



How To Avoid Your Death Causing An Estate Disaster!

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1. Estate planning definitions:

- A. Will – A legal instrument allowing a person to specify the method to manage and distribute his/her estate after death. It also allows a person to choose a guardian to raise children after death.
- B. Durable Power of Attorney (DPOA) – A legal instrument designating an agent the ability to sign and manage finances. The POA can also be limited to when a person is incapacitated. Power terminates at death.
- C. Medical Power of Attorney – A legal instrument that allows an agent to handle healthcare decisions and treatments on behalf of a person who is incapacitated.
- D. Medical Directive or Living Will – Spells out preferences in life sustaining treatments. For example, you can indicate whether you want life saving procedures, artificial nutrition or artificial hydration.



E. Probate

- i. The legal process in which a will is reviewed to determine whether it is valid and authentic.
- ii. Probate also refers to the legal process by which a deceased person's assets are distributed to beneficiaries or heirs through a Personal Representative named in the will.
- iii. If the will names a Personal Representative, the Personal Representative starts the process by notifying the court of the appointment. This notice is then sent to all heirs. If the person dies without a will, the court will appoint an administrator. The Personal Representative or administrator performs the process of collecting the assets of the deceased person, paying any liabilities of the estate and finally distributing the assets of the estate to beneficiaries named in the will or determined as such by Personal Representative.
- iv. Probate is controlled by state law and only 20 states have adopted Uniform Probate Code (UPC).


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- F. Letters Testamentary – A court issued document which is proof of the legal authority granted to the Personal Representative to manage all aspects of the estate.
 - G. Living Trust – A trust that is created during lifetime to hold property in the name of the trust for the benefit of the grantor (the person creating the trust). This type of trust is revocable and avoids probate on assets that are owned by the trust at death.
 - H. Irrevocable Trust – A trust that *can not* be modified or terminated. The grantor transfers assets to the trust and removes all rights of ownership and use of the assets transferred. An irrevocable trust can be created while alive or at death.
 - I. Intentionally Defective Grantor Trust (IDGT) – A trust that is effective for estate and transfer tax purposes but incomplete or “defective” for income tax purposes.

2. Estate document recommendations:

- A. Anyone over age 18 with assets, spouse or children should have a will, DPOA, MPOA and Medical Directive.
- B. Wills need to be up to date, taking into account changes in assets, ages of children, changes in beneficiaries, spouses or children or change in law. On average, updates should occur every 3 to 5 years.
- C. DPOAs, MPOAs and Medical Directives-
 - i. Financial and medical institutions routinely do not follow documents that are more than 5 years old.
 - ii. Provide your MPOAs and Medical Directives to your doctors and hospitals you likely will use. Ask if they will be honored. Some places require certain procedures to honor documents.
 - iii. Challenge institutions that will not honor documents. Routine denials are normally for liability reasons and when pressed can be overcome.

D. Important choices related to estate planning documents

- i. Choice of Personal Representative. The job of a Personal Representative can be challenging.
 - a) If a close relative, the personal representative has to grieve the loss of a spouse, child or loved one while also having to attend to business matters of administering the estate. Sometimes these two issues are incompatible.
 - b) In WA state, a person convicted of a felony cannot be appointed!
 - c) The Personal Representatives job will include dealing with beneficiaries. Most issues with beneficiaries revolve around each person's concept of fairness. What is fair to the deceased is not necessarily fair to a beneficiary. Common issues include:
 - Equal does not necessarily mean fair
 - Beneficiaries with spouses and/or children view fairness much different than single beneficiaries. Single children are generally the most unhappy with how assets are divided.
 - Fairness does not necessarily relate to dollar values. Important personal property items or perceived slights can cause significant issues between beneficiaries and Personal Representatives.




ii. Choice of Agent for Powers of Attorney

- a) **For the DPOA, the agent is responsible for financial decisions.** The person chosen should have a good understanding of finances and be trustworthy. Consider their personal financial situation. Do not choose a child in financial duress.
- b) **For the MPOA, the agent is responsible for medical decisions.** The person chosen should understand your medical wishes. Do not choose someone that will allow emotional distress to alter your wishes. The person should be geographically close to you.


iii. Choice whether to disclose or not disclose estate planning documents.


