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# Estate Planning Notes



**Cannon Beach Conference Center**  
PO Box 398 • Cannon Beach OR 97110  
(503) 436-1501 • [www.cbcc.net](http://www.cbcc.net)

**Carl Sandeen**  
Development Manager  
[carlsandeen@cbcc.net](mailto:carlsandeen@cbcc.net)

**Call, email, stop by office any time**  
*(Administration Building)*







## What is Estate Planning?

Estate Planning is the wise use of available options to accomplish your goals for distributing your assets after death.

What is an Estate? It is everything you own. That includes:

- ▶ Your home
- ▶ Your real estate
- ▶ Your bank accounts
- ▶ Your investments
- ▶ Your retirement
- ▶ Your IRA's
- ▶ Your insurance
- ▶ Your collectibles
- ▶ Your personal belongings

When you start adding it up and include death benefits from insurance policies, you may have a lot more than you think.



### Why Plan?

Planning will allow for your estate planning wishes to be heard, otherwise, the state in which you live has default procedures for distributing an estate.

As you age, your plan should:

- ▶ Include long-term care options
- ▶ Decide medical issues
- ▶ Consider incapacity

After death, your plan should:

- ▶ Control who receives your assets
- ▶ Pay the least possible legal fees and taxes
- ▶ Provide needed liquidity

If your assets are distributed according to the state's plan by default, it will probably be more costly, confusing, and burdensome to your heirs.

In the event of simultaneous or early death, minor children can become wards of the court.

When is the best time to plan your estate? It is now, while you can, before you need it.



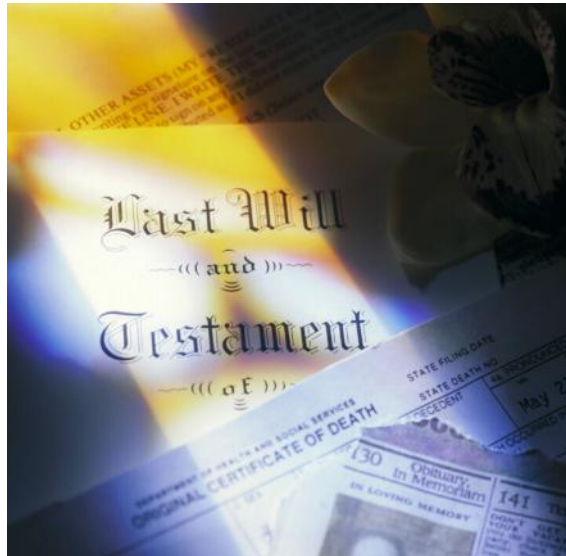
## What are the Basic Plans?

There are six basic options to choose from when planning your estate:

- ▶ Will ( Last Will and Testament )
- ▶ Nothing ( Intestate Succession )
- ▶ Joint Ownership
- ▶ Make Gifts ( Give Away Assets )
- ▶ Beneficiary Transfers
- ▶ Living Trust

## Estate Planning

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### Plan number one: Will

A Will's basic purposes are to:

- ▶ Name someone to handle your final affairs. (Executor)
- ▶ Name who will receive your assets after you die. (Heirs)

Supreme Court Chief Justice Warren Burger's Will worked okay. His heirs received 75% of his \$1,800,000 estate.

#### LAST WILL AND TESTAMENT OF WARREN E. BURGER

I hereby make and declare the following to be my last will and testament.

1. My executors will first pay all claims against my estate;
2. The remainder of my estate will be distributed as follows: one-third to my daughter, Margaret Elizabeth Burger Rose and two-thirds to my son, Wade A. Burger;
3. I designate and appoint as executors of this will, Wade A. Burger and J. Michael Luttig.

IN WITNESS WHEREOF, I have hereunto set my hand to this my Last Will and Testament this 9th day of June 1994.

