

**Getting Started  
with  
Arizona  
Estate Planning**

**Scott David Stewart, Esq.**

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GETTING STARTED WITH ARIZONA ESTATE PLANNING,  
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### ***A Personal Message...***

*“How would you describe your role in life? Most of us never think about the place we hold in people’s lives or what we mean to them. We expect close family members to grieve when we’re gone, but seldom do we reflect upon the financial challenges they will face managing on their own. What impact will your absence have on those closest to you?”*

*“I’m an attorney, yes, but that’s not all I am. Job descriptions barely scratch the surface of who we are as individuals or how we view our responsibilities to others. I am my wife’s husband and my children’s father. I am a brother, son, uncle, and cousin. I am the founding attorney of Stewart Law Group, a mentor, employer, and my clients’ trusted advisor. I am a neighbor, volunteer, and fellow member of my church. Like you, I wear many hats. People depend upon me just as your family, friends, and associates depend upon you. That alone is reason for why you should have an estate plan ready. Illness and death are not an ‘if’ but a ‘when.’”*

*“This e-book explains how a simple estate plan can help you achieve important objectives, preserve wealth, and provide for those you love and care most about.”*



Scott David Stewart

A handwritten signature in black ink, appearing to read 'Scott David Stewart'. The signature is fluid and cursive, with a long horizontal line extending to the right.

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# LESSON 1:

## What Estate Plans Are All About

*What are estate plans supposed to accomplish?*

*Does everyone need a Trust?*

*Aren't estate plans for the wealthy?*

*Can a Will provide for guardianship of my kids?*

*Should I have a prenuptial agreement?*

At the initial consultation, people ask questions like these because estate planning is an unfamiliar process for them. They don't really know where to start.

Plus, most of us have a natural tendency to avoid “what if...” conversations about mortality. We all resist talking about life and death matters, but you really need to do this.

When is the best time to start preparing an estate plan? Yesterday! The fact that you are thinking about this is an important first step. Now it's time to get it done.

## First Steps to Arizona Estate Planning and Probate

Understand that every decedent's estate must be distributed according to Arizona law. No matter who you are, what your net worth is, what your current marital status is, or if you have children or grandchildren. For probate and estate planning, Title 14 of Arizona Revised Statutes is the primary authority.

**Here's the first lesson:** Know the importance of a Last Will and Testament. At the simplest level, dying with a valid Will means the person's wishes dictate the disposition of property owned by that person at the time of his or her passing. Distribution by Will follows **testate succession law**. The Will embodies

the testator's intent and, as such, is the cornerstone of a simple estate plan. In other words, the Will permits a person to predetermine who shares in the estate and, conversely, who does not.

Without a Will, however, the person's estate is distributed to heirs according to Arizona's law of **intestate succession** — that's the statutory estate plan by default. Unless there is a Will, the decedent's intentions regarding property disposition, guardianship of a minor child, choice of personal representative (executor), and other matters cannot be known. Therefore, intestate succession law must fill the gap. As for the heirs, it's "let the chips fall where they may" under the statute. No matter what assurances and promises the decedent made during his or her lifetime, all bets are off.

With intestate succession, justice is blind. Simply put, if a person dies without a valid Will, all of the property he or she owned will be transferred in accordance with Arizona law to family members based on degree of kinship. This occurs even if not decedent's intention.

What happens if someone dies intestate without any known heir? The adage "you can't take it with you" is all too true. Without a traceable heir, the State of Arizona may lay claim to the remainder of decedent's property after debts and taxes are paid. Decedent's home, vehicles, RVs, bank accounts, investments, and other tangible and intangible assets cannot remain

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untitled indefinitely. If no one is qualified to claim the decedent's intestate estate, then Arizona takes as the last resort. ARS § 14-2105. The law may seem harsh, but the solution is easy — make a Will!