- a) Reasons to disclose:
 - Disproportionate distribution of assets among beneficiaries
 - Leaving a beneficiary out of the will
 - Skipping a generation for inheritance
 - Leaving assets to an irrevocable trust instead of outright


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- iv. What to disclose:
 - a) The choice of the Agent or Personal Representative
 - b) Why assets are being distributed other than equal or outright. At the very least make it clear you made a conscious decision and you expect it to be honored.
 - c) Your expectation that your beneficiaries will respect your will and get along with one another.
 - v. How to disclose – Be careful with group meetings if large number of beneficiaries. Communicate the same thing to every beneficiary.
 - vi. Real life examples of issues created by choices:
 - 7 children, 3 sons and 4 daughters. Mom and dad leave 800 acres of farm land to two sons, 20 acres to 4 girls and nothing to third son. However, the son that did not get anything was the Personal Representative of the estate. None of the decisions were communicated to the children. The first meeting after disclosure included 6 attorneys for the children and one for the Personal Representative. The two sons receiving the bulk of the estate farmed with dad all their lives and helped dad accumulate most of his wealth. Daughters did not believe dad would “do this to us”.
 - Daughter chosen as agent for Durable Power of Attorney experienced financial difficulties and used parents money to deal with personal debt.
 - Poorly chosen Personal Representative leads to estate being open for over 20 years

3. Immediate post death matters:

- A. Normally handled by spouse, closest geographic child or relative.
- B. Funeral and burial -Any wishes should be in writing and communicated to those most likely to take the responsibility.
- C. Obtain multiple original copies of the Certified Death Certificate
- D. Locate important documents:
 - i. Will
 - ii. List of assets and accounts
 - iii. List of online user names and passwords
- E. Reading of the will-
 - i. The reading of the will may be a broad event or a single person event. If wishes have not been communicated or if there are multiple beneficiaries, we recommend not having a group event. Normally, the spouse or child should meet alone with the deceased individuals attorney.
 - ii. Contact the Personal Representative and have attorney explain duties and responsibilities.

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- F. Contact the Personal Representative and determine if they are willing to serve.
 - G. A meeting with you, the attorney and your appointed Personal Representative to discuss PR duties and responsibilities is a good idea.
4. Estate administrator involves the probate of the decedent's estate and typically includes three broad actions:
- A. Asset collection, inventory and appraisal
 - B. Identification and paying of debts and taxes
 - C. Distributing the remaining assets to beneficiaries as the will directs.

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5. Simple planning can greatly help the Personal Representative
 - A. Have important documents such as bank and brokerage statements, vehicle titles, life insurance policies, list of safety deposit boxes, etc. in one location. If you can't consolidate to one location be sure to provide a list of locations.
 - B. Prepare and update a personal balance sheet on a regular basis. A personal balance sheet is a listing of all assets and liabilities at a given date.
 - C. Provide the Personal Representative with a list of professionals they should use (attorney, accountant, financial planner, insurance agent, etc).

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6. The Personal Representative is charged with producing an estate inventory that lists all assets and liabilities at their fair market value on the date of death.
 - A. The attorney or accountant normally produces the list from information provided by the Personal Representative.
 - B. Appraisals are typically required for real property
 - C. Jewelry, coins or other assets where the value is not clear require the Personal Representative to obtain appraisals or other proof to correctly state the value of the assets in the estate.




7. Practical issues and record keeping of assets:

- A. At death, a decedents control over financial accounts end. If you notify a bank or financial institution of the death, the accounts will be frozen. Use of the account will be greatly limited.
- B. Opening estate accounts at banks and financial institutions quickly will greatly assist with a timely transition.
 - i. A check register must be maintained
 - ii. If the estate is large or a dispute is anticipated, setup a computerized accounting system to track estate account activity.
- C. Assets held in joint tenancy, accounts with transfer on death beneficiaries, IRAs, annuities, life insurance and retirement accounts generally do not go through probate. They are passed to beneficiaries based on account beneficiary documents.