*(Signed by Warren E. Burger)*

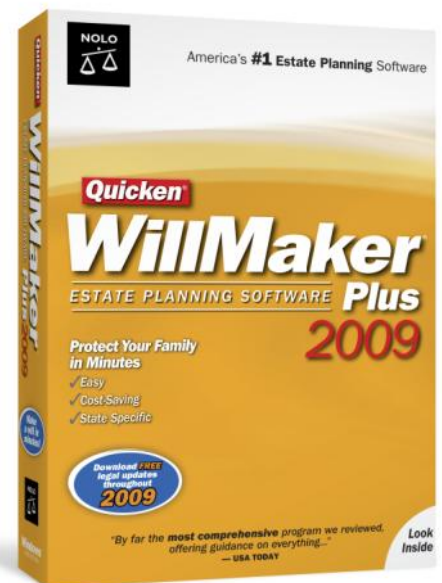


## Will dissatisfaction

The legal processes that a Will must follow often highlight dissatisfaction.

A carefully crafted Will as the primary estate planning tool addresses:

- ▶ Probate ( Laws of Descent and Distribution )
- ▶ Community Property Laws (Community Property states only)
  - Washington                      Idaho                      California
  - Nevada                              Arizona                      New Mexico
  - Texas                                  Louisiana                      Wisconsin
  - Alaska if an agreement is made
- ▶ Jointly owned assets
- ▶ Assets with beneficiary designations
- ▶ Long-Term Care
- ▶ Incapacity
- ▶ Minor Children





### Probate

Probate is a legal process that takes place in court

- ▶ The Will is validated
- ▶ Debts are paid
- ▶ Assets are distributed according to the Will
- ▶ Titles are changed

Probate can be undesirable for some

- ▶ Probate takes time, sometimes two years.
- ▶ The estate may face some loss of control as assets are sorted out
- ▶ Probate can be overly expensive, typically:
  - Gross estate:  $\$200,000 \times 8\% = \$16,000$  fee
  - Gross estate:  $\$1,000,000 \times 6\% = \$60,000$  fee
- ▶ Probate is a public process
- ▶ The process is often more easily contested
- ▶ Each state where assets are owned requires a court proceeding



## Community Property Laws

Community Property Laws apply to married couples who live or have lived in:

Washington	Idaho	California
Nevada	Arizona	New Mexico
Texas	Louisiana	Wisconsin

Alaska also has Community Property Laws that will take effect if spouses sign a Community Property Agreement. Often Community Property Laws prompt couples to make a Community Property Agreement an important part of their estate planning.

The general Community Property rule is that spouses together own all property that is acquired during the years of their marriage. Except for property a spouse receives by gift or inheritance. Each spouse owns a half-interest in the "community property" acquired during marriage. You are generally free to leave your separate property and your half of the community property to anyone you choose.



### Jointly Owned Assets

Your Will only controls assets that are solely in your name. The most common forms of ownership are:

- ▶ DEEDED: Real Estate
- ▶ TITLED: Automobiles, Motor Homes, Trailers, Motorcycles
- ▶ REGISTERED: Stock, Bonds, Securities, Accounts
- ▶ POSSESSION: Coin Collections, China, Silver, Antiques, Art, Clothes

### Assets With Beneficiary Designations

Your Will does not control assets where you have named beneficiaries, such as:

- ▶ IRA's
- ▶ Retirement Benefits
- ▶ Life Insurance Policies

### Long-Term Care

An excellent resource on the internet:

[http://www.longtermcare.gov/LTC/Main\\_Site/Understanding\\_Long\\_Term\\_Care/Services/Services.aspx](http://www.longtermcare.gov/LTC/Main_Site/Understanding_Long_Term_Care/Services/Services.aspx)



## Incapacity

A Will is no help if you become incapacitated. It only goes into effect after you die.

Remember Groucho Marx? He had a Will. But he didn't plan for incapacity. The end of his life became a public circus. The Court declared him incompetent, and his family members battled for control over his care and his money. He lost his privacy in a costly court battle. If he had planned in advance, he would have not lost control over the decisions about who should manage his finances and determine his medical treatment, how and for whom his money should be used during his disability, and how he should be cared for if disabled.

