Guide to Estate Planning in Nevada

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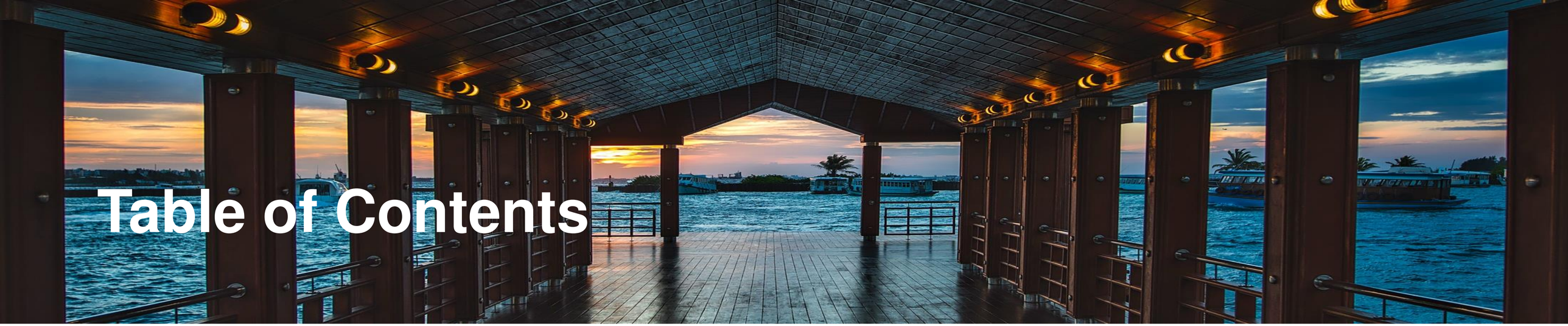
LEE A. DRIZIN CHTD.

In a city that never sleeps, we help you create an estate plan so you can.



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The importance of an estate plan.

Getting your financial and medical affairs in order is a task easily tabled for another day. It's a big step, but one that we believe is crucial. Estate planning is the only viable way to protect your assets, reduce tax obligations, avoid probate and provide financial security and peace of mind to your family. We prepared this eBook for educational purposes only. It should not be construed as legal advice or a legal opinion as to any specific facts or circumstances.

This information is based on general principles of Nevada law at the time it was created and you should be aware laws frequently change. Moreover, the laws affecting you may differ depending on the circumstances. You should consult with a qualified attorney in your own state or jurisdiction concerning your particular situation. This eBook does not create a client-attorney relationship with Drizin Law.

Estate Planning is for everyone.

Your estate consists of everything you own including your cars, home, real estate holdings, business interests, personal property, bank accounts, retirement savings, stocks and bonds, furnishings and jewelry. No matter how large or small your estate, everyone has a desire to control how their assets are distributed to family, friends, and/or charities upon their passing. For more than 25 years, Drizin Law has assisted Nevada families with creating wills and trusts to ensure their wishes are carried out.

Estate planning is more than deciding who will receive your assets after your die. Have you ever considered who would manage your estate if you were in a car accident or suffered a stroke or other sudden debilitating medical issue? We believe a comprehensive estate plan should also include a durable power of attorney for financial matters because none of us can predict the future.

Finally, a comprehensive estate plan should also address your healthcare. Most people don't think about death and dying and, as a result, many families are left struggling with difficult decisions such as removal from a ventilator and the type of care you may or may not desire. A durable power of attorney for healthcare decisions nominate an agent to make decisions about your care when you are unable to do so. This document will also assist your loved one in making end of life decisions on your behalf in accordance with your wishes.