- i. Reviewing and updating beneficiary forms should be done every time the will is updated.
 - ii. Extremely common mistakes include: having a care giver as a joint tenant of large bank accounts, not removing or updating beneficiaries after death, divorce or disagreement.
 - iii. Mistakes can be corrected by disclaimers if filed within nine months of death. However, a beneficiary is not required to correct a mistake.
- D. If the deceased owns real estate in another state, a second probate (an ancillary probate) proceeding will be needed. A living trust can be used to avoid probate in multiple states.

8. Identifying and paying debts

- A. Notice to creditors is required to be published
- B. In general, debts can not be avoided if there are assets to pay the debts. There is an exception for non private student loan debt.


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- C. Any debts forgiven will normally result in a 1099 being issued to the estate.
 - D. Co-signed debt may become the responsibility of the cosigner.
 - E. Taxes
 - i. The Personal Representative is responsible for paying all taxes: final income taxes for the deceased, any income tax for the estate, any state estate taxes and any federal estate taxes.
 - ii. If a CPA has not yet been employed, it is now time to hire one. Early hiring of a CPA could lead to reduced income & estate taxes for the estate.
 - iii. At death, the decedents tax year ends. Income up to death is reported on the decedents final income tax return (joint or single). Note: income tax forms may or may not report income up to date of death. Any income earned after death does not belong on the final income tax return.
 - iv. Death creates a step-up (or down) in tax basis on all assets to their fair market value at the date of death.



F. Final personal tax return opportunities and pitfalls

- i. Passive Activity Losses can be deducted on final return. However, the loss has to be reduced by the amount of the step-up in basis.
- ii. Capital loss carryovers expire with final tax return. Trigger gain pre-death to use up carryover.
- iii. Net operating losses expire at death.
- iv. Charity, investment interest and other carryovers also expire at death. Elections can be made to utilize certain carryovers.
- v. The surviving spouse loses the married filing joint tax brackets in the year following death (unless there are dependent children).
- vi. Pre death tax planning can reap significant tax savings.

- G. The estate income tax year begins on the date of death and ends up to 11 full months later.
 - i. The estate year end can create an opportunity to split income into the following calendar year
 - ii. An election can be made to include a living trust as part of the estate for income tax purposes
- H. Estate income tax brackets are significantly compressed compared to individual rates. Income over \$12,500 is taxed at 39.6%!
 - i. Income can be reported to beneficiaries if distributions are made from the estate within the income tax year.
 - ii. An election can be made to treat distributions within 65 days of the estate year end as distributions made in the previous year.
 - iii. Income includes income in respect of a decedent from IRAs, annuities, and installment sales collected during estate administration.

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9. The Personal Representative can distribute estate assets to inheritors after debts and taxes are paid.
 - A. Early distributions can be made, but the Personal Representative can be held personally responsible for any shortfall in paying debts and taxes.
 - B. Income and estate tax are not final until any audits of state or federal tax returns have been completed. The Personal Representative can request estate tax closing letters from the state and federal government.
 - C. The Personal Representative is required to follow the instruction in the will to distribute assets to beneficiaries.
 - i. Personal Representatives cannot “protect” beneficiaries by holding or diverting assets.
 - ii. Beneficiaries can “disclaim” their right to inheritance by filing a disclaimer within nine months of death. If disclaimed, the beneficiary is considered deceased by the Personal Representative when determining who inherits the disclaimed assets.

10. Once assets are distributed, final estate closure can occur. Depending on the estate complexity, the closure could come after a short period or a long period of time.

11. Estate Tax

A. Exclusion and filing requirements-

- i. The Federal basic exclusion amount is \$5,490,000 for 2017
- ii. The State of Washington applicable exclusion amount is \$2,129,000
- iii. The exclusion amounts are per person and adjust annually for inflation

B. Gift Tax-

- i. Federal gift tax applies to any transfer unless an exclusion applies.
 - a) Gifts less than annual exclusion. Currently \$14,000 and adjusted for inflation.
 - b) Direct payments of tuition or medical expenses
 - c) Gifts to spouses
- ii. Gifts not excluded use up the federal basic exclusion amount.
- iii. The State of Washington does not have a gift tax.

