

ESTATE PLANNING RESOURCE GUIDE

NOTE: *The content of this material is not intended to represent legal counsel. The information contained herein should be validated by your professional advisors.*

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ESTATE PLANNING RESOURCE GUIDE

WHY THIS RESOURCE GUIDE?

While visiting with individuals concerning the design of their estates, three issues typically arise:

- **People do not understand the estate planning process.** The technical language involved and the inability of many professionals to communicate on a layman's level tends to make it a very complex process.
- **Many individuals do not have the priorities of the planning process in the proper perspective.** To many, taxes and probate are the greatest concerns, sometimes to the detriment of interpersonal family relationships. People are most important. Due to lack of awareness, many people have not considered the estate plan as part of a total financial design. There are not guidelines about how to determine an appropriate plan for our estates.
- **Procrastination.** Because of the confusing nature of the first two problems, or it may be human nature, many individuals simply never get around to planning their estates. It may be the thought of death, or the lack of urgency, but estate planning never seems to happen.

So we have set out to develop materials to help our friends better understand the estate planning process. We wanted to help you gather the information necessary to establish a proper estate plan and to motivate you to “do it.”

There are materials available, but little is written for the nonprofessional to help you through this complex process of preparing to work with your attorney.

This Resource Guide has been created especially for you. We trust it will provide a process that is practical, understandable and workable. The results should be an estate plan with which you are comfortable that lovingly transfers your estate to individual and charitable beneficiaries with the least possible costs and delays.

WHAT IS ESTATE PLANNING?

Estate planning has been defined from many perspectives, the most common being:

“The creation, conservation and utilization of assets to secure a maximum benefit during retirement and once a person passes away...”

THE ESTATE PLANNING PROCESS

Whoever you are, it is important to thoroughly plan your estate. We offer the following steps to help you begin your planning.

- Step 1:** Set the priorities of your estate plan.
- Step 2:** Become familiar with the estate planning tools available to you.
- Step 3:** Gather all the necessary and pertinent data you will use in your estate plan.
- Step 4:** Seek competent counsel for technical assistance and drafting of legal instruments.

You do not have to become an expert in estate planning. That would not be practical, because it is a very complex subject. But it is important that you spend the necessary time to do a thorough job in planning.

STEP 1: SETTING THE PRIORITIES OF YOUR ESTATE PLAN

The first step in estate planning is to create a strategy. You want to place the overall process in perspective and set the goals and objectives you wish to accomplish.

In working through the details you may lose sight of your ultimate goals and objectives. You need a strategy to keep you on track.

Therefore, consider the first priority of your estate plan to be...

What is the Best Plan of Distribution for my Estate?

Once you have determined this, you can establish a philosophy that you will use to make certain the objectives and the processes of your estate plan are on target.

This is probably the most important aspect of your estate plan and there are no universal answers. Determining this early in the planning process will be critical to achieving satisfying results.

The second priority of the estate design process is to understand that...

People are more important than dollars.

It's unfortunate that property distributions must be made so soon after the death of a family member. It is a time of emotional stress, due to the loss of the loved one who has just passed. Circumstances often result in individuals acting upon emotions,

saying and doing things that may hurt others. While we are living, we need to do everything possible to help ease these possible tensions.

- Through planning for the distribution of household goods and personal effects,
- Careful consideration of who should be the personal representative (will) or Successor Trustee (living trust) of the estate,
- Proper planning of guardianship and trusts for minor children, so that distributions will not be made in too large amounts, too soon.

These and many other items of your estate design will affect the lives of people you love. Keep this as a second priority, constantly thinking in terms of how your decisions will affect the individuals and organizations receiving your property.

The third priority of estate planning is...

Passing Property to Beneficiaries with Minimum Shrinkage and Delay.

Once you understand the objectives of your estate plan—first giving consideration to the effect your plan will have upon people—you need to do everything possible to reduce costs and delays. You want to conserve the maximum amount of your property for your beneficiaries.

Therefore, it follows that the second step in the estate planning process is to...

STEP 2: BECOME FAMILIAR WITH THE ESTATE PLANNING TOOLS AVAILABLE

Again, you don't have to become an expert, but the more basic knowledge you have, the better able you will be to communicate. You need to understand the estate plan that your legal counsel will recommend and prepare for you, knowing that it accomplishes your goals.