Many celebrities have left heirs a legacy of grief by failing to plan. Prince Rogers Nelson, Jimi Hendrix, Howard Hughes, James Brown, Kurt Cobain, Aretha Franklin, Bob Marley and Amy Winehouse all died without a Will. When someone dies and has no heirs to leave property to, then a gift to a favored charitable organization has meaning. Many people include charitable giving in addition to leaving their assets and possessions to relatives and friends. Control, that's what an estate plan is all about. The individual has the right and ability to determine who and what charitable institutions will share in the estate plan.

The way to avoid intestate succession law is to create a cohesive estate plan. Every competent adult should start by executing a Will. We can help. To prepare for that first consultation, in this discussion you will read about the following estate planning instruments:

- ✓ Last Will and Testament
- ✓ Healthcare and Mental Health Power of Attorney
- ✓ Living Will
- ✓ HIPAA Release

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- ✓ Financial Power of Attorney
- ✓ Life Insurance
- ✓ Trusts
- ✓ Joint Tenancy and Community Rights of Survivorship
- ✓ Beneficiary Deeds
- ✓ Payable on Death Designations
- ✓ Memorandum for Disposition of Personal Property

**Have a question?** Feel free to send your inquiry to [info@ArizonaLawGroup.com](mailto:info@ArizonaLawGroup.com) or call 602-548-3400 to schedule an appointment with one of our estate planning attorneys.



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# LESSON 2:

## Estate Plans Can Be Simple or Complex

*Would a Living Trust provide for my spouse if I'm gone?*

*How do I plan for succession of the family business?*

*What's the best way to provide for my children and set funds aside for their education?*

*Is there a way to change ownership now to avoid probating assets later?*

*How do I avoid taxes on my estate?*

Estate plans are built on layers. Each layer being an intentional instrument with a specified purpose. The more layers, the more complex the plan is likely to be. First, it is your unique circumstances that will provide needed clues for the estate planning attorney to make recommendations.

Second, the attorney assists you by preparing instruments that, when taken as a whole, carry out your desires and objectives. This requires substantial estate planning and probate litigation experience.

From the attorney's perspective, at some point — either during the client's lifetime or upon the client's death — the written terms in each document will be scrutinized and tested. For the estate plan to be enforced as intended, each instrument must be drafted to withstand objection.

Third, laws change and so do people's lives. Flexibility should be built into every estate plan to allow for changed circumstances. Still, every plan needs reviewing and updating from time to time. Your goals and the instruments included in your estate plan are likely to change some, especially with important events. These happenings are good cause to reflect on where you are in life. Let them serve as motivation to sit down with your attorney and review your estate plan for potential updating.

How do you know if it's time to review your estate plan? Make a habit of looking your plan over every year at the same time, just because. Otherwise, let events dictate review. Birth of a child, medical diagnosis, divorce or pending divorce, death of a spouse or other heir to your estate, retirement, your grandchild's high school graduation, and any other event sufficient to motivate a look-see for change and improvement. Don't keep your estate plan at arm's length once you have it. Every instrument should reflect your wishes and intentions at each stage in life.

## Who Should Have an Estate Plan?

Should every adult have an estate plan? Yes. Does everyone need a complex estate plan? Definitely not. Look in the mirror and be honest about your life today and where you expect to be in two, five, or 10 years. Generally, the more complicated your finances and family situation, the more complex the estate plan will probably need to be to accomplish your goals. Talk to a lawyer about your particulars.

In meeting with an estate planning attorney, the discussion typically begins with an overview of your current status. To advise you, the attorney needs to get to know you. Are you married? Have you been divorced? Are you engaged? Do you have children — minor or adult, natural or adopted? Do you or does a family member

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have immediate health concerns or disabilities? What real property do you own? Where are you employed? When will you retire? Do you have a pension, retirement account, or other investments? Do you own a business or professional practice? Are you the beneficiary of a family trust? Will you inherit a substantial sum? What are your financial expectations over the next few years?