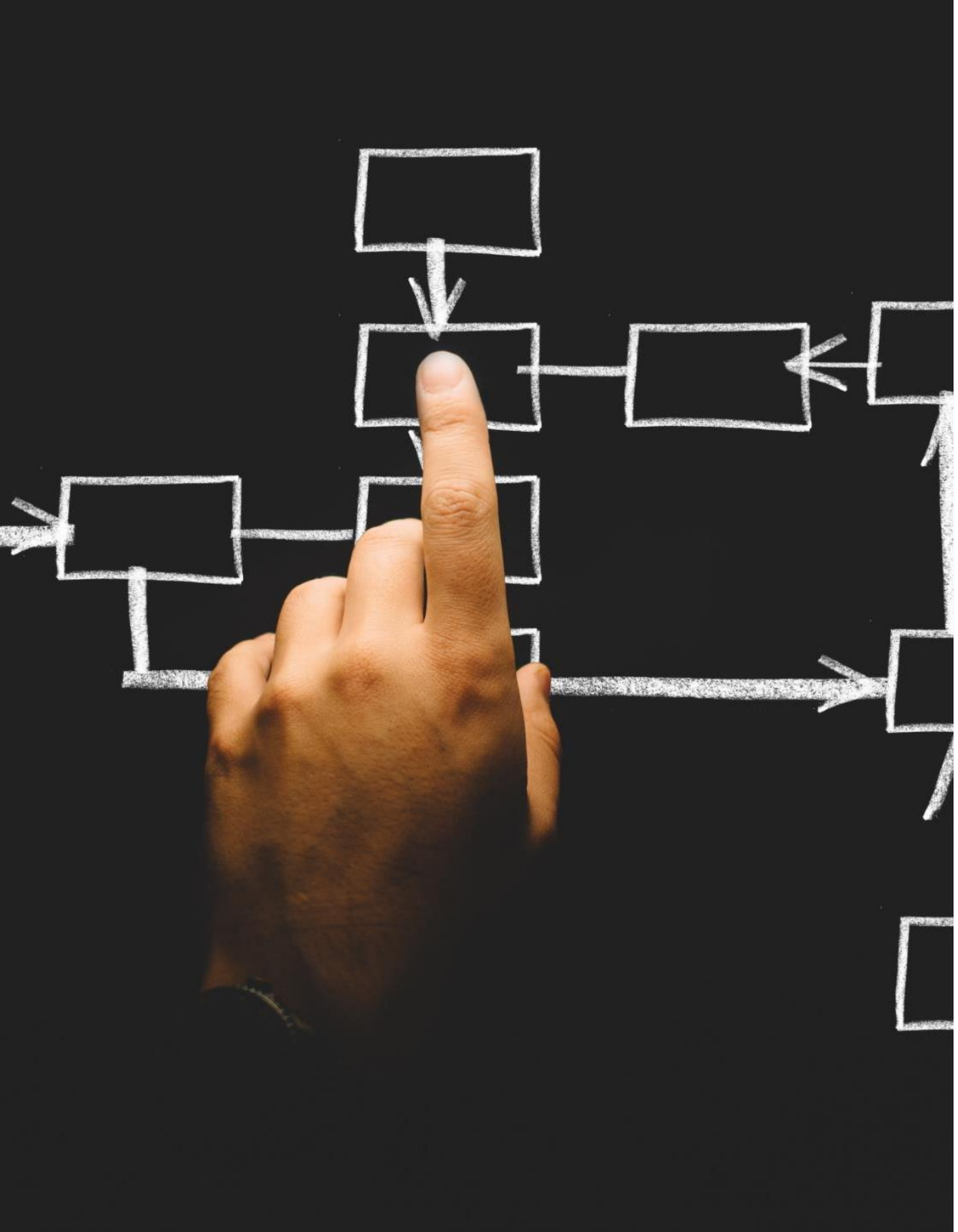
Where do I start?

Important questions to ask yourself:

Who do I want to inherit my assets?
Who should handle my financial affairs if I ever become incapacitated?
Who do I want to make medical decisions for me should I become unable to make them for myself?
Are there special considerations if I have children from a prior marriage?
If my spouse pre-deceases me, is an outright distribution to my children appropriate?
Who would serve as guardian of my minor children?
Do I have personal items or heirlooms I want to go to certain people?
Are there any beneficiaries with special needs or disabilities?
Do I have real estate in different states?
Do I wish to be cremated, an organ donor or have special funeral instructions?
These are only a few of the important questions you should discuss with your estate planning attorney.

How do I know what type of estate planning I need?

Start with an inventory of your assets. Your list should include your home, personal property, bank accounts, retirement accounts, investments, insurance policies, real estate and business interests. Once your assets are identified and valued, you can then discuss with an estate planning attorney the best options for you and your family. We have provided a worksheet at the end of this e-book to assist you with this task.



So what makes an attorney's advice important?

1. Unlike employees at a form store or on-line DIY services, an experienced attorney can respond to particular questions that are unique to your specific circumstances. For example, how to address issues relating to children from a prior marriage or what happens if you and your spouse are killed and are survived by minor children.

