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# YOU CAN'T TAKE IT WITH YOU

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A Guide to Estate Planning in the USVI



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## **Welcome to Our Helpful Guide on Estate Planning!**

Let's talk about a simple truth: When people pass away, they don't need their stuff anymore. But what happens to all these *things* – like their house, money, or even their favorite watch? That's where estate planning comes in. It's all about making plans for these items so they can go to the right people or places after someone's gone.

We know this topic isn't the easiest to think about, which is why we're keeping things conversational and easy to understand, like having a chat with a good friend. Our goal is to help you feel more comfortable and informed about estate planning, so let's walk through this together, step by step, in a way that makes sense and doesn't feel so daunting.

Ready? Let's get started.

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## YOU CAN'T TAKE IT WITH YOU

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When a person dies, there's a legal process to sort out what to do with everything they owned while they were alive. This includes **all** their stuff - money, houses, land, condos, timeshares, cars, boats, trucks, business interests - and even their personal things - like clothing, jewelry, art, and books.

Here's a quick look at how this usually goes:

- **Figuring Out What They Owned:** First, we need to make a list of everything the person had. This means checking their bank accounts, finding any property titles, and even going through their personal belongings (*don't worry, they won't mind*). A good estate planner will include a list of these important assets with their estate plan.
- **Understanding Their Wishes:** If they left a will, it tells us who they wanted to give their stuff to. If there's no will, then there are U.S. Virgin Islands (USVI) laws that decide who gets what.
- **The Probate Process:** This is the legal process where the USVI Superior Court makes sure the will is valid (if there is one) and oversees the distribution of the estate (all the stuff the person owned). In the USVI, this can take a while, often *many* years.
- **Paying Debts and Taxes:** Before giving anything away, we must settle any debts or taxes the person owed. This could mean paying off credit card bills, loans, or taxes.
- **Distributing the Remaining Stuff:** After debts and taxes are taken care of, the rest of the stuff gets shared out to the people named in the will, or according to the laws of the USVI, if there's no will.
- **Closing the Estate:** Once everything is paid off and given out, the process is wrapped up, and the estate is considered closed.

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# PROBATE

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**What is Probate?** Probate is a court process that happens after someone passes away. It's when a court looks at the will (a legal document that says who gets the person's things) and makes sure it's followed correctly. If there's no will, the court decides what to do with the person's assets based upon USVI law.

**What are Assets?** Assets are anything valuable that a person owns. This can be money, houses, cars, business interests, or even things like jewelry and furniture. Assets comprise a person's estate.

**What is an Estate?** An estate is all the things a person owns or controls at the time of their death. This includes:

- *Money*: All the cash a person has, whether in bank accounts, savings, or even cash at home.
- *Property*: Things like houses, land, or any other type of real estate a person owns.
- *Possessions*: This can be anything from cars, furniture, jewelry, to personal items like books, clothes, or collections.
- *Investments*: This includes stocks, bonds, retirement accounts, or any other kind of investments.
- *Business Interests*: If a person owns part or all of a business, this is also part of their estate.

When someone passes away, their estate is what gets distributed according to their will, or if there's no will, according to the laws of the USVI. In estate planning, people decide how their estate should be handled and shared out after they are gone.

**Is Probate a Long Process in the USVI?** In the USVI, this court process takes a *really* long time. On average, it can take between 3 to 5 years, and sometimes it takes *much* longer. On the U.S. Mainland, this process typically takes 6-18 months. This means that family and friends in the USVI must wait a *really* long time before they can get anything.

## Why Should Probate be Avoided?

- *It Takes a Lot of Time:* It can be VERY slow, making families wait years to get things like money or a house that was left for them.
- *It Costs a Lot of Money:* This process isn't free. There are court fees and you will have to pay a lawyer. This can use up a significant portion of the money or things that were meant for the family.
- *It's Not Private:* When someone's will goes through probate, the details become public. This means that anyone can find out about the money and things the person left behind, and who is getting them.
- *It's Complicated:* It's not a simple process. It can get really complicated, especially if there's no will, or if there is a will contest.

**What are Alternatives to Probate?** To avoid these problems, there are other ways to plan ahead. You can use a living trust (a way to hold and manage your things while you're alive and then pass them on easily when you pass away), make sure some things are owned together with someone else (like a house), or put someone's name as a beneficiary (the person who gets something) on things like bank accounts.

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# WILLS

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**What is a Last Will and Testament?** A Last Will and Testament, or just a “will,” is a paper where you write down who should get your things like your house, money, or car after you pass away. The signing of a will has to be witnessed by two people in the USVI.

