Estate Planning Guide

Your introduction to estate planning, how to pick an attorney, and ensure your loved ones are protected.

SUNSTONE
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Modern Planning For Enduring Legacies

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Greetings!

We firmly believe that estate planning information should be more accessible. Collectively we've spent 18+ years in estate planning & administration in every role possible. We've been the legal assistant answering distressed calls, the paralegal helping frustrated probate clients, and the attorney navigating complicated family dynamics.

On a personal note, we also know what it means to be the grieving client.

We understand how messy it can get.

We've developed practical tips and tricks to help you navigate your own estate planning journey. You've spent time building your legacy. Now let's protect it.

We are licensed in Oregon and Washington. Laws vary widely from state to state. Please use this guide with care. You should consult your own attorney if you have any questions or concerns. Downloading this guide does not make me your attorney.

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What should be in an estate plan...

- A **Will** *<u>or</u>* **Trust** with a pour-over will. This is how you leave written instructions for who inherits from you, and how they inherit.
- **Durable Power of Attorney** for financial decision-making. This gives someone the authority to do things like cancel your cell phone plan, or utilities on your behalf. It expires at your death.
- **HIPAA Release.** This allows people you name to talk to your doctors or nurses about how you are doing, if you are ever in the hospital.
- **Health Care Directive.** Sometimes called a medical power of attorney, or living will. This authorizes someone to make health care decisions on your behalf, and sometimes allows you to express your end-of-life wishes.
- **Health Care Power of Attorney.** This is sometimes labeled as an ‘addendum’ to your health care directive, but it’s a more robust document authorizing your health care representative to make decisions on your behalf.
- **Guardianship for Minors & Child Care Power of Attorney** (if applicable). Parents of minor children should have *both* permanent guardianship provisions, and a stand alone temporary child care power of attorney.
- **Tax planning** (if applicable). Careful consideration should be given to your estate or gift tax strategies and incorporated through out several documents.

Don’t forget! planning for digital assets, memorial instructions, charitable giving, organ donation, and ongoing asset protection trusts for your beneficiaries!

Do You Have A Simple Estate?

Did you know that both Oregon and Washington have a statutory definition of what a ‘simple estate’ is?

If all property subject to probate is:

Oregon: Personal Property (bank accounts, tangible personal property, etc) is *less* than $75,000 AND your real property = *less* than $200k.

Washington: Personal Property (bank accounts, tangible personal property, etc) AND your real property is combined less than $100,000.

What is Probate?

Probate procedures vary widely between states. A few states have quick and efficient probate procedures and others are horrendous (i.e. California and Oregon). Probate is the court supervised process of (1) appointing an **Executor** called a Personal Representative in Oregon and Washington, (2) notifying creditors of your death, (3) collecting up your assets, (4) paying final debts, and (5) distributing assets to your beneficiaries. **If something passes via beneficiary designation or by operation of law** (joint ownership, community property, etc) then it will <u>not</u> be considered a probate asset and will pass without a court proceeding.

In some states a beneficiary designation supersedes a will or trust (Oregon). In other states a will can *sometimes* supersede a beneficiary designation (Washington) but depends on how the will is drafted.

Example:

Megan has a twenty-year old son. She wants everything to go to him when she passes. She writes a will stating as such. She has a joint bank account with her sister for 'just in case'. She owns her home jointly with her new boyfriend. Her cousin has been a beneficiary on her retirement account for years.

Megan's sister receives:	**The entire bank account (OR & WA)**
Megan's boyfriend receives:	**100% of the house (OR & WA)**
Megan's cousin receives:	**The retirement account (OR) and nothing (WA)**
Megan's son receives:	**Nothing in Oregon, and maybe the retirement account in Washington**

RULE OF THUMB: Probate often costs between 3-5% of your estate in court filing fees & costs, attorney fees, and other expeness.

Wills v Trusts

Although they both include instructions for how your loved ones inherit a will and a revocable living trust are very different planning tools.

A good estate plan plans for all stages of your life.

When you have Capacity

A will...
Includes your written instructions for who you want to inherit. It's stuff in a drawer and not looked at again until something in your life changes. A will usually requires fewer changes during your lifetime.

You can change, add, or revoke your will at any time.

A revocable trust...
Also includes your written instructions for who you want to inherit. It is a bit more cost and work upfront but often saves more money and reduces the amount of work during your incapacity or after you've passed.

You can change, add, or revoke your trust at any time.

During Incapacity

A will...
Relies on a power of attorney for incapacity planning. Banks in often hesitant to honor a power of attorney for financial management, and in some case will outright refuse to honor the document.

Most often a court must determine when you are incapacitated and no longer able to manage your own financial affairs.

A revocable trust...
can create a private way to determine when you are incapacitated, and provide your Successor Trustee (Executor) with almost immediate access to your assets.

It is a more robust incapacity planning tool than a will + power of attorney.

After your Death

A will...
typically has to go through probate. If you have assets that pass by operation of law (joint owners with right of survivorship, or if you have WA community property) or assets that have beneficiary designations then you may be able to avoid probate.

After probate closes the will is no longer in effect.