2. An attorney should discuss with you certain types of decisions which you can include in a will relating to organ donation, cremation, and funeral arrangements.

3. A will is only a part of your overall estate plan and an attorney will discuss with you the importance and considerations involved with preparing durable powers of attorney for financial matters, and durable powers of attorney for medical decisions providing orders for life sustaining treatments.

4. An attorney should discuss with you the importance of a self-proving affidavit.

5. An attorney can discuss with you the problems with probate and the non-probate methods to transfer property upon your death.

Remember, estate planning is being done for your family as much as for yourself. There is great peace of mind knowing it was done correctly.

Important Facts about Wills.

When someone passes away without a will, their assets will be distributed according to how the property is classified. “Community property” will pass to a surviving spouse. “Separate property” passes pursuant to the laws of intestate succession. Even when there’s a surviving spouse, he or she does not necessarily receive all of the Decedent’s separate property.

A will must be properly witnessed in order to be valid. If the document is witnessed by only one person, it will be invalid. Moreover, if any witnesses are named a beneficiary under the will, their bequest will be void.

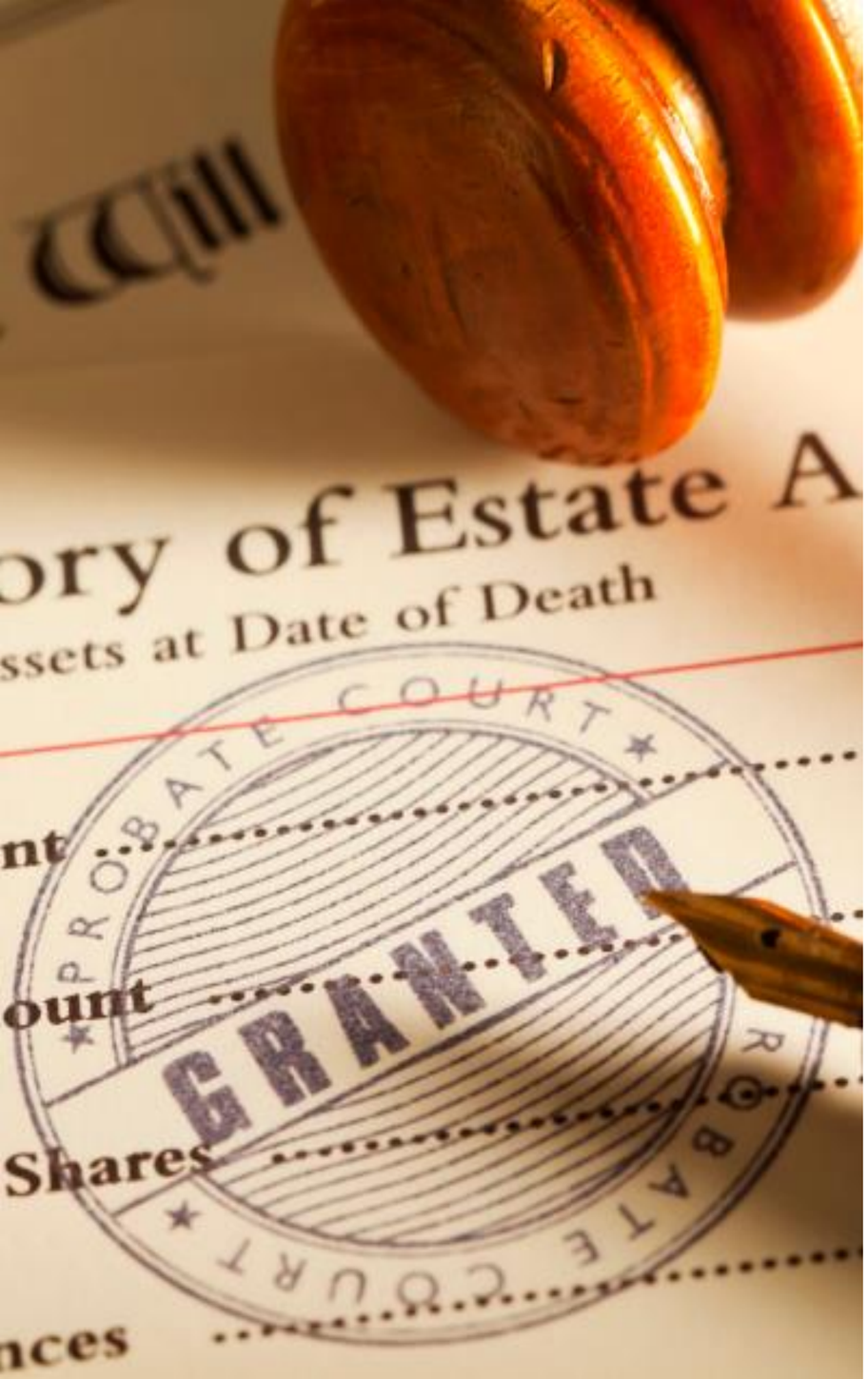
Nevada recognizes holographic wills. A holographic will is a document in which the signature, date and material provisions are written in your own handwriting. It does not have to be witnessed. However, a document that is entirely typewritten by you and then signed, is not a valid holographic will.