Estate plans are written using declaratory language because they include legally enforceable directives on very serious matters. Care of your minor children. Provision for your surviving spouse. Life and disability insurance. Disposition of the remainder of your estate upon your death. Be mindful, your estate does not include your surviving spouse's share of community property. An estate planning attorney can assist you in exercising the level of control you feel comfortable with during your lifetime and after.



# LESSON 3:

## Layering Key Instruments in Your Plan

*What does a Will accomplish?*

*Do I really need healthcare and mental health  
powers of attorney?*

*Do I need a durable financial power of attorney?*

*I'm young and healthy, what's the rush?*

*All Wills say the same things, right?*

A complete estate plan fits many pieces into the puzzle that is your life. Your age, military service, children, financial resources, property ownership, spousal maintenance or alimony payments, child support obligations, and so on, are all important factors. There is a lot going on in your life. An estate planning attorney with Stewart Law Group will help you break it down.

Wealth is certainly one criterion for seeking legal advice, but it's far from the only one. Consider two fundamental components of any estate plan — the **Last Will and Testament** and the **healthcare and mental health power of attorney**. The Will controls disposition of the decedent's estate. In other words, what property shall go to which person or charity?

## Last Will and Testament

A Will is essential no matter how grand or modest the person's economic standing and financial resources. (We'll get to trusts later!) The smallest estate may include family heirlooms and valuable assets, items often left by specific bequest to certain devisees or beneficiaries. For example, one testator bequests her wedding ring to her oldest granddaughter. Another testator gifts his classic 1964 Ford Mustang to his college-bound nephew.

A testator may leave the bulk of his estate, less taxes

and debts, to the children of his first marriage when no children were born or adopted during his second marriage. A Trust can be funded to provide for a minor child's education or care in the hands of a guardian. Wills are used to accomplish many things, including appointment of a personal representative.

## Healthcare and Mental Health Power of Attorney

Another key component of any estate plan is the healthcare and mental health power of attorney. This power of attorney is operative while the principal is living and is independent of any Will. The principal uses this instrument to appoint an adult as agent (frequently a spouse, parent, or sibling) to make future medical and mental health decisions while the principal is incapacitated or unable to communicate wishes directly to medical providers. The healthcare and mental health power of attorney is also used to designate a future guardian or conservator (or both) for appointment by the court, as well as arrange for organ donation and disposition of remains.

Say, for instance, you are severely injured in a car crash and fall into a coma. You are unable to communicate your wishes regarding medical treatment. When circumstances are exigent, the healthcare power

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of attorney has pre-authorized your agent to make medical decisions on your behalf when you are unable to do so. ARS § 36-3221. (Emergency court orders may be impracticable in certain situations, don't count on that process as a viable option.) The hospital surgeons and emergency medical team need to know *now* how to treat, what your medical conditions are, whether to operate, or whether to standby.

The power of attorney also permits your chosen agent to have access to your private medical records and to communicate with your treating doctors. Choose your healthcare advocate by written declaration that satisfies Arizona's legal requirements.

Combine the power of attorney for healthcare and mental health with two other instruments:

- ✓Your **living will** with specific instructions to your agent, doctors, and others. ARS § 36-3261; and

- ✓Your **HIPAA release** to allow your agent access to your private medical records for purposes of treatment.

Healthcare and mental health power of attorney along with a living will and HIPAA release are essential to any emergency plan. They set the stage, allowing serious medical decisions to be carried out by the person you know and trust most with these responsibilities.



# LESSON 4:

## Why Financial Powers of Attorney Are Important

*Can't my spouse sign legal documents for me?*

*Does a power of attorney last forever?*

*What if I change my mind about having an agent?*

*Could I appoint my adult child as agent while I'm overseas on business?*

*As a service member, do I need a power of attorney if deployed?*

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**Y**ou are responsible for managing assets and finances during your lifetime, among many other things. Likewise, you can utilize estate planning tools such as a Will and Trust to transfer assets upon death. How does your plan arrange for when you are unavailable and unable to act, for example, or are out of the country?