In this Resource Guide, we have included a general description of many of the estate planning tools available for you to use in accomplishing your goals and objectives. A complete study of these tools is beyond the scope of this material. However, we trust that the information we have included will give you the general knowledge you need.

The third step in the estate planning process is to...

STEP 3: GATHER THE NECESSARY DATA FOR YOUR ESTATE PLANNING PROCESS

For your legal and tax counsel to design an estate plan that will satisfy your objectives and goals, you must provide all of the pertinent information concerning your estate. In gathering the data, it is important to be as thorough as possible. In addition to this **Resource Guide**, we have included an outline for gathering this information called the **"Estate Inventory Form."**

Remember, an estate plan will only be as valid as the information provided to those who design and draft it.

When this data is gathered, it is time to complete step four of the estate planning process...

STEP 4: SEEK COMPETENT COUNSEL FOR TECHNICAL ASSISTANCE AND DRAFTING OF LEGAL INSTRUMENTS

When you:

- Have established the objectives for your estate, and
- Have checked the process to make certain that everything you are doing helps people and organizations as well as fits within the goals and objectives that you have outlined, and
- Have gathered all the necessary data,

...It's time to seek professional counsel to help you in establishing that plan.

If you do not have an estate plan, you need one. If you do have an estate plan that is not up-to-date, it needs to be reviewed. If it is important enough to do, then it's worth doing right and needs to be completed soon.

AGAIN, PEOPLE ARE MORE IMPORTANT THAN DOLLARS

The estate planning process involves the transfer of property. In our attempts to avoid probate and save taxes, we often lose sight of the people.

You have accumulated your estate by your consistent labors. Therefore, it is very important to consider whether your estate has a positive or negative impact on the people and organizations with whom you are involved.

Let us share with you some thought for consideration:

- Consider naming an individual who does not have a vested financial interest in your property or a bank trust department to serve as personal representative of your estate or successor trustee of any trust which you establish.

We must keep our perspective—**people are more important than dollars.**

Many family problems arise when a family member, placed in this position of responsibility, must make decisions that may not be acceptable to, or unpopular with, other family members.

Types of decisions include:

- The division of household goods and personal effects,
- The sale of a family home,
- The continuation of the family business,
- The interpretation of the will, seeming to conflict with what mother or father had shared with another family member,
- The attempted enforcement of lifetime promises made to family members which mother and father did not get around to putting in their estate plan.

These are areas that can better be handled by an individual who does not have a vested interest in the assets.

- Interpersonal problems in family relationships may also occur when a child must go to court and be declared the conservator of a parent in a time of incompetency prior to death.

There are costs and restrictions of the court. Decisions may need to be made concerning the choice of nursing care, property management and “preserving the inheritance” for the other children. These are decisions that may better be made by a bank or trust company, or an individual holding durable power of attorney who does not have a vested interest in the assets.

- You could divide \$100,000 in cash equally to any number of people. But consider how do you divide equally among three children the antique table that was given to you as a wedding present by your favorite aunt?

It is important that you clearly express your desires for each unique item of personal property. These desires may change. Therefore, it's impractical to do this in the will. A letter of instruction outlining your desires for personal asset distribution, written in your own handwriting, may leave the least room for interpersonal conflicts.

- The guardianship of minor children is an important people-planning decision. Should premature death occur, the lifestyles of your children will be strongly influenced by the guardians you nominate. This Resource Guide will talk more about that topic later.
- In most states, the legal age for inheritance is 18 years. How much money can a child receive at that age without affecting lifestyle? Eighteen is the age of a college freshman, the time of first romance, or the excitement of sports cars. With an inheritance, the child might leave school to get married, to buy a faster car, or whatever else seems important at that age.

It might be well to “postpone financial death” by establishing a trust which maintains the property until the youngest child reaches an age of greater maturity, such as 25. If there are mental or physical disabilities, the trust can continue for the benefit of the disabled child.