Remember: Whether you have a will or not, your estate will be subject to probate (unless assets are jointly owned, contain a beneficiary or are held in your trust).

Do it yourself wills.

The Do It Yourself (“DIY”) will is a document you obtain at a legal forms store or download from the internet. The advantages of the DIY Will is that it is less expensive then having an attorney draft the will for you. Unfortunately, there are lots of things that can go horribly wrong. The DIY Will could be ambiguous and result in challenges and expensive litigation. Mistakes in the formalities required in the witnessing and execution of the Will can result in its invalidity. The document could omit a residuary clause and, as a result, fail to dispose of your entire estate. These are only a few of the many potential pitfalls. If you want to learn more about these types of issues, simply Google “problems with DIY wills”.

The bottom line is that there is no substitute for legal advice from an experienced estate planning attorney about how to prepare your will. It’s no surprise that on-line legal sites for DIY documents generally contain a disclaimer reminding you that “XXX is not a law firm and the employees of XXX are not acting as your attorney.” Then, they hit you with the big one which states “XXX is not a substitute for the advice of an attorney”!



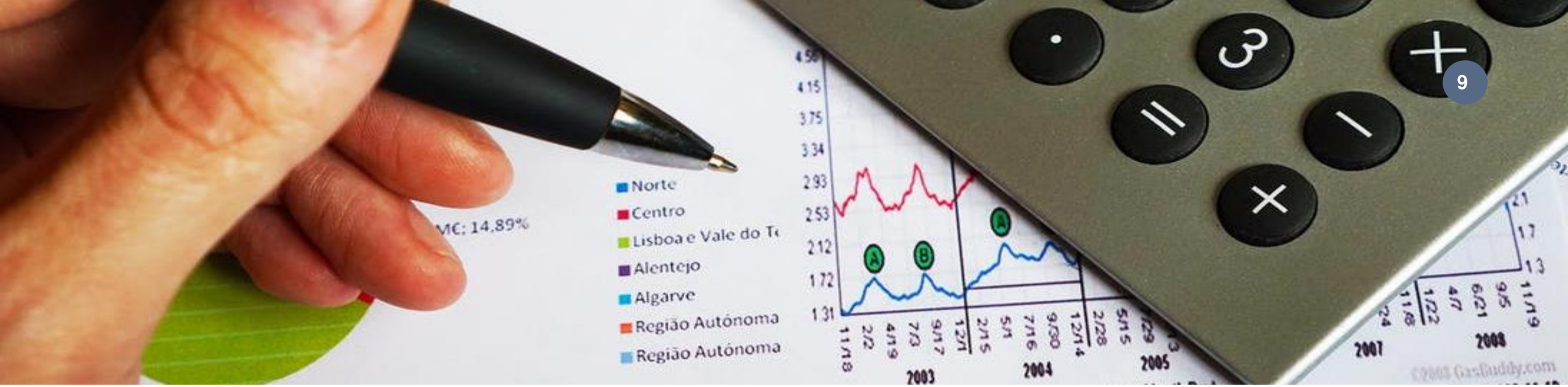
The Problems with Probate.

Probate is a court supervised process of the distribution of your estate whether you have a will or not. It is generally characterized by a myriad of rules and regulations that must be complied with. In addition, there are three important reasons you may want to avoid probate.

① **Lack of privacy.** All documents filed in a probate matter are public record that can be seen by anyone. In other words, you do not have privacy and this can be the cause for some people to feel uncomfortable. You may have intentionally excluded a particular child or left unequal distributions to your beneficiaries. In addition, the documents filed with the court will identify the beneficiaries or heirs, their addresses and the amounts they are to receive from the Estate. Not surprisingly, this information is used by some to target unwelcome solicitations.