**Do Wills Have to Go Through Probate in the USVI?** Yes, absolutely. In the USVI, if you have a will, it must go through probate. This is a rule everyone must follow.

## **Why Do Wills Go Through Probate Here?**

- *It's the Law:* The law in the USVI says that when someone has a will, it must be proven in court. This is to make sure the will is valid and truly what you wanted.
- *To Make Sure Everything is Fair:* The court looks at your will and helps make sure that your things (called assets) go to the people you chose.
- *To Take Care of Debts:* Before your things are given out, the court also makes sure that any money you owe (debts) is paid.

**What is the Probate Process Like?** In probate, a person you picked in your will (called the “Executor”) works with the court. They collect all your things, pay any debts you had, and then give what’s left to the people you said in your will. If you didn’t have a will, the person who works with the court to manage your estate is called the “Administrator.”

**Can a Will Avoid Probate?** In the USVI, a will does not avoid probate. It must go through this court process. There are other ways to avoid or make probate simpler, like setting up a trust, but a will by itself will always go through probate here.

**Does a Will Help with Incapacity Management?** No. Consider a will like a set of instructions for a probate court judge that only come into play after someone has passed away. It says who gets what – like your house, money, or personal items - but it doesn’t do anything if you’re still alive and unable to make decisions or manage your affairs, which is what we mean by ‘incapacity’.

For example, if you have an accident or illness that makes it impossible for you to handle your own stuff, a will can’t help there. It doesn’t have any power until

after you're gone. So, if you're unable to make decisions for yourself, the will can't choose someone to take care of your finances or make healthcare decisions for you.

If you're worried about what might happen if you can't manage your own affairs, there are other legal documents for that. These include things like a Power of Attorney or an Advance Healthcare Directive. A Power of Attorney lets someone you trust make decisions about your money or property, and an Advance Healthcare Directive lets someone make decisions about your health care if you can't.

In short, while a will is super important for after you're gone, it doesn't help manage your affairs if you become incapacitated.

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## AVOIDING PROBATE

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When someone passes away, figuring out what to do with their stuff (like their money, house, or car) usually requires a court process called probate, but there are ways to skip this process for certain things. It's like having a special pass to avoid a long and expensive line. Let's talk about how that works:

- **POD Accounts:** These are special bank accounts where you can name someone to get the money after you're gone. It's like telling the bank, "Hey, when I die, give my money to this person." This way, the money goes directly to them, no probate needed.
- **Life Insurance:** If you have life insurance, the money from it goes straight to the person you picked to get it (called a "beneficiary"). It's a direct delivery from the insurance company to them, so no probate pit stops.
- **For Married Couples:** In the USVI, there's something cool for married couples. If they own something together, like a house, and one spouse dies, the other automatically becomes the sole owner. All that's required is to record the deceased spouse's death certificate at the Recorder of Deeds Office in the district where the property is located. It's like passing a baton in a relay race. This is because we are a "tenancy by the entireties" jurisdiction. The surviving spouse, however, should have an estate plan in place for their heirs to avoid probate upon their death.
- **Transfer on Death Deeds:** A transfer on death deed is like a magic trick for your real estate (house, land, condo, timeshare). Imagine you have a property, and you want to make sure it goes to a special person after you're gone, like your son or daughter. Instead of waiting for a long, complicated court process after you pass away, you can use a new kind of deed in the USVI called a "Transfer on Death Deed."

Here's how it works: While you're still here, you file a deed for the property stating who you want your property to go to after you're not around anymore. You sign it, and it's like making a temporary promise, because you can change it at any time before you die.

But the cool part? You still get to use and live in your house just like before. Nothing changes for you now. Then, when you've passed away, the



house automatically goes to the person you picked, just like that. No need for the court or anyone else to make decisions. It's a simple way to make sure your house goes right to the person you care about, without any hassle or waiting.

- **Revocable Living Trust:** This one's our favorite. Think of it like a box where you put your stuff (like your house or money). While you're alive, you can use the stuff in the box. When you pass away, whatever's in the box goes straight to the people you picked, without going through probate. It's a really smart way to keep things simple and private.

Each of these ways works for different things you own. It's like having a different key for different locks. By planning ahead and choosing the right key for each lock, you can help your family avoid the long and sometimes tricky probate process.