The Financial Power of Attorney is a way for you to delegate authority to another adult — your agent, or attorney-in-fact — so he or she can take legal action on your behalf while you cannot. Powers of attorney are effective during your lifetime. You need not be fit as a fiddle, but you do need to be alive and kicking!

Depending upon the powers granted by you as principal, your authorized agent can bind you to a contract, bring or settle claims, obtain your medical records, sell your real estate, or take over your financial affairs should you become incapacitated. Needless to say, you put a great deal of trust in a person by appointing him or her as agent. Exercise due care in selecting someone.

Because the agent's authority flows through the principal, should the principal pass away then the agent's authority to act ceases, too. A spouse may ask the other spouse or adult child to serve as attorney-in-fact. Sometimes the agent for financial matters is an accountant, attorney, or doctor, but that is not a requirement in Arizona law.

## One Person Can Wear Many Hats

This is a good opportunity to mention that the same individual may serve more than one role in your estate plan. For instance, a spouse may be the other spouse's attorney-in-fact, personal representative of the Will, trustee of a Living Trust and beneficiary. Same person, various duties, very different hats. Every one of those roles may be served by a different individual — professional or layman. In fact, you could choose co-trustees and co-executors to serve simultaneously. You need to decide who would carry out each of these tasks with greatest care. After all, these can be very difficult, often thankless, jobs for your loved ones to take on.

## What Powers Are Granted?

Powers of attorney come in different types depending upon scope, purpose, and duration:

- Limited Power of Attorney;
- General Power of Attorney; and
- Durable General Power of Attorney.

The **limited power of attorney** simply means the agent's duties are limited to a specified task usually within a specified time frame. One such is the healthcare power of attorney mentioned earlier.

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The **general power of attorney** is quite different. Granting general powers to an agent usually includes broad financial responsibilities. The agent typically has access to investment accounts, business records, and numerous other assets.

With the **durable general power of attorney**, the agent has authority to act when the principal becomes incapacitated. What if Susan had a massive stroke and became incapacitated? If she delegated authority to Kevin using a durable general power of attorney, then he could continue managing her financial matters as agent even though Susan was incapacitated and may not recover. What if Susan became incapacitated while Kevin's authority was by general power of attorney only (not durable)? Kevin's powers would cease upon the principal's incapacity — if she cannot make legal decisions, then neither can he as agent.

Estate plans should build in flexibility. Determine how flexible you need to be with powers of attorney after discussing the pros and cons with your lawyer.



# LESSON 5:

## Include Insurance in Your Estate Plan

*How much life insurance is enough?*

*Should life insurance be an investment vehicle?*

*Is it possible to get disability insurance  
if I'm self-employed?*

*Do I need a long-term care policy  
for my spouse?*

Some estate planning tools are readily available without the necessity of hiring an attorney. Topping the list are three types of insurance policies:

- Disability Insurance
- Long Term Care Insurance
- Life Insurance

### Disability Insurance

No one is invincible. By protecting the family's principal wage-earner with **disability insurance**, coverage can provide a steady income through a period following serious illness or injury. Are both spouses working full time? Except for the premiums, there is no reason to restrict disability insurance to only one spouse or the other. Shop around.

Frequently, a limited disability policy is included in an employee benefit package provided by the employer. Self-employed individuals should consider acquiring a policy on their own. Of course, the risk of injury is greater with dangerous jobs, such as construction work and exposure to toxic chemicals. The risk of no income or reduced income should be enough to shake anyone, whether operating a daycare or professional practice.

Health insurance is not typically thought of as part of an estate plan, but it is related to a person's need for disability coverage. Medical care may result in time

away from work, even permanent loss of employment. And typically, there are expenses health insurance will not cover. Consider the electrician and father of three who has open heart surgery at age 40. He is expected to fully recover, but will not return to work for at least three months. Or a restaurateur and mother of two who is diagnosed with Stage 4 breast cancer and will undergo surgery, radiation, and chemotherapy. How are they to pay their bills while recuperating?