Alzheimer's disease, stroke, heart attack can trigger the need for a court to appoint someone to sign and conduct business for you—even if you have a will or trust!

A carefully crafted **Durable (General) Power of Attorney** can allow someone to handle your financial affairs if you become incapacitated.

Also pickup Advance Directive Forms from your healthcare provider. Complete what are commonly called a **Medical Power of Attorney** (Healthcare representative) and a **Living Will**. The term "Healthcare Proxy" is often used.

The image shows the cover of a booklet titled "Making Health Care Decisions". The title is in large, bold, black font. Below the title, it says "A resource to help you and your loved ones discuss and make final health care decisions". The Providence Health &amp; Services logo is prominently displayed, featuring a cross symbol. At the bottom, there is a list of contents: "Summary of Oregon's Advance Directive Law", "Advance Directive Forms", and "Instructions". The Oregon Health Decisions logo is also present at the bottom, with the tagline "Giving Oregonians a Voice in Their Health Care".



### Minor Children

If you have minor children or grandchildren your simple Will may not give you the control you want.

- ▶ The court, not the guardian named, may control inheritance if the Will has not been constructed carefully



## **Plan number two: No Will**

If you have no estate plan, not even a will, when you die:

- ▶ Your assets will be distributed according to your state's probate laws
- ▶ Your minor children will become wards of the state

If you have no estate plan, at incapacity:

- ▶ You may lose control



### **Plan number three: Joint Ownership**

There are a number of estate planning arrangements that husbands and wives can make, as well as agreements between unrelated parties. One of the most common is Joint Tenancy With Right of Survivorship. Some advantages are:

- ▶ No probate (for first joint owner)
- ▶ Both parties are 100% owners of assets

However, there are disadvantages:

- ▶ Probate is really just postponed
- ▶ If you die first, you lose control of your assets and could unintentionally disinherit your own family
- ▶ If your co-owner becomes incapacitated, the court may be your new co-owner
- ▶ Removing a co-owner's name from titles or deeds, when they don't agree with you, can be difficult
- ▶ Property is exposed to co-owner's debt

Any JTWROS agreement should be carefully considered and legal counsel sought.



## Plan number four: Giving Away Assets

Giving gifts is not only good estate planning, it fits well within the Christian life.

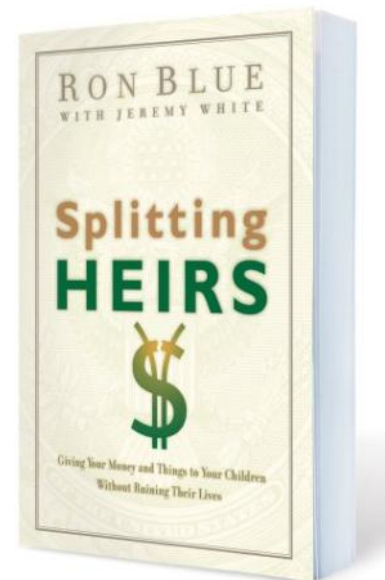
- ▶ There is enjoyment in seeing your gifts used now
- ▶ Gifts for tuition and medical bills can be a very good strategy
- ▶ Gifts to charity

Parents may give their assets to their children. If you die or become incapacitated this is often thought to make things easier. If this is your estate plan, you should consider:

- ▶ Will your children give back assets you may need later?
- ▶ Your children miss using Stepped-Up Basis

	Lifetime Gifts (Your Basis)	
10,000 shares of Microsoft stock	\$ 290,000	
Basis	- 100,000	
Gain	\$ 190,000	
Capital Gains Tax	\$ 28,500	at 15%

Additional resource: *Splitting Heirs* by Ron Blue  
*A Christian exposé on estate planning and giving gifts*





