about specific morals or vice habits corrupting your grandchildren. The Trust can be set up where certain personal habits are encouraged and others are prohibited. An example would be no drug use or criminal activity by the individual. Usually the condition(s) would have a time constraint, with compensation being paid at a specific date or age.

How to Create a Successful Estate Plan

This section describes two successful estate planning scenarios. One concerns a family of average means, and the other a family with modest wealth. As you will see, each estate plan must be uniquely tailored to the situation.

Planning for Families of Average Means

Mr. and Mrs. Smith are ready to engage in estate planning. Here are the necessary steps:

1. **Gather Vital Documents:** These documents include tax returns, Property titles, retirement account statements (e.g., IRA, 401K, etc.), insurance policies, investment confirmation statements (e.g., stocks, mutual funds, etc.), debt

summaries, birth and marriage certificates, employment pay and benefit summaries, bank account statements, personal Property list, loan agreements.

2. **Inventory Assets**: This involves identifying all the Property of the estate with a monetary value. The Smiths' inventory of assets reveal they have home equity of about $150,000, a 401K of $100,000, life insurance of $50,000, personal Property of $25,000, and bank accounts of $10,000. Both the home and automobiles are owned free and clear.
3. **Determine Net Worth:** This is accomplished by completing a basic (informal) financial statement that identifies assets and liabilities. To reach a financial net worth, liabilities are subtracted from asset values. All other asset values are added to the financial bottom line to arrive at the estate's net worth.
4. **Assess Retirement Risks and Goals:** This involves looking at the income needs and risks of the client during retirement. Any good estate planning attorney should take the time necessary to help you to assess whether your current plans will Intelligently support you during retirement. Similarly, your attorney should be well-versed in the risks you will be facing, including the risk of costly long-term care, potential automobile accidents, and business risks. A thorough estate plan should consider the options for addressing your income needs and risks during retirement.
5. **Establish Estate Goals:** Determine how and to whom the assets of the estate will be distributed. The Smiths are married and have two adult male children. They would like to pass on their assets in a manner that is timely and inexpensive to the estate. Their goals and concerns include three primary desires:
    - ***Prepare for Incapacity:*** Although the spouses would take care of each other in the event the other spouse is incapacitated, they want the older son

to have financial, personal, and medical authority to take care of any needs that arise.

- ***Take care of the Surviving Spouse***: If either the husband or wife dies, designated assets would be distributed to the surviving spouse in a timely manner and with minimum expense. *(They are concerned difficulties may arise from delays in transfer, or a shortage of cash on hand for living expenses. They also want to avoid a high tax obligation.)* Assets would include the real estate Property, 401k proceeds, bank account balances, and any personal Property. The life insurance policy proceeds for the deceased spouse would first pay for funeral expenses, and the remainder of the policy would be distributed to the Trust of the surviving spouse.
- ***Take care of Children***: In the event both parents die, the assets of the estate would be collected in the Trust and then distributed equally among the children. In this particular situation, the Smiths prefer that the older son oversee the distribution of their assets. *(Their older son has more financial experience than their younger child and they view him as more capable.)* Insurance proceeds would first pay for funeral expenses, and the remainder would be distributed equally among both children. Assets would include real estate, 401k proceeds, insurance proceeds, and bank balances. Their estate portfolio would include a detailed inventory of statements identifying the estate's personal Property to the children.

6. **Consult with Attorney:** For the wishes of the Smiths to be carried out, they will need to consult with an attorney to discuss and complete estate planning strategies. Keep in mind that in Utah estates with assets over $100,000 must be probated. Without an effective plan, probate can result in additional expenses to

the estate. Without consulting an experienced estate planning attorney, important details of your situation, such as your unique risks or income needs, could be overlooked. An attorney will help the Smiths create an effective strategy for avoiding a lengthy probate, possible complications, and costs associated with the distribution of their estate.