If there are no disabilities, charitable distributions can be made at this time. The remainder of the estate can be distributed to family members in a series of payments. For example, one-third of the estate can be distributed at age 25, one-half the remainder at age 28 and the remainder at age 30.

Often it's important that the trustee be someone other than the guardian because money takes on a different complexion at the death of a parent. For example, to a son, it is our money and we have the privilege of using it for his benefit, as we deem best. But at our deaths, to him it becomes his money, though it is in trust. If a guardian, serving as trustee, restricts the use of that money for his benefit, it leaves an opening for conflict. A bank or trust company may be able to better serve in this position.

- What about the spendthrift child, who has been unable to manage the money that he or she has earned? What impact will an inheritance have upon his or her incentive?
- How do you give property to people so that it will help them to become better individuals? This question is not only “how,” but also “how much?”

We do know that you can give your family protection, a wide circle of friends and experiences, an honorable and just name, a good education and an opportunity for success.

You must, however, decide whether or not you can give anything more than this, or if additional inheritance will carry with it burdens or responsibilities that may stifle lifetime initiative.

TOOLS AVAILABLE FOR PERSONAL ESTATE PLANNING

We want to share with you a brief outline of some of the strategic tools you can use to accomplish your goals and objectives. There are many tools available to you for the planning of your estate.

THE WILL

Basic to every estate plan is a will. It is a legal document drafted during your lifetime, while you are competent, which can accomplish many things.

- It revokes all previous wills that you have made.
- It authorizes payment of all debts and expenses related to a final illness.
- It authorizes the payment of taxes by the estate.

- It disposes of your personal property according to your desires, either through direct instructions in the will, or by reference to a letter of instructions placed in the will.
- It makes in-kind or fixed-dollar distributions to family members or charitable organizations.
- It distributes the remainder of your estate to your individual and charitable beneficiaries.
- It names a personal representative who is responsible for entering the will into probate and making distribution according to your desires expressed in your will.
- It can nominate the person you wish to serve as guardian of minor children and any other persons for whom you have custodial responsibility.
- It empowers the personal representative to carry out the terms of your will, especially relating to the ability to sell, dispose of and liquidate property and to continue the operation of business interests.
- It establishes trusts for the benefit of minor children or other individuals for whom you have income responsibilities.
- It names the trustee of any trusts established and empowers that person to carry out the terms of the trusts for their duration.
- It can be used to waive bond.

Each state has strict laws regulating the execution and validity of the will. It is extremely important that you retain competent legal counsel who is familiar with the laws of your state of residence.

JOINT OWNERSHIP OF PROPERTY

For smaller estates, joint ownership of property may be the ideal estate planning tool. It avoids probate and provides an orderly transfer of property between two individuals.

However, care must be taken not to place too much property in joint ownership, thereby eliminating the use of tax saving opportunities available with other estate planning tools.

Joint ownership also carries with it the potential for your assets to be paid out to satisfy the claims of creditors if the person you own the assets with gets into financial trouble or is successfully sued.

TRUSTS

In some cases, a trust arrangement may be more suitable to your needs.

A trust can be used to:

- Provide management for property in case of disability.
- Protect minor children from premature distribution of property.
- Avoid ancillary administration of the estate when you own property in more than one state.
- Distinguish separate property from community property when you move from one state to another.

A trust can be confidential, can be used to avoid probate and can provide coordination of your entire estate planning process. It is easy to establish and easy to change.

When a trust is used as a key instrument in your estate plan, it is typically combined with a simple will that transfers all remaining property to the trust at the time of death.

The trust should also be combined with a durable power of attorney, which allows the individual holding the power to place any property into the trust that you have not previously assigned, should you become incompetent. In other words, **a trust can do just about anything that you design it to do.**

DURABLE POWER OF ATTORNEY

The realities of life dictate that we must give consideration to who will be in a position to manage our property in case of mental or physical disability prior to death. Relying on family members or friends to act under court-appointed conservatorship needs to be carefully considered, as it may affect interpersonal relationships. In addition, unnecessary costs and restrictions are often imposed.

The alternative is to grant the power to manage your property in case of disability to an individual, a bank trust department, or a trust company. In most states this can be arranged through a power of attorney designed to be in effect during incompetency.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Many states now recognize a separate power of attorney granted to an individual to make decisions relating to health care during any period of disability.