A revocable trust...
avoids probate. In some cases the trust dissolves after assets have been distributed. In others the trust might state that it converts to an ongoing trust (manage a minor's inheritance without court oversight, or provide asset protection to your beneficiaries).

When to Consider a Trust

Real Property

- ☑ You own your home
- ☑ You have rental properties
- ☑ ESPECIALLY if you have properties in multiple states

Beneficiaries

- ☑ You have minor children inheriting from you
- ☑ Your beneficiaries are on needs-based benefits or have a disability
- ☑ You have non-joint children

Privacy

- ☑ You want the details of your plan to remain private, and not public record
- ☑ You'd prefer to privately decide when you're incapacitated and not rely on a court order or a doctor to decide when to 'take the keys away'

Taxes & Expense

- ☑ Your estate is over $1m in Oregon or $3m in Washington (including life insurance!)
- ☑ You want avoid the expense of probate

Owning real estate without rights of survivorship, naming minors or individuals on needs-based benefits directly; can all result in unnecessary court proceedings. These court proceedings or public. They take time and money. A trust can reduce complication. It can also reduce the risk of 'accidental disinheritance', and with married couples can also reduce your taxable estate.

Not all trusts are created equal

There are hundreds of different types of trusts. The two main 'categories' of trusts are **revocable** and **irrevocable**. Some trusts are purpose built or asset specific, and others are more general. You can create a trust for life insurance to reduce your taxable estate, provide for a pet, transfer federally regulated firearms, and provide for someone in an asset protected way.

Tips & Tricks

Beneficiary Designations. Simple estates, with no real estate, can often pass by beneficiary designation. They are sometimes called 'Transfer on Death' or 'Payable on Death'. Naming a competent adult as a beneficiary can be an elegant way to transfer assets.

When a person inherits an account via beneficiary designation the account becomes *theirs* without court intervention and regardless what the will says.

The secondary or contingent beneficiary does not follow the account after death. The new owner needs to fill out new beneficiary forms.

Beneficiary designations do not apply until after you've passed away.

Add a Co-Owner. In very narrow circumstances adding your beneficiary to you accounts, or on your deeds can work. This is best if you are not concerned about your beneficiary getting sued, divorced, or absconding with funds. It works best when you have one beneficiary you'd like to inherit, but not multiple beneficiaries.

At your death the asset becomes theirs. If you aren't worried about capital gains tax, gift taxes, and you don't have multiple beneficiaries then this can avoid probate and provide access during incapacity.

A co-owner's creditors and liabilities can attach to assets they are named on.

In unsual circumstances the asset passes automatically. It is not subject to the terms of your will or trust.

How to Interview an Estate Attorney

Finding an attorney can be stressful and confusing. It's important that you find someone that you can trust, who has the technical skills to help you troubleshoot any potential problems, and you feel confident will honor your wishes.

Attorney Interview Questions		Sunstone Planning	Attorney #2	Attorney #3
DO YOU BILL FLAT RATE OR HOURLY? **If hourly:** can you set a maximum? What is an average cost? **If flat rate:** How many meetings does that include? How is the rate determined?	HOURLY	✗	☐	☐
	FLAT RATE	✓	☐	☐
WHAT IS INCLUDED IN THE FEE? Are the documents à la carte, and billed separately? Or is it a coordinated collection of documents that work together? Understanding everything that is included is important to ensure there are no surprises now, or in the future. **Trust-based plans:** is the deed to my house included in the cost?	À LA CARTE	✗	☐	☐
	COMPLETE	✓	☐	☐
DO YOU HELP ME EXECUTE THE DOCUMENTS? Proper execution of your estate planning documents is vital to ensure that there no unexpected surprises in the future. Failing to include a witness or notary can have devastating consequences.	YES	✓	☐	☐
ARE YOU A LICENSED ATTORNEY IN OREGON OR WASHINGTON? There are numerous companies who say they can help you with your estate planning but many of them are glorified legal zoom DIY forms. The problem with unlicensed help or DIY forms is you don't know if they are right until it's too late.	YES	✓	☐	☐
IMPLEMENTATION SUPPORT **Will-based plans:** Do they help complete beneficiary designation forms? Do they provide instructions for how to update them? **Trust-based plans:** Do they include ongoing help updating the ownership of your assets to the name of your trust? Update beneficiary designations? Do they provide instructions?	PROVIDES SUPPORT	✓	☐	☐
ONGOING SUPPORT How often do they check-in on clients? Do they charge for a check-in? What if you have a quick question? What if you want to change something?	FREE REVIEW	✓	☐	☐
WHAT IS THE PROCESS? Do they have a set process? Can additional meetings be added if needed?	HAS A CLEAR PROCESS	✓	☐	☐
ARE YOU A SPECIALIST OR GENERALIST Estate planning can be deceptively complicated. Improperly drafted documents, or inexperience can cause unintended consequences. You wouldn't go to a heart doctor when you broke your foot. Neither should you go to a personal injury lawyer for estate planning.	SPECIALIST	✓	☐	☐
WHO KEEPS THE ORIGINALS Traditionally law firms kept the original will, or other documents. More modern firms may provide the originals to you.	PROVIDES ORIGINALS	✓	☐	☐