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## REVOCABLE LIVING TRUSTS

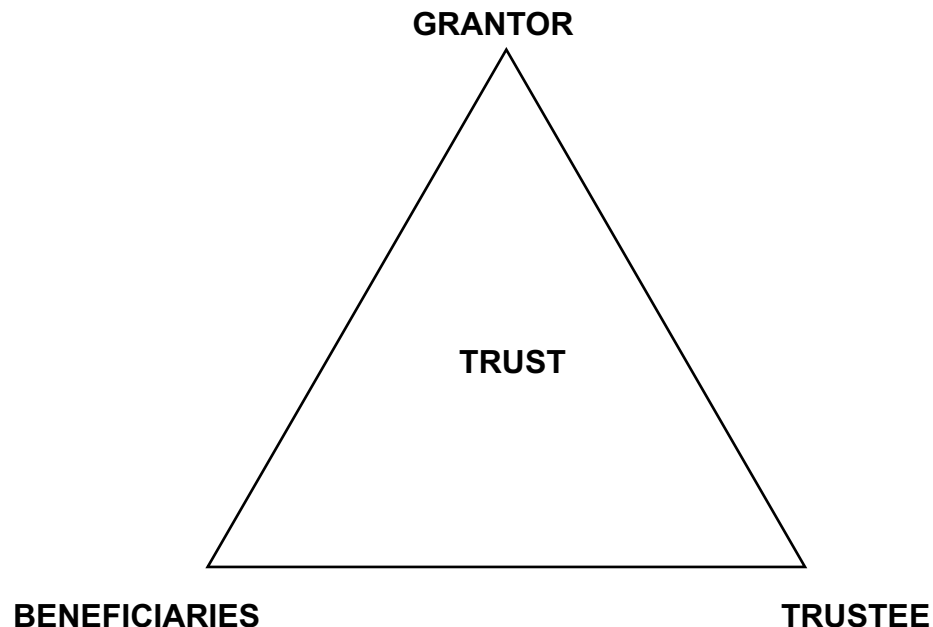
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**What is a Revocable Living Trust?** A revocable living trust is like a big, safe box where you can put your stuff like your house, money, or other important things. You make this trust while you're alive (that's why it's called "living"). The "revocable" part means you can change it or cancel it anytime you want, as long as you're able to make decisions (as determined by two physicians).

### The Triangle of Trust

When planning your estate with a revocable living trust, it's important to grasp some key concepts. One of these is the "Triangle of Trust," which illustrates the roles of the Grantor, Trustee, and Beneficiaries in your trust. Let's explore this idea in a way that's easy to understand.

Picture a triangle where each corner represents the three key roles in your trust: the Grantor, the Trustee, and the Beneficiaries. This triangle simplifies the understanding of how everyone works together within a trust.



## **You, the Grantor: The Starting Point**

As the Grantor, you're the one who creates the trust and decides to put your assets into it. Your Responsibilities:

- You set up the trust and decide its terms.
- You choose the Trustee and Beneficiaries.
- As Grantor, you can change or cancel the trust, if needed.

## **You, the Trustee: Managing Your Trust**

During your lifetime, and as long as you're not incapacitated (as determined by two physicians), you'll usually also be the Trustee. This means you'll manage the trust yourself. Your Duties as Trustee:

- You'll oversee and manage the trust assets.
- You'll make sure the trust operates according to your wishes.
- You can buy, sell, mortgage, and borrow against trust property the same as you can now.

## **You, the Beneficiary: Benefiting from Your Trust**

Typically, while you're alive, you'll also be the primary Beneficiary of the trust. As Beneficiary:

- You'll benefit from the assets or income of the trust.
- This arrangement helps manage and protect your assets during your lifetime.

## **The Trustee and Beneficiaries After You Pass**

Once you pass away (or if you become incapacitated), the successor Trustee you've chosen will take over managing the trust. After you pass, the Beneficiaries you have named will then receive benefits from the trust as per your instructions.

## **Why This Matters**

The "Triangle of Trust" demonstrates the interlinked roles and responsibilities in a trust. It highlights how you can maintain control and benefit from your trust during your lifetime, while also ensuring that your wishes are carried out and your loved ones are taken care of after you're gone.

**Does a Revocable Living Trust Help with Incapacity Management?** Yes, a revocable living trust can be a big help in managing your affairs if you become incapacitated! When you set up this kind of trust, you choose someone you trust (called a Successor Trustee) to take care of your things if you're ever unable to do it yourself. This means if something happens and you can't make decisions or manage your stuff, the Trustee steps in to handle everything according to your trust's rules. It's a smart way to make sure your affairs are taken care of by someone you picked, without the need for a court to get involved and decide for you. This can give you and your family peace of mind, knowing everything will be managed the way you wanted. If you do not have a trust, incapacity management is often determined by a court of competent jurisdiction upon application for a guardianship. This is a court process that can take a very long time.