C. Portability-


- i. If the first spouse to die has a taxable estate less than the basic exclusion amount, the unused exclusion can be “ported” to the surviving spouse.
- ii. Must be elected on a timely filed Form 706. The Form 706 is due nine months after the decedents death.


D. Estate and gift tax rates-


- i. Federal estate and gift tax rate is 40%
- ii. The state estate tax starts at 10% and marginally increases to 20% for taxable estates over \$9,000,000


E. Step-up in basis-

- i. At death, all assets and liabilities get a step-up (or down) in basis to their fair market value on the date of death
- ii. Basis must match what is reported on Form 706. A form is now sent to all beneficiaries reporting the basis of assets inherited

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- iii. Community property gets a full step-up in basis at the first spouses death
 - a) Washington is one of only 9 community property states
 - b) Community property is any property acquired while married
 - c) Any assets acquired pre marriage or while a resident of a non community property state are *not* community property. A community property agreement solves this issue.
 - iv. Due to community property rules, estate tax planning in Washington is complicated and creates a choice between income tax and estate tax.
 - a) Assets passed to spouse at first death will have two step-up in basis events, however, all assets will be in spouse's estate.
 - b) Assets *not* passed to spouse will only receive one step-up in basis, but assets *not* passed to spouse will be excluded from estate taxes if under the Federal and State exclusion amounts.


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- F. Basic recommendations for estates (both husband and wife) below state exclusion of \$2,129,000
- i. Will – Allow all assets to pass to spouse unless disclaimed. If disclaimed, they pass to a family trust for benefit of spouse to be passed to family members at spouses death. Most likely spouse will not disclaim.
 - ii. Trusts – Consider trusts for all beneficiaries if concerned about creditors, spouses of beneficiaries or ensuring assets pass to lineal descendants. Trusts should also be used for any beneficiary that is a minor. Marital trusts can be used for amount going to surviving spouse.
 - iii. Consider filing Form 706 to elect portability

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- G. Basic recommendations for estates between state exclusion of \$2,129,000 and \$4,258,000 (twice the state exclusion)
- i. Will – Use same disclaimer process in will for estate at the lower end of this range. If at the higher end, consider a formula gift to a family trust for an amount up to the state exclusion amount.
 - ii. At death, an analysis has to be done to determine what to disclaim if using the disclaimer process in will. Gift plan will need implemented to deal with the surviving spouse's estate in excess of state exclusion.
 - iii. Trusts – Consider trusts for all beneficiaries if concerned about creditors, spouses of beneficiaries or ensuring assets pass to lineal descendants. Trusts should also be used for any beneficiary that is a minor. Marital trusts can be used for amount going to surviving spouse.
 - iv. File Form 706 to elect portability for any unused federal exclusion amount.

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- H. Basic recommendations for estates above \$4,258,000 (twice the state exclusion)
 - i. Will – Disclaimer process can be used after careful consideration or use formula gifts to family and marital trusts to utilize state and federal exclusion amounts.
 - ii. Gift planning should be considered before and after death.
 - iii. Trusts – Consider Intentionally Defective Grantor for gifting and inheritance, Marital, Credit Shelter and GST trusts are likely necessary.
 - iv. File Form 706 to elect portability for any unused federal exclusion amount.

12. Biggest estate planning mistakes we see:

- A. Not planning for or communicating incapacity.
- B. Poor choice of Power of Attorney or Personal Representative and forgetting to update when agent or Personal Representative die or become incapacitated.

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- C. Not anticipating issues among beneficiaries
 - D. Failing to update documents regularly
 - E. Having incorrect or outdated beneficiary designations
 - F. Losing control by adding someone to your bank accounts
 - G. Adding your child to your house title
 - H. Failing to realize that wills can be changed by the maker
 - I. Failing to consider who pays estate taxes
 - J. Leaving assets outside of your living trust
 - K. Failing to have proper beneficiary designations on your IRA
 - L. Failing to have gifting powers in your POA

The End