② **Undue delays.** Probate proceedings generally take at least five to six months to complete. However, delays of 12 to 18 months could occur depending upon the complexities of the assets.

③ **Costs.** Attorney's fees are generally calculated as a percentage of the assets less any encumbrances or liens of record. In addition, there are additional fees for services considered extraordinary such as sales of real property. These attorney's fees can many times be three to four times the expense of certain alternatives.



Why Joint ownership falls short in Estate Planning Objectives.

One common mistake many people make is to try to avoid probate by adding their adult children to their bank accounts and real estate. Upon their death, the asset passes to the other joint owner(s). Unfortunately, this can have disastrous results as illustrated in the following examples:

Scenario 1: Your child is facing financial difficulties and begins "helping" themselves to the jointly titled assets. The financial "assistance" you were unknowingly providing to your child is not fully discovered until after your death, resulting in a contentious fight between your children. A huge estate battle ensues and your children stop speaking.

Scenario 2: Your son or daughter has an undisclosed debt or is involved in future litigation. Your assets are now at risk from creditors and lawsuits because you added their name to your property and they are treated as an owner.

Scenario 3: You have a will that leaves your estate to your children in equal shares. However, if you omit adding any child's name to the joint bank account, they are not entitled to any portion of the asset despite the language in the will.

You may think this could never happen, but unfortunately these scenarios occur routinely. Read on to learn about a much better option, one that will provide for you and your family.

Issues with Beneficiary Accounts.

Another common method available to avoid probate is the use of bank or brokerage accounts which contain beneficiary designations. While beneficiary or “payable on death” accounts avoid some on the problems of joint ownership, there are several drawbacks:

- If the account or real estate title designates only one beneficiary, the other beneficiaries are disinherited.

- If one of numerous beneficiaries predeceases you, problems can arise determining how that share is distributed.

- You could lose flexibility in planning because some institutions may require each beneficiary receive an equal share of the account despite your intention otherwise.

In addition, these accounts can’t provide for the distribution of assets over time or permit you to restrict when and how a beneficiary may access their inheritance. For example, if your child is only 19 at the time of your passing, do you feel they have the maturity to manage the funds appropriately once they are released by the bank?

The best solution: a revocable living trust.

A trust is a will substitute. In other words, it is a method of providing for the distribution of your estate upon your passing. You transfer ownership of your assets into your trust and they are controlled by a "trustee." During your lifetime, you serve as the trustee and determine how your trust estate is used. Upon your incapacity or death, a "successor trustee" nominated by you in the trust agreement will ensure your wishes are carried out.

What does "revocable" mean?

The term "revocable" means that you can make changes to your trust or even terminate it at any given time. As long as you are mentally competent, you can change or dissolve the revocable living trust at any time for any reason. The trust becomes irrevocable (which means it cannot be changed) when you die.

Why is a revocable trust referred to as a living trust?

Assets are generally only part of the trust estate if their ownership is transferred into the trust. This process is known as "funding." A living trust is funded during your lifetime compared to a trust that is funded at death which is called a "testamentary trust." For example, David and Lisa have wills that provide upon their death, all of their assets are to be distributed to their surviving spouse. The wills also provide that if their spouse passes before them, then the assets are to be held in trust for the benefit of their children and managed for their care and education until each child turns 25. This testamentary trust has many of the same advantages of the living trust with one significant difference, the assets are not transferred into the trust until David and Lisa have died and the estate is subject to probate. [1]

[1] See page 7 to learn more about the Problems with probate.

So what are the advantages of a revocable living trust?

Assets that are in the Trust avoid probate. Upon your passing, the assets are distributed in accordance with the terms of the trust document, not your will and there is no need for probate. Your trust is a private document which does not have to be filed with the courts and made available for public record. In addition, trusts can generally be administered and distributions made in a much shorter time frame than the completion of a probate. Although setting up a trust does require a small cash outlay, the investment can end up saving two to three times the cost of probating the estate. In summary, the trust document allows you to pass on assets privately, in a shorter amount of time and much more economically then having your estate pass through probate.

Are there other benefits to a trust besides avoiding probate?