This power should be granted to an individual whom you trust to hold your personal care and wellbeing as a priority. A durable power of attorney for health care does not give authority to the named individual to declare your inability to act for yourself. However, it does grant specific authority to that individual to consent to or refuse treatment for you and to receive information from your medical records to which you would be entitled if you were physically and mentally unable.

ADVANCED HEALTHCARE DIRECTIVE

Many states also recognize an advanced healthcare directive. This is an individual's statement during a time of good physical and mental health that determines if, and how long, the person wishes to be kept alive by artificial means, among other things.

PAYABLE ON DEATH ACCOUNTS, TOTTEN TRUSTS

These are vehicles specific to the financial industry. You retain full control over the property during your lifetime and designate a beneficiary of the account at the time of your death. The beneficiary has no control over or access to the property during your life.

These vehicles do not provide management of property in case of mental or physical disability. They are only probate avoidance devices.

LIFE INSURANCE CONTRACT

The life insurance contract has many uses in the estate planning process and is beyond the scope of this reading as well. Consult with a qualified insurance representative about the importance of life insurance in your estate plan.

Liquidity

- Even when the best estate planning tools are used, there are liquidity needs to pay final expenses and/or death taxes. Another liquidity need might be to provide an inheritance for one family member so a business interest or other real property can be distributed to a family member involved in a business or farm. Life insurance may be the only way to guarantee that money will be available in the right amount at the time needed.

Protection for Dependents

- Life insurance is effectively used for the protection of dependents when there has not been sufficient time to accumulate assets. A life insurance policy, designed to provide cash when needed most, may be the only way a young family can guarantee sufficient assets for the surviving spouse and children.

RETAINED LIFE ESTATE

You can transfer real estate to another individual while retaining the right to use the property for a period of years or for life. In most states, this is an irrevocable transfer in which you have established two separate interests—a life estate interest and a remainder interest.

The life estate gives you full use of the property during your life. This includes the right to live in the property, or rent it and receive the proceeds of the rental. However, the property cannot be sold without consent of the holder of the remainder interest and a division of the proceeds, based upon the value of the remainder interest at the time of sale.

TOOLS AVAILABLE FOR CHARITABLE ESTATE PLANNING

When you have made the decision to support a charitable organization(s) with your estate's asset(s), the tax advantages of a charitable transfer and the integration of these transfers into your total estate plan can be of significant advantage to you overall. Several tools are available.

THE 'GIVE IT TWICE' TRUST

One of the most under-utilized but powerful planning strategies involves the use of a trust at death that will provide income to the heirs for a period of time, at the end of which a charitable organization(s) will receive the balance. This strategy helps to protect and control the way in which loved ones receive their inheritance (given to them first as income), while also allowing the remaining trust proceeds to be given "a second time" to the decedent's favorite charitable cause(s).

THE CHARITABLE GIFT ANNUITY

You can transfer a sum of money during your lifetime, or through your estate plan at death, to a charitable organization, requiring that the organization pays you, your spouse, or another beneficiary, an income for life.

A portion of the income will be tax-free, some may be treated as capital gains (when appreciated property is transferred) and the remainder will be taxed as ordinary income.

The charitable gift annuity can be designed to avoid probate. It also achieves federal gift and estate tax savings.

CHARITABLE REMAINDER TRUSTS

Charitable remainder trusts can be established during your lifetime or through your estate plan at death. They can be used to achieve income, estate and gift tax advantages.

When you make a lifetime transfer, you receive an income tax deduction. You also avoid capital gain tax on appreciated property and the property is distributed outside the probate process.

This type of trust is typically contemplated when people are about to sell stock or real estate that has appreciated significantly in value.

CHARITABLE LIFE ESTATE AGREEMENT

Previously in this section, we discussed the life estate agreement. When the transferred property is a personal residence or farm and the remainderman is a charitable organization, definite income, estate and gift tax advantages are achieved and the transferred property is not subject to probate.

TOOLS AVAILABLE FOR BUSINESS ESTATE PLANNING

There are additional estate planning tools available to the owner of a closely held business. Many advantages of these tools are related to the income tax structure of the business. Some that may be beneficial in estate planning may have income tax disadvantages. Their use may also be contingent upon the relationship of the business estate to the personal estate.