Choose disability coverage carefully. As with any insurance product, shop for quality coverage and pricing. A good disability policy should kick-in when you need it and help with mortgage payments, child care costs, and regular expenses during the period of disability.

## Long Term Care Insurance

**Long term care insurance** is another policy that may have a place in your estate plan. Long term care insurance supplements Medicare in a number of ways. Because the risk is fairly high that an elderly individual will have to move into a long-term care facility, these policies can be fairly costly. Again, shop around for the best price. If the cost is prohibitive or unsuitable given the circumstances, then at least have a plan for elder care. An experienced attorney can help with this.

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What assets can be spent down or liquidated initially to pay for 24-hour care at a licensed adult-care facility? Will a son or daughter, friend or other relative be caring for the elderly parent full time? The statistics on adult children raising families while caring for their elderly parents — with or without compensation — are staggering. Statistics from [www.caregiver.org](http://www.caregiver.org) illustrate how many caregivers are in the nation:

1. From the National Alliance for Caregiving and AARP (2015). Caregiving in the U.S.:

- *“Approximately 43.5 million caregivers have provided unpaid care to an adult or child in the last 12 months.”*
- *“About 34.2 million Americans have provided unpaid care to an adult age 50 or older in the last 12 months.”*
- *“The majority of caregivers (82%) care for one other adult, while 15% care for 2 adults, and 3% for 3 or more adults.”*

2. From Coughlin, J. (2010), Estimating the Impact of Caregiving and Employment on Well-Being: Outcomes & Insights in Health Management:

- *“Approximately 39.8 million caregivers provide care to adults (aged 18+) with a disability or illness or 16.6% of Americans.”*

3. From the Alzheimer's Association, 2015 Alzheimer's Disease Facts and Figures:

- *“About 15.7 million adult family caregivers care for someone who has Alzheimer’s disease or other dementia.”*

Caring for an elderly parent, grandparent, or disabled spouse could easily expand into modifying the primary residence to accommodate that person's needs and limitations. There are very real costs involved in addition to the caregiver's physical, emotional, and psychological investment.

## Life Insurance

Lastly, **life insurance** is another essential component of one's estate plan. There are many different types of life insurance policies. Some are utilized as investments, such as annuities. Others are not investments at all. The plusses and minuses of the two are beyond the scope of this discussion. Term life insurance policies might be the best deal. Even with an annuity, adding a separate term life insurance policy can provide more coverage for the greatest value and largest payout upon death. Why not set up auto-pay drawn from your bank so the annual term insurance premium is never missed?

Life insurance is a necessary piece of the estate plan puzzle. There are always end of life expenses. But

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consider, too, the emotional and economic shock to the other spouse when left to manage all household expenses and raise the children. How much is enough life insurance? That's a tough question and depends upon the circumstances, such as your age and health condition.

Talk to your financial advisor and estate planning attorney about “how much is enough” life insurance coverage to protect your loved ones.



# LESSON 6:

## Fitting a Trust into The Big Picture

*How do I know if I need a Trust?*

*Can a Trust provide for my disabled adult child?*

*Are there estate tax reasons for Trusts?*

*Could a Trust help an elderly parent?*

*Can my Trust leave everything to my  
spouse first and then my kids?*

**T**rust creation is one area of estate planning, particularly, that requires sound legal advice. An estate planning attorney knows what Trust form will best serve the client's specified objectives and chooses precise language to carry them out. The Trust instrument should perform as intended and pass muster upon legal challenge.

With Wills and Trusts, experience really matters. Do not depend upon a generalist who dabbles in trusts and estates from time to time. That won't cut it. Hire the lawyer who works with estate plans routinely, knows what to look for, understands what the client needs to accomplish, and can competently draft instruments to implement those goals for the best possible outcome. Trusts are all about tailoring provisions to the person's wishes and needs, however variable those are. Trusts can be narrow or broad in purpose, but almost all are necessarily complex instruments. Don't wing it!