Yes, it's important to realize that your assets can be tied up in court in two ways. One is through probate, after you die, the other is through guardianship, while you are still living but deemed to be incapacitated. Your trust helps you avoid not only probate, but also guardianship. Your trust can also ensure that your beneficiaries receive what they are entitled to, without everything you own being turned into liquid cash! Let's face it, not every beneficiary may be ready to inherit the assets and the responsibility of those assets. With a trust, you can set up "structured distributions" or hold the assets in trust until they reach the appropriate age to manage their financial windfall.

Administering Your Trust.

A prospective client indicated “I am nervous about setting up a trust because I’m afraid that I don’t have the understanding or skills to administer the trust once it is created... and that if I needed to work with an attorney in the process that the costs would be high.”

Concern #1: *A Trust is too complex for me to administer and I don’t want to incur more attorney’s fees*. Actually, once the trust is established, you shouldn’t need an attorney to assist you any further. After the Trust Agreement is executed and you have transferred your assets into the Trust, you will continue to enjoy and use the assets the same as you did before the transfer. However, if you do have questions, at Drizin Law you are not charged additional fees for further advice about your Trust administration.

Concern #2: *I don’t know how to transfer my assets into the Trust.* If your assets are not transferred into the Trust, then they will be subject to the **probate process** and this defeats one of the primary purposes of the Trust - probate avoidance. At Drizin Law, the costs of transferring your residence into your Trust is included in the fee and is completed by our attorneys. We also take the time to discuss with you in detail how easy it is to transfer each and every other asset into the Trust. More importantly, if there are more questions during this process, we’re only a phone call away!

Concern #3: *I don’t want to have to open new bank accounts and sign my checks differently.* Most banks don’t require you to close old bank accounts and open a new account in the name of your Trust. Rather, you merely have to provide them a copy of the Certificate of Trust and request they transfer the account into the name of the Trust. You aren’t required to order new checks and you continue to sign your checks just as you did before the account was transferred into the Trust.

Undoubtedly, many people may have these same concerns. However, an experienced estate planning attorney can easily address these issues.

Durable Power of Attorney for Healthcare Decisions.

In addition to a will or trust, every estate plan should include this document.

What is it?

A Durable Power of Attorney for Health Care Decisions (or Health Care Proxy) designates an individual that you trust (the “heath care agent”) to make healthcare and medical decisions on your behalf when you’re unable to do so.

Do I need a health care power of attorney before I become sick?

Yes. A Health Care Power of Attorney is a critical tool because anyone could experience a sudden accident or a serious health issue and not be able to speak for him or herself. It is particularly important to make clear, in writing, what your wishes are should the time come when you are unable to communicate them yourself.

How can I prepare my agent for these tasks?

The key is communication. Your health care agent is your advocate but it is important that they know your health care preferences. These discussions should include whether you want to live as long as possible under certain circumstances, would you prefer to be in a hospital or at home at the end of life, or do you have religious or spiritual values that will affect the types of care or treatments you would like to receive?

What do I need to know about the role of my health care agent?

Your agent will be authorized to make decisions regarding your medical care, including, but not limited to, requesting or declining life sustaining treatment, making choices about pain management, and deciding where treatment is to be received. In order to complete these duties, they will need to learn about your medical condition and treatment options, communicate with doctors, request second opinions, and review medical records. Therefore, you should consider carefully who you select as your agent but remember that they will only have the right to make these types of decisions when you are no longer able to make the decisions yourself.

Protecting your assets during incapacity.

A durable power of attorney for financial matters is a document that allows you to appoint someone (known as the “agent”) to manage your assets on your behalf when you’re unable to do so.

Scenario: You become ill and require hospitalization. After a surgical procedure, you require several months of rehabilitation. During this time, you’re unable to write checks or pay bills and your mortgage goes into foreclosure.

Scenario: A parent or spouse is diagnosed with dementia and determined he/she needs assistance with making financial decisions and managing household finances.

The durable power of attorney enables your agent to address these matters until you recover and take over these responsibilities or to provide assistance from that point forward.

The durable power of attorney for financial matters is important because your spouse may not be able to make all decisions regarding certain types of assets in the event of your incapacity and a power of attorney for health care decisions does not enable someone to access your assets for your benefit if you are incapacitated. However, one of the greatest needs for the document is that you don’t want to authorize anyone to have access to manage your assets until you’re unable to do so. Moreover, you don’t want your family to have to incur the cost and time of obtaining a guardianship.

