

LET'S TALK ABOUT **ESTATE PLANNING**

THE PROCESS AND HOW IT EFFECTS YOU



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Why Create An Estate Plan

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Decide Who gets What, When, How and How Much

If you pass without a plan, the State has already decided, for you, who gets what, when, how, and how much. Every state has a plan for your property. It is a “one size fits all” attempt to predict how most people would want things done.

In Arkansas it depends on who survives you on who gets everything. Here are some drawbacks to the State’s plan for your property:

- You might want to leave unequal shares for your family and children because they have different needs.
- You lose control of your property

Avoid Probate

We will talk more about this later. The most important things you need to know you need to know are by avoiding probate you:

- Minimize expenses and time invested
- Minimize family fights

A Will alone does not avoid Probate!

Pick Guardians for your Children

Without a Will, a Judge won’t have your choices in writing. The Judge will have to pick between the people that have asked, if anyone, to raise your children. The Judge doesn’t have the inside information on these people you do. The Judge must select based on the evidence the present in Court. And of course, they will all present their best side.

Provide Who Can Make Decisions for You

If you become unable to make safe, sound, rational decisions for any reason (accident, illness, stroke, dementia, ...) nobody else has the legal authority to make them for you. Unless you have a durable power of attorney in place. If you have a durable power of attorney place, you've named the person or people you want to manage and make decisions for you.

One reason to plan is to name the people you would want to make your personal decisions. That is, who will make financial, legal, personal, and healthcare decisions for you if you can't.

If you don't name somebody, then the State Government has a process in place to name somebody to make those decisions for you. Their plan lets a Judge make the choice and control their plan lets a Judge make the choice and control the decisions.

Provide for Your Family in Case of Incapacity

All too often, your spouse needs money from one of your accounts to make ends meet. Unfortunately, if you can't sign or accounts to make ends meet. Unfortunately, if you can't sign or are incapable of signing, your spouse can't access that money. A durable power of attorney can give them the legal authority they need to not only take care of you, but to also take care of themselves.

Keep the Government Out of Your Business

If you don't create a plan, then the Government has a plan written for you. Their plan is public, costly, and complicated. Their plan may not match your wishes.

How to Avoid Probate

You can avoid, or at least delay, Probate in several ways.

1. Create a revocable living trust
2. Joint tenancy with right of survivorship
3. Transfer on Death deeds and titles
4. Payable on Death accounts designations
5. Beneficiary designations
6. Lifetime gifts

A Will alone does not avoid Probate!

Revocable Living Trusts

A Revocable Living Trust (RLT) is one of the most versatile and flexible ways to avoid probate. Not only does the trust outline the instructions on how to manage the property in the trust during your lifetime, but also has instructions on the distribution of your property. It names who gets what, when, how, and how much.

Your typical revocable living trust:

- Names you as the trustee (property manager) during your lifetime as long as you are able to make decisions
- Names a successor trustee to take over later

- Names the people you want to get your property. Names who gets what, when, how, and how much.
- Has instructions that you can change the trust during your lifetime

As the grantor (creator) of your trust, you can manage the property or revoke the trust altogether. You have full access to the assets.

Joint Tenancy

Many people rely on joint tenancy with the right of survivorship to do their estate planning. This method of avoiding probate really only delays probate and has tax implications for those people you leave the property to.

It works well between spouses because of the unlimited gifting allowed by the IRS between spouses.

However, if you leave property to your children with joint tenancy you create many issues.

- If you need Medicaid, putting a child on the deed is seen as a gift and is penalized.
- Your children will have to pay capital gains tax on the house. They pay this tax based on what you paid for the house. They pay this tax based on what you paid for the house, not what it was worth on the day of the gift.
- It is not easy to undo the gift. All your children must sign a deed back to you.
- Creditors of any one owner can reach the entire property. This means if any one of your children get in credit problems, get sued, have IRS issues, and more the creditor can place a lien on the property or maybe even get it ordered sold so they can get paid.

- You can't give minors property.

Transfer on Death

Some of your property can be retitled to transfer on death without probate. The forms or deeds must be created correctly and filed in a timely manner.

Since it is an inheritance no excessive capital gains tax is due.

Automobiles

Arkansas allows an automobile to be retitled to transfer on death.

The rules are:

- The car must be paid for
- A business may not own the car
- The beneficiary must be an individual
- No more than 3 people can be on the current title

You fill out the form, except for signing it, and go to your local DMV to file it.

Real Estate

Arkansas allows a "beneficiary deed" for the transfer of real estate at death without probate.

- All current owners must sign
- Transfer happens without probate
- Must be recorded before death
- Can leave real estate to a trust
- Medicaid can't recover

It is recommended to have a qualified attorney create this deed for you. It is easy to mess up a legal description or wording and create an invalid deed.

Payable on Death

Arkansas allows you to name the people you want to get the bank account on death. Until death you have full control of the account. If you close the account or spend it all, nothing happens at death.

- Easy and inexpensive to setup
- Beneficiary has no access during your lifetime
- You can revoke and change it anytime
- You can (usually) name more than one beneficiary
- Final transfer is quick and easy

Beneficiary Designations

Instead of calling it payable on death, some companies call it a beneficiary designation. This is the language typical of IRA's, 401(k)'s, life insurance, and annuities.

Lifetime Gifts

The big issues here, is once you give it away, well it is not yours anymore. There are strategies you can use here if you have an estate tax issue.

Lifetime gifts have issues:

- You are limited to an annual exemption or you must file a gift tax return. (For 2021 it is \$15,000 per person)
- If you file a gift tax return, the gift counts against your estate tax exemption later.

- Non-cash gifts are subject to capital gains tax if the recipient of the gift sells it.
This tax is payable based on what you paid for the property not what it is worth on the day of the gift.

What comes in an Estate Plan?

With every complete, comprehensive plan comes **peace of mind** and

- Lifetime advice and questions answered at no extra charge
- Your Will or Trust
- Durable Powers of Attorney
- Healthcare Powers of Attorney
- Advance Healthcare Directive (living will)
- HIPAA Waiver (Protected Healthcare Information release)
- One deed for your primary residence with recording to protect it from Medicaid recovery and pass it to who you want
- Memorial Instructions
- Memorandum of Gifting
- Estate planning binder with original documents neatly organized
- Electronic copy stored on our cloud servers indefinitely
- Personalized plan
- Notary and Witness service
- Instructions on how to use your plan to its fullest benefit
- Instructions on how and when to update and check your plan

With your trust you also get

- “Pour Over” Will
- Assignment of Personal Property
- Funding Instructions
- Certificate of Trust