**How is a Revocable Living Trust Created?** Creating a revocable living trust is like writing a special plan for your things. Here's how you do it:

- *Decide What to Include:* First, think about what you want to put in the trust. This could be your house, money, business interests, or other important items.
- *Choose Who Will Be Involved:* Pick who will be in charge of the trust (the Successor Trustee) and who gets your stuff when you're gone (the Beneficiaries).
- *Hire an Attorney to Write the Trust Agreement:* This is a big step. A trust agreement is like the rule book for your trust. It tells everyone what you want to happen with your things. It has all the instructions for the Trustee on how to take care of and hand out your stuff.
- *Sign the Trust Agreement:* You need to sign this agreement to make it official. It's important to sign it on the date it's dated because that shows the agreement is valid and current. Think of it like a contract; signing on the right date proves that everyone agreed to the terms on that specific day.
- *Notarize and Witness:* You also need to have your signature witnessed and notarized. This is like getting an official stamp that says, "Yes, this really is your signature."

- *Transfer Assets to the Trust:* After your trust is created, you need to move your stuff (like your house or bank accounts) into the trust. This is called “funding the trust.”

**Can I Change the Revocable Trust?** Yes, you can! Since it’s a revocable trust, you can make changes or even cancel it if you want to, as long as you’re able to make your own decisions.

**Why Sign the Trust Agreement on the Date It’s Dated?** Signing the trust agreement on the date it’s dated is very important. It’s like a timestamp that shows the agreement was made on a specific day. This helps avoid any confusion or disagreement later about when you made your decisions or if the agreement is the most recent one. It’s all about making sure everything is clear, official, and legally sound.

**What do I do with the Original Signed Trust Agreement?** When you set up a revocable living trust, your trust agreement is a key document. It’s important to keep the original copy safe. You want to avoid it getting damaged, like from water or tearing, and you definitely don’t want any pages to go missing. Think of it like a very important instruction manual for your valuable possessions. This document needs to be complete and in good shape, especially if there’s ever a question about your trust.

For safety, you might keep it in a safe deposit box or a secure place in your home. When you need to retitle your assets into the trust, like for your house or bank accounts, use copies of the trust agreement instead. Hand out these copies to banks, the BMV, or wherever you’re changing titles. By keeping the original in a safe spot and using copies for these tasks, you make sure your crucial document is always intact and available when you really need it.

**I have a revocable living trust agreement – what’s next?** Congratulations! You are one step closer to protecting your heirs and beneficiaries from probate. But, if you don’t actually put your things (like your house, bank accounts, or investments) into the trust by changing their titles to the trust’s name, those assets are outside of the trust.

**What does “outside the trust” mean?** If you pass away and some of your important things aren’t in the trust because you didn’t change their titles to the name of the trust, those things won’t follow the rules of the trust. Instead, they’ll be treated as if you didn’t have a trust for them at all. This means they might have to

go through probate, the court process we use to decide where things go if there's no plan for them.

So, the stuff you wanted to protect and pass on easily with your trust might end up stuck in the long and sometimes complicated probate process. This can make things harder and take longer for your family or whoever you wanted to get your things. It's like having a safety net but not using it.

To make sure your trust works the way you want it to, it's critical to move your stuff into the trust properly by changing the titles into the trust's name. This way, everything is neatly organized inside your trust, ready to be taken care of just the way you planned.

**How Do I Retitle Assets into My Trust?** To put things like your house or bank accounts into your trust, you need to change the ownership documents to say that the trust now owns them. This is like changing the label on your stuff to show it belongs to the trust.

**Do I Have to Retitle My Real Estate?** Yes, if you want your real estate (like your house) to be part of the trust and avoid probate, you have to change the title to show that the trust is the new owner. This requires a new deed showing ownership in the name of the trust.

**Do I Have to Retitle My Bank Accounts?** If you want your bank accounts to be part of the trust and be managed according to the trust's rules, then yes, you should change the accounts to be in the trust's name. This requires you to take a copy of the Trust Agreement to your banker and to follow your bank's protocols regarding retitling accounts.

**Do I Have to Retitle My Investment Accounts?** Just like bank accounts, if you want your investment accounts to be handled by your trust, you'll need to retitle them in the name of the trust. Some investment accounts have "payable on death" beneficiaries – those accounts already avoid probate, so you do not need to name the trust as the beneficiary; instead, you can name the ultimate beneficiaries directly.