7. **Implement the Estate Plan:** The total value of the Smith estate is $330,000, which includes home equity, the 401K, life insurance, personal Property, and bank accounts. Both the home's mortgage and automobiles are debt-free, and the estate will be almost entirely debt-free. Here is an estate plan that meets the criteria for each scenario, and contains plans for overcoming the unique characteristics of each:
    A. **Create Powers of Attorney:** A General Power of Attorney would be drafted for each spouse giving each other, and then the older son, the authority to perform and make financial and personal decisions in the event either spouse is incapacitated. Medical directives would also be drafted giving authority to make medical decisions. Completed copies of these documents will be made available to the physicians, attorneys, and family.
    B. **Prepare Last Wills:** Reciprocal Last Wills would be drafted for each spouse to cover the event of their death. The Wills would mirror each other--leaving the designated assets to the surviving spouse.
    C. **Establish a Joint Revocable Trust:** A Joint Revocable Trust would be an excellent choice in this particular case (although separate Trusts are often a better choice in the case of second marriages. The Spouses would be designated as the trustee and the son would be named as successor trustee. In the event of the a spouses death, the surviving spouse will assume the

role of trustee. (*In addition, the older son would be named a successor trustee in the event that both of the spouses died about the same time.)*

D. **Implemente the Trusts and Designate Beneficiaries:** The Trust would be established and much of the Smiths' Property would be transferred into the Trust--including the family residence with $150,000 in current equity. Similarly, the Trust would be the beneficiary of the life insurance and bank accounts in order to consolidate the assets. In any case, the surviving spouse or the children would have complete access to the assets through the Trust, and retitling Property would not cause any complication since the Trust is revocable. Also, in order to make sure the wife receives the proceeds from the husband's 401k, she would be named as primary beneficiary—Trusts would not normally be beneficiaries of 401k or IRA plans since this can cause some tax complications. (*In addition, in the case of mutual fatality, the children would be made secondary beneficiaries with an equal share in the 401k proceeds.)*

The Joint Revocable Living Trust structured in this way will serve the Smiths well--not only during life but will also ensure that they provide for their family after death. This Trust is recommend as a powerful planning strategy to anyone who: (1) has more than $100,000 in assets that might be probated, (2) has appreciated homes or other Property subject to capital gains taxes, and (3) is a person who wants to protect themselves and their family from the burdens of future disability.

Planning for Families of Modest Wealth

In the second example of successful estate plans, we will look at a family with a little more wealth, Mr. and Mrs. Johnson. Their estate has a total value of $1,495,000. The Johnsons have two children who are minors.

1. **Gather Vital Documents:** The required documents are similar to that needed for the Smiths plan in the example above.
2. **Inventory Assets**: This would follow the same process as listed in the Smiths plan above.
3. **Determine Net Worth And Consider Potential Tax Consequences:** This is where the Johnsons' plan differs from the Smiths' plan. Because the Johnsons have more wealth, it is worth considering the potential estate tax, capital gains tax, and income tax consequences of the Johnsons' plan. Because these rates shift frequently, the Johnsons should only consider planning strategies that are flexible enough to bear some changes in the tax code.
4. **Assess Retirement Risks and Goals:** The Johnsons must consider the same risks as the Smiths in the above example. If the Johnsons have any "higher-risk" assets, they should consider some risk management options, such as insurance or asset protection planning. There is no better way to ruin retirement than letting a risk get out of hand.
5. **Establish Estate Goals:** The Johnsons consider their modest wealth to be an important legacy to their family and they understand that it is worth the time to engage in Intelligent estate planning. Here are their estate planning goals, and the scenarios to be addressed, or to overcome.
    - ***Scenario #1****:* If Mr. Johnson's death precedes his wife's, he wishes that she remain in control of the family residence that currently has $400,000 in equity. Mr. Johnson intends that his 401k of $300,000 and his personally

held stocks of $300,000 provide a steady income for his wife. He wants $100,000 of the insurance proceeds ($125,000 minus funeral expenses) to be available for the minor children's college fund. Any cash in bank accounts would be transferred to Mrs. Johnson upon his death. The land (worth $200,000) would be passed on to Mrs. Johnson to sell or keep as she wishes. If Mr. Johnson becomes incapacitated, Mrs. Johnson would be granted durable Power of Attorney, and, his personal physician would be granted medical Power of Attorney.

- ***Scenario #2:*** If Mrs. Johnson's death precedes her husband's, she wishes that her interest in the family residence with $400,000 in equity be passed on to him. The money in the bank accounts would be transferred to Mr. Johnson's Trust upon her death. She wants $100,000 of the her insurance proceeds ($125,000 minus funeral expenses) to be used to fund her children's college education. The land (worth $200,000) would be passed on to Mr. Johnson with no restrictions, as well. In the event of Mrs. Johnson's incapacitation, Mr. Johnson would be granted durable Power of Attorney, and her personal physician would be granted medical Power of Attorney.
- ***Scenario #3:*** In the event of a mutual fatality, Mr. and Mrs. Johnson would appoint her sister as guardian of the children. An account would be set up, funded with insurance proceeds, that would provide for the children's college education. The guardian would have the option to live in the family residence, or the home could be liquidated with the proceeds held in Trust. A living expense fund (from proceeds of the 401k and stocks) would be established and distributed to the guardian on a monthly basis.