## Trust Basics

Because trust instruments are a big part of estate planning, let's go over a few basics. A Trust is an agreement between the settlor (grantor) and trustee. The Trust instrument instructs the trustee as to how Trust assets and income from the Trust are to be managed and distributed in various ways for the benefit of one or more beneficiaries. Be mindful, Trusts are all about the

grantor's intent and purpose.

People think of Trusts as a method of avoiding probate. What if there is a legal challenge or objection? The Superior Court sitting in probate will have jurisdiction over the case. Yes, a well-drafted Trust may avoid probate and a knowledgeable estate and trusts attorney will do what is possible to reduce potential problems and limit liability. But no Trust can prohibit the court from exercising proper jurisdiction when a lawsuit is brought by a creditor, by the trustee as fiduciary, or by a trust beneficiary. ARS § 14-7401, et seq. Hire an attorney. Get it right. Avoid problems later.

## Living Trusts and Testamentary Trusts

Trusts are grouped into two main categories. Does the instrument create a **Living Trust** (a.k.a. inter vivos trust) or a **Testamentary Trust**? The former refers to any funded Trust that goes into effect during the lifetime of the grantor — the one who created the Trust (a.k.a. trustor, settlor or grantor). By contrast, a Testamentary Trust is embodied in a Will, springing into existence upon the testator's death. Most Trusts today are Living Trusts.

## Revocable and Irrevocable Trusts

The next division is whether the Trust is **revocable** or **irrevocable**. If revocable, then the settlor may revoke or modify the Trust for various reasons. However, an irrevocable trust cannot be revoked or changed by the grantor later on. A Trust can start out as revocable and become irrevocable upon the occurrence of a specified event, such as the death of the settlor (trustor or grantor). There is a provision within every trust for final distribution and termination. Including when Trust assets are tapped out, the sole beneficiary dies, or as otherwise specified in the Trust agreement.

There are multiple possibilities. Trusts can be used for Medicaid planning, veteran's benefit planning, business succession planning and, of course, provision for a spouse, minor or adult children, and future grandchildren. A knowledgeable and caring attorney will help you think outside the box with your Trust formation.

There are so many different approaches to Trusts, they really cannot be listed. Instead, take a look at a few examples of what a Trust may be used for:

- *Provide additional assistance with a Special Needs Trust (or Supplemental Needs Trust) for a disabled beneficiary, whether a minor child or adult. (Read more about this below.)*

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- *Preserve wealth with estate tax avoidance techniques for estates over the exemption level. Moving assets into various trusts can make full use of exemptions, a way to avoid being taxed at the highest rate.*
- *Provide for distribution of the grantor's estate upon his or her death.*
- *Create an educational trust for a child or grandchild.*
- *Create an Insurance Trust to own and distribute life insurance benefits.*
- *Prevent a spouse or adult child from wasting assets with a spendthrift trust.*
- *Create a Medicaid asset protection trust for an elderly adult.*
- *Provide for additional assistance with a Veteran's trust for a service member.*
- *Provide for guardianship of minor children with allocated assets for their care and education, along with instructions on how the children should be raised, desired family culture, and religious upbringing.*

A **Special Needs Trust** (or Supplemental Needs Trust) could provide for an elderly parent who has dementia or Alzheimer's disease, for example, or a

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severely disabled child. Generally, the purpose of a Supplemental Needs Trust is to make additional resources available to the beneficiary who qualifies for Social Security Income (SSI), Social Security Disability Insurance (SSDI), VA disability programs, or state benefits through the Arizona Health Care Cost Containment System (AHCCCS) and Arizona Long Term Care System (ALTCS). Why supplement those government benefits? Because they are often insufficient to cover all of the beneficiary's living expenses, caregiver costs, and medical bills. A Special Needs Trust can supplement with funds to pay for things that government benefits will not.

With one or more Trusts included in an estate plan, regularly scheduled review is necessary. Listen to your attorney when he or she says you need to review your Trust because the law has somehow changed and may affect you. No estate plan should be executed, stuffed in a drawer, and forgotten for 10 years. Read it every year, mull it over, jot down notes and questions, and communicate with your attorney. That is how you ensure everything is good to go without changes for another year. Or not.