Some tools available for the business owner are as follows:

INCORPORATION

Many people own and operate businesses. Often family members are also involved. The incorporation of the business combined with a program to make annual gifts of closely held corporation stock may have excellent estate planning results. These include the tax-free transfer of future appreciation to family members, while maintaining income and voting control.

This is a very complex area. You should work with your tax and legal counsel to determine whether or not incorporation of your business is advisable. Incorporation may have drawbacks from income tax, worker's compensation and unemployment insurance standpoints.

PARTNERSHIP AGREEMENTS

Similar benefits can be achieved by forming a partnership with family members. This can allow family members to participate in the appreciation of the business. Like incorporation, this is a very complex area of planning. Again, you should rely entirely upon your legal and tax counsel.

BUSINESS PURCHASE AGREEMENTS

In business planning it may be wise to consider entering into an agreement with a business partner to buy your share of the business upon your death. In exchange, you would agree to purchase his or her share of the business should the partner predecease you. The partner maintains control of the business and the surviving beneficiaries of the deceased partner have a ready market for their share of the business interest.

It is usually wise to fund a business purchase agreement with life insurance to make certain that there is sufficient cash when needed most.

The business purchase agreement can also be used to peg the value of the business interest in the estate for federal estate tax purposes.

TAXATION OF THE ESTATE

The following is an overview of three general areas of taxation of the estate: **federal gift taxes**, **federal estate taxes** and **state death taxes**.

FEDERAL GIFT TAXES

The federal government imposes a tax on irrevocable transfers made during one's lifetime. There are certain exceptions to this rule.

- An individual has an unlimited marital deduction for gifts to a spouse.
- There is an unlimited deduction for gifts to charitable beneficiaries.
- An exemption is allowed for any gift of current interest to an individual that is less than \$12,000.

You can give \$12,000 to as many different individuals as you wish and you can give it each year. And if you are married, your spouse can consent to the gift and increase it to \$24,000. It should be noted that there are no restrictions to relationship of beneficiaries. The only restriction is that it must be a gift on current interest and not of future interest. Any gifts of more than \$12,000 per year to an individual must be reported on a gift tax return.

This does not necessarily mean there is a tax payable. Current federal gift tax law allows a credit, which will offset the taxes on the first \$1,000,000 of gifts made to personal beneficiaries. The gift tax rate begins at 41% on each dollar given above the \$1,000,000 however.

Be careful though! Just because you can give property to individuals tax-free does not mean that you should. You should never give away anything that you may need in the future. The four D's of life explain why.

Death: You make a transfer of property to your daughter with the assumption that she will care for you in your old age. Should her death occur prior to yours, the property that you have given to her may go to her beneficiaries who may not assume her responsibility for your care.

Divorce: This is not a pleasant subject, but it is important that we be realistic. Many divorce settlements are financially devastating. If you transfer property to your son with the understanding that he will care for you for life and his marriage ends in divorce, he may not have sufficient assets to provide the care that he has promised.

Financial Disaster: You have transferred property to your son and he experiences reverses in his business or personal financial affairs. He may become bankrupt or financially unable to fulfill his obligation.

Desertion: It has been known to happen. Property is transferred to family members but they do not fulfill their responsibility. They use the property for their own enjoyment while mother and father are in need.

Therefore, make lifetime gifts of property only if there is no possibility that you will need that asset in the future.

FEDERAL ESTATE TAXES

The federal law imposes a tax upon all property that you own at the time of your death.

Please understand that there is no relationship between what is included in your estate for federal estate tax purposes and what is subject to probate. This is a common misunderstanding.

Your entire estate can avoid probate by means of joint ownership, trusts, or other probate avoidance devices, yet be entirely subject to federal estate tax.

However, there are two items specifically exempt from federal estate taxes:

- Any transfer made in a qualifying manner to a surviving spouse, no matter the amount, is exempt from federal estate tax.
- A full charitable deduction is allowed for the value of property transferred to a charitable organization.