**Do I Have to Retitle My Life Insurance?** Usually, you don't need to retitle life insurance into your trust. Instead, you can name your desired beneficiaries of the policy. This means the money from the insurance will go directly to your beneficiaries when you're not here.

**Do I Have to Retitle My Vehicles?** Yes, if you don't want your heirs to have to go to probate to gain control over the asset. Even if the vehicle is not valuable, ownership of the vehicle must be established before a tow truck will tow the vehicle from the property.

**Do I have to Retitle My Business Interests?** Yes, if you want your interests in an LLC, corporation, or partnership to be part of your revocable living trust, you will need to retitle these interests into the trust. This process involves changing the ownership of your interests from your personal name to the name of the trust. Here's an overview of what's typically required:

**1. Review Governing Documents:**

Start by reviewing the governing documents of the LLC, corporation, or partnership, such as the operating agreement, bylaws, or partnership agreement. These documents may have specific provisions or requirements regarding the transfer of ownership interests.

**2. Obtain Consent if Necessary:**

In some cases, the consent of other members, shareholders, or partners may be required before you can transfer your interest into a trust. This is especially common in closely-held or family businesses.

**3. Prepare an Assignment Document:**

You will need to prepare an assignment document that formally transfers your interest from your personal name to your trust. This document should clearly describe the interest being transferred and state that the ownership is now being held by the trust.

**4. Update the Company Records:**

Once the assignment is complete, the records of the LLC, corporation, or partnership should be updated to reflect the trust as the new owner of your interest. This might involve updating the membership ledger, stock ledger, or partnership records.

**5. Consider Tax and Legal Implications:**

It's important to consider any tax or legal implications of transferring your business interests into a trust. For instance, there may be tax consequences or a change in how your interests are managed or controlled. Consulting with a tax advisor or attorney specializing in business law can provide guidance on these matters.

## **6. Notify Relevant Parties:**

After the transfer, it's a good practice to notify any relevant parties, such as the company's accountant, attorney, or management, that your interest is now held by your trust.

## **Why Retitle Business Interests?**

*For Estate Planning Purposes:* Including your business interests in your trust is crucial for estate planning. It ensures that these assets are managed according to your trust's instructions, avoiding probate, and providing a smoother transition of control and ownership upon your incapacity or death.

*Consistency in Your Estate Plan:* Retitling these interests ensures that your entire estate, including your business interests, is aligned with your overall estate planning goals.

Retitling your interests in an LLC, corporation, or partnership into your trust is an important step in ensuring that these assets are handled according to your estate plan. This process can be complex and may vary depending on the structure of the business and its governing documents. It's advisable to work closely with your estate planning attorney and possibly a business attorney to ensure that this process is done correctly and in line with your overall estate planning objectives.



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# POUR OVER WILLS

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## **Pour Over Wills: The Safety Net for Your Revocable Living Trust**

In the world of estate planning, we often use different tools to ensure that your wishes are carried out just as you've planned. While setting up a revocable living trust is a significant step, there's another key component that works hand in hand with it: the Pour Over Will. Let's explore what it is and how it acts as a safety net for your estate.

Think of a Pour Over Will like a backup plan for your trust. It's a special type of will designed to work directly with your revocable living trust.

### **How It Works**

- *Catching What's Left Outside the Trust:* Sometimes, there might be assets you own that weren't transferred into your trust before you pass away. This can happen for various reasons — maybe you acquired new assets and didn't have time to retitle them, or you simply overlooked some items.
- *Pouring Over Into Your Trust:* The Pour Over Will comes into play here. It essentially states that any assets not already in your trust at the time of your passing should be "poured over" into your trust. Once they are in the trust, they will be managed and distributed according to the trust's terms.

### **The Benefits**

- *Simplicity and Efficiency:* Without a Pour Over Will, any assets outside your trust at your death would go through probate, which can be a lengthy and public process. The Pour Over Will simplifies things by ensuring these assets go directly into your trust.
- *Consistency in Your Wishes:* This process helps keep your estate plan consistent, as all your assets, whether initially in the trust or not, will eventually be managed and distributed according to the single set of instructions in your trust.

## The Role of Pour Over Wills in Estate Planning

Not a Standalone Solution: It's important to understand that a Pour Over Will isn't a substitute for properly funding your trust. The best practice is to make sure as many of your assets as possible are titled in the trust during your lifetime.