### **Plan number five: Beneficiary Transfers**

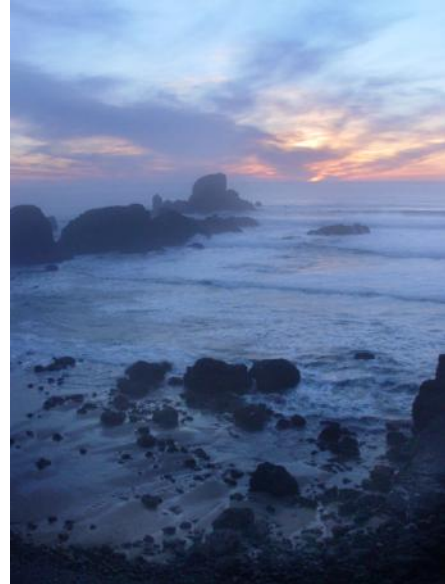
You may transfer the bulk of your assets through beneficiary designations. Your bank accounts, CD's, stocks, bonds, insurance policies, IRAs, and retirement plans may all let you name beneficiaries to receive the asset when you die.

- ▶ Pay on Death (POD) designations on individual and joint accounts
- ▶ Name a beneficiary for retirement accounts
- ▶ Name a beneficiary for stocks and bonds (TOD)
- ▶ Name a beneficiary for your vehicles

Probate is avoided, but care must be taken so that the courts don't get involved if the beneficiary is:

- ▶ Incapacitated
- ▶ Dies before you or at the same time
- ▶ A minor

Uniform Transfer to Minors Act (UTMA) and the naming of a Custodian are important issues.



## **Plan number six: Revocable Living Trust**

The Revocable Living Trust, which has been around a long time, has become very popular in the last thirty years. It is being used by people of all ages, marital status, or wealth because of the following advantages:

- ▶ It avoids Probate and Probate fees
- ▶ It accomplishes what a Will accomplishes
- ▶ You can name alternate beneficiaries
- ▶ You can amend or revoke at any time
- ▶ It is harder to attack in court than a will
- ▶ It is legally alive the moment it is signed



### The Three Parts of a Revocable Living Trust

#### 1. Trustor(s)

- ▶ The creators of the Trust
- ▶ Determines what assets the Trust will own
- ▶ Names the Trustee(s) and Successor Trustee(s)
- ▶ Names who will get what, when, and in what form when assets are finally distributed

#### 2. Body

- ▶ The assets owned by the Trust

#### 3. Trustee

- ▶ Control over the assets of the Trust
- ▶ Can be the same people as the Trustor(s)

The amount of control is determined by the Trustors. In cases where the Trustors and Trustees are joint husband and wife, no controls are usually set. Whatever the law allows, they can do. The law allows Trustees the same latitude of use and control as an owner unless restricted by controls set within the trust.



## **The Successor Trustee**

The Successor Trustee(s) is appointed by the Trustor to succeed the Trustee and take over control of the Trust's assets according to the instructions contained in the trust.

- ▶ These instructions usually spell out the duties and limits of control placed upon the Successor Trustee.
- ▶ Under Trust Law, the Successor Trustee is accountable to fulfill those duties and stay within specified limits of control to the best of their abilities and judgment.
- ▶ The Successor Trustee is responsible for distributing the Trust's assets according to the requirements of the Law and the instructions contained in the Trust. The requirements of the law are:
  - Advertise for claims against the estate and pay the debts of the deceased
  - File an Income Tax Return for the deceased within nine months of their death
  - Distribute the remaining assets according to the instructions contained in the Trust
- ▶ Upon removal of all assets, the Trust is considered legally dissolved.
- ▶ There are rules that require provision for termination (rules against perpetuities.)