The remainder of the estate is taxable. However, that does not mean that a tax is payable. There is currently a credit to offset taxes on the first \$2,000,000 that any individual passes on to another person. This amount can be transferred estate tax-free.

Credit Available to Both Spouses

This tax credit is available to both spouses. With proper planning a married couple can now transfer \$4,000,000 to personal beneficiaries, tax-free.

However, this planning must be done before the death of the first spouse. The amount transferred by the first spouse's credit can be protected against taxation in the state of the surviving spouse.

The estate tax rate is 46% on all amounts above what you can give to family members and charitable organizations on an estate tax-free basis.

STATE DEATH TAXES

State death taxes fall into three categories:

- **State Inheritance Tax.** Many states have a tax on the right to inherit property. States that impose an inheritance tax usually divide beneficiaries into different classes. Those closely related to the decedent form one class, those less close form another class and those unrelated form a third class. A different exemption is usually allowed for each class.

Certain types of property may be exempt from state inheritance tax, such as life insurance, real estate held jointly with a surviving spouse, etc. Your local tax advisor, legal counsel, or bank trust department can furnish you information relating to state inheritance tax implications in your state.

- **State Estate Tax.** In place of an inheritance tax, some states impose an estate tax that operates on a principle similar to the federal estate tax. The state imposes an established exception or credit and one tax rate (though it might be progressive) for all beneficiaries.
- **Credit Estate Tax.** The federal estate tax system allows a credit against the federal estate tax for state inheritance or state taxes paid. This credit is based on a table and the only restriction is that the state tax must equal or exceed this amount to receive the credit.

A credit estate tax has been created in certain states where the tax rate did not result in a tax as great as the credit allowed against the federal estate tax. These states charge the difference between the established state tax and the credit allowed against federal estate tax. This tax does not affect the estate, since it would be paid to the federal government if not paid to the state.

LET'S GET STARTED!

We have tried to help outline for you the priorities for establishing an estate plan and the strategies to determine the overall distribution of your assets. We have also tried to familiarize you with the estate planning process, its terminology and the basic tools available. Now, it's time to begin gathering the information upon which your estate plan will be based!

Accompanying the Resource Guide is a *Confidential Estate Inventory*. This inventory is designed to help you gather data on your estate to furnish the professional counsel who will be responsible for implementing your estate plan. Thank you. I hope this information has been helpful!

GLOSSARY OF ESTATE PLANNING TERMS

ADJUSTED GROSS ESTATE: Arrived at by deducting estate settlement costs from the gross estate, also known as the taxable estate.

ADMINISTRATOR: An individual appointed by a court to settle the financial and legal affairs of a person who dies without a will.

ADMINISTRATRIX: A female administrator.

ANCILLARY ADMINISTRATION: Administration of a decedent's estate in a state other than the state of residence, where the decedent owned real property.

ANTE-NUPTIAL AGREEMENT: Contract or agreement between a man and a woman before marriage, but in contemplation of marriage. Property rights and interests of the prospective husband, wife or both are determined and property is secured to either or both of them or to their children.

BENEFICIARY: One named in a will to receive a devise, legacy, or use of estate assets.

BEQUEST: A transfer of personal property by will. Distinguished from a devise which is a transfer of real property by will.

BOND: An insurance agreement under which one party becomes surety to pay, within stated limits, financial loss caused to another by specified acts or defaults of a third party.

CO-ADMINISTRATORS: Two or more persons named in a will to settle an estate. A frequent arrangement is to name a bank or trust company with an individual, such as a spouse, lawyer, or friend.

CODICIL: The only legal document that can change a will. It is a supplement to a will, adding, taking from, or altering the will's provisions. It must be executed with the same formalities as a will.

COMMON DISASTER: When two or more persons (usually husband and wife) die as a result of the same accident, when the death of each follows in a relatively short period of time.

COMMUNITY PROPERTY: In some states, property acquired by the efforts of either husband or wife forms a common fund in which each has an equal interest.

CONSERVATOR: One who is appointed by the court to protect the interests of an incompetent, such as a minor, insane person, convict, etc.

CORPORATE FIDUCIARY: A bank or trust company exercising fiduciary powers under statutory authorization.

CO-TRUSTEE: A joint trustee to whom specific duties are assigned.