# LESSON 7:

## Non-Probate Transfers Do Just That

*What is a joint tenancy really for?*

*How do beneficiary or POD designations work?*

*What happens to my life insurance and  
retirement benefits?*

*What's the simplest way to leave land to my child?*

*What is community property with right  
of survivorship?*

*Will our prenup have an impact on estate planning?*

*Are there ways to avoid probate?*

Estate planning goes beyond Wills, Trusts, and Powers of Attorney. The scope of this area of law practice includes purpose-driven limited liability companies, family limited partnerships, and co-tenancies in real property and other assets. Prenuptial agreements and post-nuptial agreements can play an important role as well. Again, the emphasis is on creating a cohesive plan. Sometimes this requires different ownership arrangements so property can pass outside the Will and Trust, called non-probate transfers.

## Rights of Survivorship

In Arizona, for instance, a married couple may own real property as joint tenants with right of survivorship, meaning the surviving spouse becomes the sole owner of the asset upon the first spouse's death. Similarly, spouses often take title to their marital home and other real estate interests as **community property with right of survivorship**.

Any two or more individuals may take title to property as **joint tenants with right of survivorship**. As joint tenants, the last survivor among them will take the property or whatever remains of it. Survivorship rights allow property to transfer to the sole survivor outside of probate. To complete this non-probate transfer, Arizona

law requires filing a certified copy of the Certificate of Death in the county recorder's office where the property is located.

## Pay on Death Accounts

A **pay on death account** (POD) lets the account-holder fund the bank or investment account knowing, when the account-holder passes away, the money will be paid to the named beneficiary — end of story. A Certificate of Death is typically all that is needed for the funds to be released to the beneficiary.

The beneficiary could be an adult child, a sibling, relative, friend or the other spouse. Does the beneficiary wear other hats in the decedent's estate plan? If the surviving spouse is the POD beneficiary and also the decedent's personal representative under the Will, then immediate access to those POD account funds can be put to work. This means money is quickly available to pay living expenses, cover the decedent's last medical bills, pay funeral expenses, or hire an attorney for legal guidance in administering the deceased spouse's estate.

## Beneficiary Deeds

Arizona also recognizes the **beneficiary deed** allowing the property owner to execute a deed leaving property to a specified beneficiary. ARS § 33-405. What

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is unique about the beneficiary deed is that the owner-grantor enjoys total control of the property during his or her lifetime. The owner-grantor is free to encumber it, improve it, rent it, even sell it (the act of selling the property revokes the beneficiary deed). If still holding title at time of death, then the property is conveyed to the beneficiary outside probate by recording a certified copy of the Certificate of Death with the recorder's office where the property is located.

In Arizona, an individual may predetermine who will receive a motor vehicle, too. The sole owner of the vehicle completes the Motor Vehicle Division's Beneficiary Designation form for the purpose of transferring the vehicle title upon his or her death. After the owner passes, the named beneficiary collects the vehicle without going through probate court proceedings. To effectuate the non-probate transfer of decedent's vehicle (as personal property), the beneficiary designation instrument is submitted to the MVD along with a certified copy of the death certificate.

Making good use of joint tenancies, POD accounts, beneficiary deeds and beneficiary forms in an estate plan is encouraged. However, such strategies do not replace the need to execute a Will or Trust instrument. They do provide a non-probate way for individuals to transfer specific assets to survivors and named beneficiaries in the future. And without complication or delay.



# LESSON 8:

## Preparing to Consult an Estate Planning Attorney

*Why hire a lawyer?*

*What could possibly go wrong?*

*Why talk to an attorney when I don't know what I want?*

*How can I make decisions about unknown future events?*

*Can't I just fill out some online Will form and sign it?*

## Every Client's Estate Plan Is Unique

**I**n the eyes of an estate planning attorney, individual clients have distinctly individual needs. No two estate plans are the same, which is why this law practice is so very interesting to dedicated lawyers. Every consultation covers new territory, offers up novel situations, and requires creative legal solutions.

