

ESTATE PLANNING TOOLS

- A. **Will**: Instructs your executor how to distribute all assets that were not distributed by alternative estate planning tools & nominates a guardian for minor children. Can be the only estate planning tool or the safety net for property not covered by alternate planning tools.
- B. **Joint Tenancy With Right of Survivorship [JTROS]**: You and another person own equal shares of a piece of property. When one owner dies, the remaining owner inherits the property without having to go through probate delays.
Advantages: Avoids probate, difficult to challenge, inexpensive.
Disadvantages: 1) Joint tenants are both owners. Creditors of either owner can seize the property. 2) Once you give someone JTROS, you can't take it back if you break up. Also, giving someone JTROS status may constitute giving them a gift of more than \$10,000, & you will have to file a gift tax return. 3) There is no step up in basis upon the death of the first owner. 4) Neither owner can prevent the other from using the property, and either owner can sell their ½ to someone else or go to court and force a sale of the entire property to get their ½.
- C. **Tenants in Common**: Co-owners with no right of survivorship. Tenants in common can own unequal shares of the property.
Advantages: If each owner leaves the survivor his/her share of the property, the survivor gets a ½ step up in basis. This can help the survivor save taxes when s/he sells the property. Even if the will is challenged, the survivor still owns his/her original share of the property.
Disadvantages: Same as for JTROS.
- D. **Sole Ownership**: One person owns the entire property.
Advantages: Simplest form of ownership. When the property goes through probate, the heir gets a full step up in basis. Owner maintains full control over the property.
Disadvantages: Property must pass through probate. If there is no will, the surviving partner gets nothing. Even with a will, other heirs may challenge the will. If they prevail, the partner gets nothing.
- E. **Beneficiary Designation**: An instruction to your bank, brokerage, insurance company, or pension fund to transfer assets to a designated beneficiary upon your death. The designation is usually made when you open the account.
Advantages: Automatic inheritance like JTROS, but owner maintains full control over the assets until his/her death. Does not pass through probate.
Disadvantages: You can only do this with certain assets. You may forget who your beneficiaries are and inadvertently treat your heirs unequally.
- F. **Living Trusts**: Transferring all or some of your assets into a trust fund with yourself (and your partner) named as the trustee. The trust usually instructs the successor trustee (trustee who takes over after you die) to distribute the assets of the trust to your heirs after you die.
Advantages: Avoids probate & probate fees, is completely private. Good option for people who have assets in another state and want to avoid the hassle and probate fees in the other state, or who don't want investment portfolios or businesses frozen during probate.
Disadvantages: More expensive to set up than a will. Since Washington does not have probate fees, you will probably spend more money than you save. You have to re-title

everything as being owned by “The Jordan & Lee Trust” and remember to title all new acquisitions under the Trust name. Anything not specifically transferred to the trust passes by will or by intestate succession, so you still need to have a will.

- G. Gifts:** Giving someone part of their inheritance before you die. You get to see them enjoy it, but you can't take it back. A gift of over \$10,000 to one person has tax implications.

PREPARING YOUR WILL

Identify your family (blood relatives and non-relatives). List their full names, addresses, & birthdays. This helps your executor locate your heirs when the time comes.

Assemble any separate property or “prenuptial” agreements.

Identify your assets (bank accounts, stocks, IRAs, real estate, personal items, pets, business, trust funds).

Determine the location, form of ownership, and approximate fair market value of each asset, any mortgages/liens on the assets, & current beneficiaries of insurance/IRA/etc. Total the values to see if your estate might be over \$675,000 and require tax planning. Insurance policies may or may not be considered part of your estate, depending on circumstances.

Determine your liabilities (mortgages, loans, pending lawsuits).

Decide what you want to accomplish with your estate plan and determine if there are any indications you may need a more complex estate plan.

Decide what estate planning tools you will use (will, JTROS, trust, life insurance, gifts).

Implement your plan.

Review your estate plan every year.

INDICATIONS THAT YOU MAY NEED A MORE COMPLEX ESTATE PLAN:

Your net estate could be over \$675,000 (including any life insurance policies, pensions/annuities, or property held jointly). You should do some tax planning.

Your family might contest the will. You should be sure that your heirs can show they did not “unduly influence” you when you decided who got what.

You are treating your children differently or leaving large parts of your estate to charity.

You own a business and need to give your partner the right to run the business until probate is settled.

You want to leave property to a non-citizen. Special tax planning is strongly advised.

HOW TO EXECUTE YOUR WILL

1. The testator and 3 witnesses go to a notary public and all stand together in the same room. The witnesses **cannot** be people who could possibly receive anything in the will.
2. The testator tells the witnesses "This is my will," asks them to witness it, and signs it in front of them, initialing and dating each page.
3. The witnesses all sign the "self-proving affidavit." The notary notarizes all 3 witnesses' signatures. Without the witnesses or their affidavits, the will cannot be admitted to probate and is useless.