⚠ While the durable power of attorney for financial matters is an essential part of your estate plan, there may be a significant problem regarding the ability of your agent to sell real estate and you should meet with an attorney to discuss these issues.

More about Durable Powers of Attorney for Financial Matters.

Your agent is not to commingle assets and must keep assets separate.
You can revoke the power of attorney as long as you are not incapacitated.
You may appoint more than one agent. This will allow persons to share the responsibility for carrying out the duties as your agent.
The agent is not required to perform all the services by himself or herself and can retain a financial planner, an accountant, and/or attorney to assist.
No formal written acceptance is required by your agent. A person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

ALERT: If the principal resides in a hospital, group home, facility or skilled nursing or home for individual residential care at the time of execution of the power of attorney, a certification of competency of the principal from a physician, psychologist or psychiatrist must be attached to the power of attorney or the document is void.

Digital Assets

“Digital assets” are the electronic information stored on a computer or through computer-related technology. These could include digital images from photographs, electronic investment account statements, e-mails, social media accounts, and bank account statements. Nevada’s digital asset statute applies to fiduciaries acting under a will or power of attorney, personal representatives acting on behalf of decedents, guardianship proceedings, and trustees acting under a trust.

Any persons having an account with a custodian (a person that maintains, receives or stores a digital asset) may use an online tool for the purpose of directing a custodian to disclose some or all of the user’s digital assets, including electronic communications. An “on-line tool” is simply an agreement that the custodian offers the user to indicate whether they can disclose information to third parties. In cases where a user has not used an online tool, or if the custodian has not provided an online tool, a user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user’s digital assets.

Don’t assume that the custodian will provide a method for you to give permission to access your digital records in the event or your incapacity or death. Instead, these powers should be included in your estate planning documents!

Tips on Hiring an Attorney

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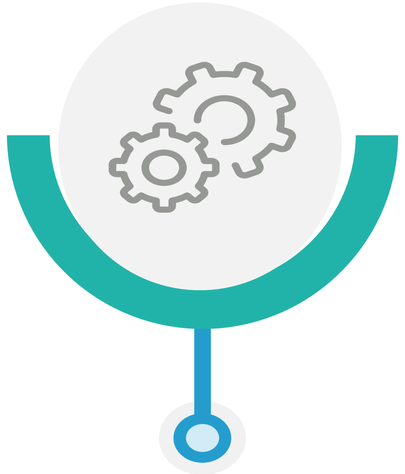
Meet face to face.

This is the best way to get a gut feeling. You will likely have to share personal information and discuss outstanding problems.

Prepare for the meeting.

Don't waste your time or that of the attorney. Make a list of questions ahead of time.



How well do you work together?

Consider how the attorney addresses your questions. Do you feel rushed? Are answers easy to understand?

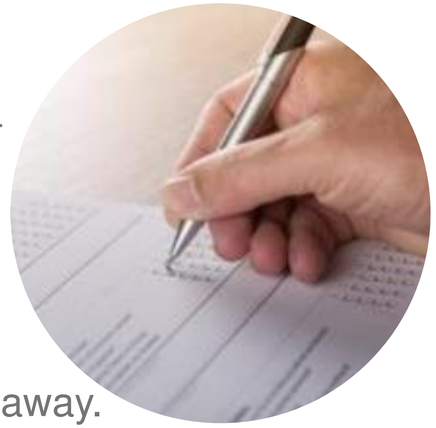
Evaluate the initial experience.

Is the attorney and his assistant accessible? Were you able to talk to them at your initial phone call? If you left a message, did they call back?

Estate Planning Terms

Attorney-in-fact: The person appointed under a power of attorney to conduct the affairs of another. This person does not have to be a lawyer.

Beneficiary: anyone receiving a distribution from a probate estate or trust estate in accordance with the terms of a will or trust.



Bequest: a gift contained in a will to a particular person or persons.

Capacity: The legal competence to effectively create a will or trust.

Decedent: a person who has passed away.

Estate Planning: The process of arranging your property and affairs to insure their management and ultimate disposition in an efficient, effective and private manner.

Heir: the person entitled to the probate estate in the absence of a will.

Intestacy: the transfer of property of a decedent who passed away without a will.

Pour Over Will: A will which provides that upon death of a person the probate estate is transferred into any trust created by the decedent.

Probate: legal process of supervising the transfer of a decedent's property to his or her heirs or beneficiaries.