What is it like to meet with an estate planning attorney? Relax, an attorney with Stewart Law Group is on your side. Everyone on our legal team is passionate about helping our clients and their families. Some anxiety is to be expected, but there is no reason to stress out about this. (If you are motivated by stress, then worry about something happening before your estate plan is ready to sign!)

You have a story to tell and the attorney will listen intently to what you have to say. This process is quite different from planning to sue someone or defending against someone who is suing. In fact, estate planning has proved time and again to be the smart way to avoid a contested probate action.

## You Deserve to Get Your Questions Answered

You need answers. Consult an attorney who regularly practices in Wills, Trusts, and Probate Law. A professional drawing on years of estate planning experience can anticipate your greatest concerns. Who will care for the children if both parents are gone? How will an elderly spouse or parent be cared for? Some worry a former spouse will attempt to take everything from the current spouse or, at a minimum, try to make things difficult out of spite. Clients worry their children from a previous marriage will be unfairly excluded from inheriting. The majority of parents want all their children to receive a fair share, which may or may not be an equal share or no share as the case may be.

Worries like these have a common thread. Clients stop worrying when they learn what the law allows and how they can control the outcome through estate planning. One thing you should not worry about is the notion that thinking and talking about death issues is somehow taunting fate. Death is inevitable. Perish the thought that you are somehow jinxed by discussing death. Instead, start preparing for a positive legacy.

## This Is a Golden Opportunity to Help Loved Ones

At Stewart Law Group, meeting with an estate planning attorney is a golden opportunity to talk and to learn how different instruments mesh with your objectives and special circumstances to provide actual results. The attorney will go over the need for a Will and possibility of creating any applicable trust arrangement if the situation warrants doing so. Given your desired outcome and our experience in these matters, the initial discussion may involve strategizing how to:

- *Use powers of attorney (durable, general, or limited in scope) to appoint agents to act in your stead;*
- *Provide for disabled or special needs beneficiaries (minor children, adult children, or elderly parents);*
- *Utilize insurance should injury or illness interrupt your ability to earn income at a comparable level;*
- *Preserve pension income, retirement plans, military retired pay, and Social Security benefits;*
- *Implement reverse mortgages, leasing, and renting properties to generate income;*

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- *Carry out tax avoidance measures, primarily at the federal level; and*
- *Plan for business or farm succession, among other things.*

In planning your estate, you clear the way for today's living. Obtain peace of mind. Build on the self-confidence, clarity, and direction that comes with a purpose-driven life. Uncertainty and confusion get tossed to the wayside when you have talked with a lawyer, made key decisions, and executed a plan. The greatest stress reliever is knowing everything will come together like a well-oiled machine should something happen to you. You've protected your family and given yourself room to breathe again. That's when you tell yourself "Well done!"

What to look for in an estate planning attorney? Our legal team stays on top of legal trends, important cases, and statutory changes to estate planning, probate, federal and state tax law, and related practice areas. We guide our clients through the estate planning process, explaining how the different instruments are utilized and why. We assist clients by interpreting their specific estate plan wishes. And by overcoming the more challenging situations by strategizing alternative plans known to provide positive results in complex situations.

## Getting Started with Arizona Estate Planning

A competent estate planning attorney with Stewart Law Group will make this a positive experience for you. Although laws change, you need some assurance that what you expect to happen under the law as you know it, today, will actually occur many years in the future. First, your estate plan should carry out your specific objectives and, second, be sufficiently flexible to allow for changed circumstances. Life is all about change, after all. Our estate planning attorneys are adept at this and will carefully guide you through the process.

Lastly, your family and those who depend on you need this done just as much as you do. There is no room for delay. This adult responsibility — having an estate plan — is one that too many fail to carry out. And with very undesirable consequences for the loved ones they leave behind. Don't be one of them. Make a plan.

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