CREDIT ESTATE TAX: State death tax added to basic levies to bring state taxes up to the total maximum credit available under federal tax law.

DOMICILE: The location of a person's home or principal residence although he may also have living quarters in another location.

DURABLE POWER OF ATTORNEY: A written instrument by which one person authorizes another to act for him in specific actions stated in the instrument, with authority extended to periods of disability and incompetency.

ESTATE: The property of an individual, both real and personal, in the process of administration.

ESTATE PLAN: An arrangement for the management and disposition of a person's property during lifetime and at death. This can be accomplished by a will, trusts, gifts made during life, or a combination of these.

EXECUTOR: A person or agency named in a will to administer the estate of a deceased person. (Synonymous with personal representative.)

EXECUTRIX: A female executor.

GUARDIAN: A person who has the legal duty and power to take care of the person and property of another who because of some disability (usually age or incompetence) is considered incapable of administering his or her own affairs.

HOLOGRAPHIC WILL: One that is written entirely in the maker's own handwriting, not attested by subscribing witnesses.

INCOMPETENT: A person judicially declared to be incapable of managing his or her affairs. This may include a person who, due to old age, disease, weakness of mind, or other cause is unable to properly manage property.

INHERITANCE TAX: A tax levied on the right to receive property from a deceased person. This tax should be distinguished from the estate tax that is levied on the right to transmit property, not the right to receive it.

INTER VIVOS: Term used in law to describe agreements made while living. An inter vivos trust indicates a transaction made by a living person.

INTESTATE: Death without leaving a valid will.

JOINT TENANCY: Where two or more persons own property, either real or personal, according to a separate agreement. The property does not pass to heirs and cannot be disposed of by will. It passes only to a survivor (or survivors) of the tenancy.

MARITAL DEDUCTION: A provision under the federal estate tax law by which a qualified estate of an unlimited amount may be left to a spouse, exempt from estate tax.

MUTUAL WILLS (RECIPROCAL): Two documents that have the same provisions but are executed separately by husband and wife.

NUNCUPATIVE WILL: One that is given orally, in the presence of witnesses, usually during one's last illness, under circumstances that make it impossible to prepare a written will.

PER CAPITA DISTRIBUTION: Distribution of property among descendants as individuals and not by right of representation.

PER STIRPES DISTRIBUTION: Where the children of a decedent receive only that share of property, which the parent would have received if living.

PERSONAL REPRESENTATIVE: A person or agency named in a will to administer the estate of a deceased person. (Also, executor/executrix.)

PROBATE: The action of proving before a competent judicial authority that a document offered for official recognition and registration as the last will and testament of a deceased person is genuine.

PROPERTY: Anything that may be the subject of ownership, real and personal, tangible and intangible. It is that which belongs exclusively to a person with full rights to enjoy and dispose of it. **Real property** is land, or any estate in land. It generally includes whatever is built or growing upon the land. It may be defined to include anything that is immovable. **Personal property** is all property other than real property. It generally refers to property that is movable or personal.

SUCCESSOR TRUSTEE: A trustee who follows the original or prior trustee. Generally, the appointment of a successor trustee is provided for in the trust instrument. If it is not and if the trust is still in existence when the original or prior trustee fails to qualify or ceases to act, a person will be appointed by the court.

TRUST: A legal relationship when one party (the trustee) holds legal title to property for the benefit of another (the beneficiary). To create a valid trust, the grantor must transfer property (the corpus or principal) to the trustee.

TRUSTEE: A person holding a right or power and property for another person (the beneficiary).

WILL: A legal declaration that makes provisions for the distribution of property at death.

WITNESS: One who personally sees or perceives a thing and testifies to what he has seen, heard, or otherwise observed or learned.

NOTE: The foregoing material is intended to be helpful as you think about your estate plan. Please consult with your own advisor(s) to confirm the accuracy of the information contained in this Resource Guide. This Resource Guide should not be construed as legal counsel. Please consult with your own advisor(s) for the appropriateness, and implementation, of your specific estate plan. Again if you, or your legal advisor(s), have questions, thoughts, or concerns about any portion of the information contained in this document, please call 503-620-5173.