Revocable Living Trust: a trust that may be amended or revoked by the Trustor at any time and becomes effective while the Trustor is still alive.

Testator: a person who executes or signs a will. The term "testatrix" refers to a female that executes a will.

Trust: a legal arrangement in which title is transferred to a trustee who has a fiduciary duty to manage and distribute the Trust assets in accordance with the terms of the trust.

Trustee: the person nominated in the Trust Agreement to be responsible for the administration of the trust estate.

Trustor: The person who establishes a trust. Also referred to as a "grantor" or "settlor".

Drizin Law

The Drizin Firm offers its clients over 45 years of experience in Probate, Real Estate, Estate Planning, Divorce, Custody, Business Law, Guardianship and Litigation. We are committed to providing our clients compassion and quality attention to all matters. We place a high value on responsiveness, both in its timely help to clients and how well it meets their needs and objectives.

For over twenty years, Lee A. Drizin has been an advocate for families during times of uncertainty. He is an experienced Nevada estate planning, real estate and probate attorney who has made it his life's work to advocate for families in their time of need. "It's not always easy work, but I am passionate about assisting my clients in setting up their estate plans. I want them to know they don't have to walk this path alone, we will be there every step of the way."

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Lee A. Drizin, ESQ

Trust Questionnaire (page 1)

1. Full Name (as you want on your documents) :_____
2. Spouse's Name:_____
3. Mailing Address: _____
4. Telephone Numbers: (Home) _____(Cell) _____
5. Names of Children:
   A. _____ Age_____
   B. _____ Age_____
   C. _____ Age_____
   D. _____ Age_____
   E. _____ Age_____
6. Do you wish to be cremated? Husband: YES_____ NO_____ Wife: YES_____ NO_____
   If YES, please attach instructions as to how and to whom each spouse desires ashes to be distributed.
   If NO, please attach any burial instructions, including the desired location.
7. Do you wish to be an organ donor? Husband: YES_____ NO_____ Wife: YES_____ NO_____
8. Who would Husband desire to serve as the Successor Trustee and Personal Representative/Executor of his Estate?
   A. Name: _____
   B. Alternate _____
   C. 2nd Alternate _____
9. Who would Wife desire to serve as the Successor Trustee and Personal Representative/Executor of his Estate?
   A. Name: _____
   B. Alternate _____
   C. 2nd Alternate _____
10. How is the Trust Estate to be distributed upon the death of the first spouse to pass? (attach sheet with details)

Trust Questionnaire (page 2)

11. How is the Trust Estate to be distributed upon the death of the surviving spouse? (attach sheet with details).

12. If either spouse wants any particular items (i.e. jewelry, items of sentimental value, etc.) to be distributed to specific individuals upon his or her death, please attach a separate statement.

13. Who would you nominate as guardian and alternate guardian of minor children? A._____ B._____

14. Who does Husband designate to make financial and business decisions in the event he is unable to do so?
    A. Name: _____
    B. Alternate: _____
    C. 2nd Alternate: _____

15. Who does Husband designate to make healthcare decisions in the event he is unable to do so?
    A. Name: _____
    B. Alternate: _____
    C. 2nd Alternate: _____

16. Who does Wife designate to make financial and business decisions in the event he is unable to do so?
    A. Name: _____
    B. Alternate: _____
    C. 2nd Alternate: _____

17. Who does Wife designate to make healthcare decisions in the event he is unable to do so?
    A. Name: _____
    B. Alternate: _____
    C. 2nd Alternate: _____

18. It is important that you disclose your assets so that we can assist you with their transfer into the Trust. Therefore, please complete the attached list on the following page with your questionnaire.

List of Assets (attach separate sheet if necessary)

Assets	Value
Bank account (list each separately by account number)	
Brokerage accounts	
Stocks and Bonds	
Real Estate (including time shares)	
Cars, Trailers, Motorcycles (make, model, year)	
Household goods, Furniture, Tools, Artwork	
Boats	
Ownership in corporations (limited liability company, partnerships or sole proprietorship)	
Jewelry/Clothing and Personal Items	
IRS or deposit refunds due	
Any non-probate assets that omit beneficiary or names predeceased beneficiary	
Frequent flyer programs	
Reward club memberships	
Other (please specify)	

Guide to Estate Planning in Nevada

Navigating the complexities of Wills, Trusts & Probate for over two decades.

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