Additionally, the children would receive equal shares in the net estate with 50% distributed at age 20, and 50% distributed at age 24. Also, in the event of mutual incapacitation, medical Power of Attorney would be granted to their respective personal physicians, and, personal Power of Attorney to Mrs. Johnson's sister.

6. **Consult with Attorney:** For the Johnsons to realize their estate goals, it is necessary for them to consult with an attorney and create a feasible plan that will meet their expectations. In Utah, estates with assets over $100,000--even those with a Will--must be probated. An attorney will be instrumental for developing an effective strategy for avoiding a lengthy probate, tax implications, and unnecessary delays with the distribution of estate assets.
7. **Make the Estate Plan:** The Johnson estate contains $400,000 in home equity, land worth $200,000, a 401k balance of $300,000, stock of $300,000 personally held, life insurance proceeds of $125,000 each, and bank accounts with a total balance of $45,000. They have stated a number of estate goals (detailed in the scenarios) that they want to address, and possible challenges they wish to overcome. Here is the estate plan they have decided will meet their expectations:
    A. **Create Living Wills:** A Living Will is drafted for each spouse giving durable Power of Attorney or guardianship over the children to those individuals whom they wish to appoint in the event one or both of the spouses are incapacitated. Medical directives would be drafted and medical Powers of Attorney would be granted to their personal physicians respectively. Completed copies will be made readily available to the physicians, attorneys, and other family members.

B. **Prepare Last Wills:** Reciprocal Last Wills would be drafted for each spouse to cover the event of their respective death. The Last Wills would mirror each other--leaving the designated assets to the surviving spouse. Also, named and listed in the Wills are those personal assets each spouse intends on giving to family members, other individuals, or organizations. (*In addition to the Last Will's established beneficiaries, it would also stipulate that, in the event of the mutual death of both spouses, Mrs. Johnson's sister would be appointed guardian of the children. Also, any remaining personal assets are to be distributed equally among the children.)*

C. **Establish Revocable Trust:** A Revocable Trust would be created to manage the estate proceeds with Mr. Johnson as trustee and Mrs. Johnson as successor trustee. In the event of the death of her husband, the Trust would provide current income for Mrs. Johnson and the children, derived from stocks and other assets. *(In the event of a mutual fatality, the Trust plan would provide income for the children and guardian, until which time the Trust is fully distributed and dissolved.)*

D. Create Real Estate Trust: A Real Estate Trust would be established for the family residence and the land that the Johnsons own. Mr. Johnson would be named trustee, and Mrs. Johnson would be successor trustee. Also, Mr. Johnson's brother would be named as a successor trustee in the event of mutual fatality or incapacitation. (*If the residence was occupied by the surviving spouse or children, the Trust would continue to manage it; otherwise, the properties would be liquidated with the proceeds held*

*until the children reached ages 20 and 24. At that time the proceeds would be distributed according to the Trust plan.***)**

E. **Designate Beneficiaries:** Each spouse would name the Insurance Trust as the beneficiary to their respective insurance policy proceeds. Also, in order to make sure the wife receives the proceeds from the husband's 401k, she would be named as primary beneficiary. *(In addition, in the case of mutual fatality, the children would be made secondary beneficiaries with an equal share in the 401k proceeds.)*

The Revocable Living Trust serves well during your life, but also ensures you will provide for your family after death. This Trust is recommended as a powerful planning strategy if you (1) have more than $100,000 in assets that might be probated, (2) have appreciated homes or other Property subject to capital gains taxes, and (3) are a person who wants to protect themselves and their family from the burdens of future incapacitation or disability.

How to Avoid the 12 Most- Common Estate Planning Traps

12 of the Most Common Mistakes and Pitfalls

1. **Procrastination:** Putting off the process is assuming unnecessary risk with your assets and your heirs' future security.
2. **Failure to Complete Plan:** Estate planning involves completing many details if the plan is to be effective. If the essential details of an estate plan are not completed Intelligently, they will render a plan ineffective, or only partially effective.