### **Setting up a Revocable Living Trust**

There are seven steps to setting up a Revocable Living Trust:

- ▶ List assets to be included
- ▶ Develop a distribution plan
- ▶ Choose Trustee
- ▶ Choose Successor Trustee
- ▶ Write the Trust
- ▶ Transfer assets to the Trust
- ▶ Manage the Trust



## **Step one: List the Assets to be Included**

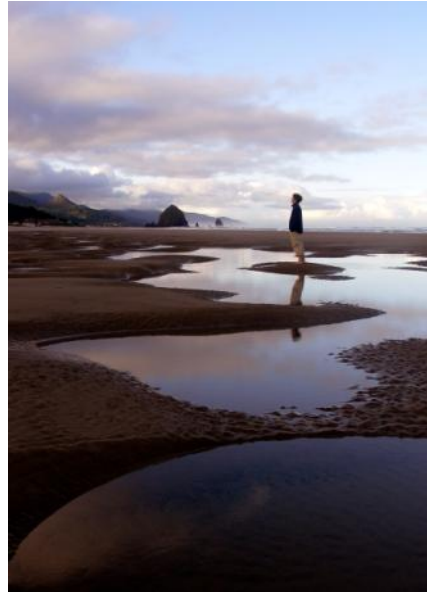
You will gather documents to take to your attorney:

- ▶ Deeds for real estate
- ▶ Titles for automobiles and other vehicles
- ▶ Registered Certificates for stocks, bonds, and securities
- ▶ Latest account statements
- ▶ Lists and appraisals of other possessions

## **Step two: Develop a Distribution Plan**

Have a plan for the final distribution of each asset:

- ▶ Who gets what
- ▶ Who gets it when
- ▶ In what form is each asset distributed



### **Step three: Choose a Trustee(s)**

If the Trust is being set up jointly by husband and wife, you will most likely appoint yourselves as Joint Trustees. Otherwise:

- ▶ Have the person's permission
- ▶ Consider a corporate trustee if investment expertise is important

### **Step four: Choose a Successor Trustee(s)**

Most couples appoint one or two of their children to act as Successor Trustee.

- ▶ The person does not have to be an attorney, accountant, or financial planner
- ▶ Most adult children can handle the details of distributing the assets of an average estate
- ▶ In essence, all that is required is to keep peace in the family while transferring deeds, titles, and registered certificates from the trust to the ones designated to receive the assets

If the Trust is set up while your children are still minors:

- ▶ Provision can be made for a temporary Successor Trustee appointment
- ▶ A Guardian may be chosen for your minor children in the event both of you die before they come of age



## **Step five: Write the Trust**

- ▶ Use a lawyer.
- ▶ Use software.

## **Step six: Transfer Assets**

Assets which are going to be owned by the Trust must be legally transferred to the Trust:

- ▶ Deeds, Titles, and Registered Certificates must be transferred individually.
- ▶ Your Attorney may prefer to handle some transfers to assure accuracy.
- ▶ Unregistered personal belongings are often transferred by a General Provision built into the body of the Trust.

## **Step seven: Manage the Trust**

- ▶ New Deeds, Titles, and Registered Certificates are now registered in the name of the Trust.
- ▶ A Pour Over Will is often produced as part of a Trust to catch personally owned assets and pass them to the Trust after probate. Some states require a will for guardianship.
- ▶ Review your Trust and Estate Plan as a whole after any major acquisition or event in your life.



### Thank you

Our hope is that the information presented in this workshop is helpful. It is good to pause and reflect upon your future and the planning that can help those you love.

- ▶ If you have questions I am available to help you sort through options we've discussed during this workshop.
- ▶ If you need assistance I am available to sit down with you and discuss specific situations, help you sort through your options, and encourage you to take steps toward finalizing your estate plan. I am not an attorney, therefore will be careful not to undertake duties that are considered the practice of law.
- ▶ There is no charge for this service. It is a ministry of the Cannon Beach Conference Center.
- ▶ Making Cannon Beach Conference Center a part of your estate plan is an option we will be glad to discuss at your request.

Contact me, Carl Sandeen, anytime. My office is in the Administration Building where I'm there on conference weekends and Monday through Friday, 8:00 am to 5:00 pm. Stop by, or call me at (503) 436-1501, or email me at [carlsandeen@cbcc.net](mailto:carlsandeen@cbcc.net).