A Comprehensive Plan: However, the Pour Over Will is an essential part of a comprehensive estate plan. It ensures that anything missed is still handled according to your wishes.

The Pour Over Will is like a safety net, catching any assets that didn't make it into your trust and ensuring they're added and distributed according to your trust's terms. Your Pour Over Will works in tandem with your revocable living trust, providing peace of mind that all your assets are accounted for and managed according to your wishes.

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## ADVANCE HEALTH CARE DIRECTIVE

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As part of a comprehensive estate plan, it's crucial not only to plan for the management of your assets but also to make decisions about your health care in the event you're unable to speak for yourself. This is where Advance Health Care Directives come in — they are essential tools that allow you to outline your preferences for medical treatment and appoint someone to make health care decisions on your behalf if you are incapacitated.

Advance Health Care Directives are legal documents that serve two main purposes:

1. **Living Will:** This part of the directive allows you to state your wishes regarding life-sustaining treatments and other health care decisions if you are terminally ill, seriously injured, in a coma, in the late stages of dementia, or otherwise unable to make decisions for yourself.
2. **Health Care Proxy or Durable Power of Attorney for Health Care:** This document enables you to appoint a trusted person (known as a health care agent or proxy) to make medical decisions on your behalf if you're incapacitated.

### Why Are They Important?

*Maintaining Control:* These directives ensure that your medical treatment preferences are followed, even when you're unable to communicate them yourself.

*Easing the Burden on Loved Ones:* By making these decisions ahead of time, you relieve your family members of the burden of having to make tough health care decisions without knowing your wishes.

*Avoiding Conflicts:* Advance directives can help prevent disagreements among family members about your care.

## **Key Considerations When Creating Advance Health Care Directives**

***Be Specific:*** Clearly articulate your wishes regarding life support, resuscitation, tube feeding, and other treatments. The more specific you are, the easier it will be for your health care agent to make decisions that align with your values and preferences.

***Choose the Right Health Care Agent:*** Select someone who understands your values, is willing to advocate on your behalf, and is capable of making potentially tough decisions under stressful circumstances.

***Discuss Your Wishes:*** It's important to discuss your wishes with your health care agent, family members, and your doctor to ensure everyone understands your preferences.

***Life Changes:*** Review and update your directives as your health situation or personal preferences change.

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## CONCLUSION

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As we come to the end of this journey through the essentials of estate planning, I hope this guide has illuminated the various aspects and tools of an effective estate plan. From understanding the Triangle of Trust in a revocable living trust to the nuances of Pour Over Wills and the importance of correctly titling assets, we've covered a breadth of topics aimed at providing you clarity and confidence in planning for your future.

### **Reflecting on What We've Learned**

Estate planning is more than just a legal task; it's a profound act of care for yourself and your loved ones. It's about ensuring that your wishes are respected, your legacy is preserved, and your loved ones are protected and provided for. Whether it's deciding how your assets will be managed, who will inherit them, or who will make decisions on your behalf if you're unable to, each element of your estate plan plays a crucial role.

### **The Power of Personalized Planning**

Remember, every estate, no matter its size, benefits from a thoughtful and well-structured plan. Your personal situation, family dynamics, and financial landscape are unique. That's why your estate plan should be as unique as you are, tailored to fit your specific needs and goals.

### **We Are Here to Guide You**

At Tully Law, PLLC, we understand that estate planning can feel complex and, at times, overwhelming. That's why we are committed to guiding you every step of the way. Our expertise in estate planning, real estate law, and business law, combined with our deep commitment to our clients, makes us your ideal partner in this important endeavor.

## **Your Questions and Concerns Matter**

### *Have Questions?*

If any part of this guide raises questions or if you need clarification on specific topics, please don't hesitate to reach out.

### *Need Personalized Advice?*

For advice tailored to your unique circumstances, we invite you to schedule a consultation with us. We're here to discuss your specific needs and help you craft an estate plan that gives you and your loved ones' peace of mind.

### *Looking for Ongoing Support?*

Estate planning is not a one-time event; it's an ongoing process. As your life changes, so too may your estate plan. We're here to provide you with ongoing support and guidance.

## **Moving Forward**

As you move forward in your estate planning journey, remember that you're not alone. At Tully Law, PLLC, we're more than just a law firm; we're your trusted advisors, committed to helping you navigate this path with ease and confidence.

Let's work together to create an estate plan that reflects your wishes, protects your assets, and secures your legacy. Reach out to us today to take the next step in your estate planning journey. We look forward to being a part of your story.