3. **Disorganized Planning:** Too many people try to patch an estate plan together that no one but they understand. A disorganized plan will **not** execute your intentions or wishes effectively, and it places a huge burden on your family.
4. **Outdated or Obsolete Plan:** Creating a single estate plan and believing it will serve a family's needs indefinitely will only lead to more problems. Outdated plans are unable to correctly address current personal, professional, and financial realities.
5. **Scope of Plan is Narrow:** When the scope of an estate plan is too narrow, it only addresses a limited number of scenarios. If a scenario takes place that was not prepared for, the estate plan easily fails.
6. **Failure to Complete a Will:** Putting off the completion of a Will creates many liabilities and problems for families. Not only will heirs fight for what they perceive is theirs, but the lack of a Will gives others the power to determine the fate of your assets.
7. **Beneficiaries Unnamed:** The failure to name beneficiaries for insurance policies, pensions, retirement accounts, etc., can be devastating to an estate. Ultimately this will reduce their value, and their distribution will be determined by others.
8. **Failure to Name Decision-makers:** Failing to name decision-makers (especially when it comes to medical decisions) can be catastrophic. In light of the HIPPA laws (the federal laws on personal health information), the hands of your family members to assist in making medical decisions will be tied and render them helpless.

9. **Identifying Heirs of Personal Property:** One of the most common areas of conflict in families is the distribution of personal/sentimental Property. Failing to specifically identify who gets what personal Property can insight family quarrels.
10. **Protection against Creditors and Predators:** Failure to protect spouses and children from creditors and predators can cause many problems. A one-dimensional estate plan can fail to provide the needed protection.
11. **Plan Is not Accessible:** Time and money you put into an estate plan becomes meaningless if nobody has access to it. If your heirs are not aware of or do not have access to your plan, it is useless.
12. **Failing to Update Plan:** The idea that creating an estate plan is a once-in-a-lifetime event is flirting with disaster. Not understanding the need to update an estate plan as life circumstances change is the primary catalyst for plan failure.

Cheap Estate Plans

Professional advice is worth its weight in gold because cheap advice will end up costing you more. This is true when it comes to personal, business, and estate planning advice. Inexpensive estate plans tend to take a shotgun approach when accuracy and precision are really necessary. Consulting with a professional who knows the law and is up to date on the latest tax law changes will save you a lot of money in the long run.

You worked hard to accumulate your assets, so it is only logical to consider investing the Intelligent amount of time and money in protecting them. Would you put a third-rate fire warning or security system in your home because it was cheaper? Or are you going to put the best system you can afford to protect your loved ones? Your

estate plan is just as important. An effective plan will protect your family and ensure they will receive what you leave them intact.

Using a “one size fits all” approach to estate planning will eventually cost you and your heirs more time, frustration, and money. This means they will probably spend more time in court, end up paying more in taxes, and may not even receive the full value for what Property and assest you left them. Instead of enjoying the security you want to give them, their fate will be decided by others. A customized approach based on your individual needs is the most effective estate planning strategy.

Taking the time and effort to engage in Intelligent estate planning now, you can provide for your family in the future. Think about the peace of mind you will have knowing that, if something unexpected were to happen, your loved ones would be taken care of. This will allow you to enjoy your time with them even more today.

Choosing the Right Attorney

Knowledgeable

Many attorneys specialize in specific aspects of law and practice. You will want to choose an attorney who specializes in estate planning, and who can work with you to complete a plan that is right for your needs.

Accessible

Estate planning can be confusing, with many details, so you will have many questions. When you choose an attorney, you will want one who is accessible to answer your questions. In other words, you will want to pick a family attorney who can serve If an attorney is not accessible to answer your questions in a timely manner, they may not be the right attorney for you.

Experienced

An attorney with verifiable professional experience in estate planning will have a broad and deep base of knowledge. This attorney will have worked successfully with a wide range of clients with different needs and circumstances. He will understand the circumstances that his clients face as they age, including Medicaid, VA benefits, and other elder law concerns. He will be able to help you to indentify unique family and business risks that need to be addressed. Consequently, his or her experience will directly benefit your estate planning efforts and ultimately, ensure that your plan address your unique needs.

Reasonable

Acquiring specialized knowledge in any field can be expensive, and the law is no different. But you should be able to tell which attorneys are charging reasonable fees by comparison. In considering the reasonability of a fee, do not be fooled into taking the lowest cost attorney: you will get what you pay for. All attorneys set their flat fees according to the time they spend on your estate plan, and when you choose a "cut-rate" attorney, you might just be getting your name slapped into the same generic document they are using for all of their clients. Choose an attorney that you feel will not skimp on time and cut important corners such as helping you to transfer Property to your trust. Choose an attorney who will become a family resource for years to come.

Professional

When choosing an attorney for estate planning purposes, it is best to work with an attorney who is a professional estate planner and focuses nearly all of his time on estate planning. This is an attorney who conducts seminars, publishes articles, and

educates other professionals (and the public) regarding the principles and practices of effective estate planning. Don't be afraid to inquire as to the volume of planning the attorney does in a year, and more importantly, ask the attorney what portion of his time he dedicates to estate planning.

Now is the Time to Act

Reality Check: What if you were to die today – or perhaps worse, become suddenly incapacitated? Have you taken the steps necessary to ensure the future security of your family? What if you were incapacitated for an extended period of time? Who would take care of your assets?

Remember, *procrastination is the most common pitfall preventing effective estate planning*. For some people, estate planning is a difficult proposition. Planning for possible incapacitation or premature death, does not sound like a good time, right? But if you keep putting it off because you are waiting to find the best time or mood, it may never come and you may be too late.

There is no doubt estate planning requires attending to a lot of details, and thinking about a situation that may not be pleasant. But you do not have to do it all at once or even in a single day. Your attorney will be there to help you through the process, one step at a time. Know that it will get much easier as each step is completed; and, within a short amount of time, your estate plan will be in place.

Every day you put off talking with an attorney about beginning the estate planning process is another day you assume unnecessary risks with your assets, and put your family's future security in jeopardy. There is no better time than today to make an appointment and get the ball rolling. You will feel better almost immediately because you know it is the right thing to do for yourself and your family.

How To Leave a Legacy Rather than a Problem!

To leave a legacy rather than a problem, take the first step by making an appointment to begin the estate planning process.

At the initial appointment, an estate planning attorney will explain the process and costs associated with preparing, drafting, and finalizing your estate plan. The attorney will typically perform the following steps to ensure your estate assets are protected and effectively distributed to your family and heirs:

1. **Conduct a Thorough Evaluation.** Initially, a thorough evaluation of your estate begins. The attorney will take a look at all of the components that comprise your complete estate picture. This includes the financial, personal and professional characteristics of your estate. Also, the attorney will listen to your concerns, current circumstances, and intentions for distributing assets to your family and heirs. Based on your estate goals and the results of our thorough evaluation of your estate, they will design and present options for consideration.
2. **Educate Regarding Options.** Estate planning can be a complex process for families with a wide range of estate goals. An attorney present you with viable and relevant plan options, and thoroughly explain how they can help you meet your estate goals. With many years of legal experience, an attorney can educate you about the specifics of each option available so you can more easily make informed choices. With this guidance, you can make decisions that best fit your needs, intentions, and goals.

3. **Design a Plan with Redundancies for Safety.** To leave a legacy rather than a problem, the plan will need to anticipate many possible scenarios. The recommendations an attorney makes for your estate plan are not based on a one-dimensional plan, but are able to address a number of possible scenarios. Designing a plan with redundancies creates a safety net protecting your estate plan in the face of uncertainty. Knowing your estate plan will perform efficiently and correctly will give you peace of mind and confidence.
4. **Collaborate with other Professionals for Optimum Results.** Working with the estate planning community, an attorney is able to access vast knowledge and experience and achieve optimum results for our clients. An attorney will create the most effective plans based on current best practices and principles of the industry. The estate plan an attorney designs for you will be able to provide the safety and security you desire for your family and heirs.

Taking the Next Step—Schedule an Appointment with an Attorney

Now is the time to get your estate plan in order, and you can begin by making an appointment with an Attorney. In the initial appointment you can have a thorough review of your current estate plan if you have one. If you do not have a current plan, the evaluation process can be discussed and steps taken to begin the estate planning process. Updating and making changes to an obsolete plan can be discussed, too.

Your initial appointment with an Attorney is a great opportunity to:

- *Review your current estate plan, and discuss your goals*
- *Determine the best options and initiate creating a new estate plan*
- *Update an obsolete estate plan*