

## 5 Steps to a Competent Asset Protection and Estate Plan

### **Step #1: Learn how to deal with your incapacity.**

**Court Supervision.** Our system of laws allows two methods for people to care for you. One method, Court supervision, has already been chosen for you. If you make no decisions, the Court will step in and appoint a conservator to handle your financial matters and a guardian for your personal affairs. Your guardian and conservator carry out the judge's orders. It is not likely they will handle things the way you would have handled them. When the Court steps in, you and your family lose control.

Setting up a guardianship and conservatorship is like other matters involving the Court. Lawyers represent all parties, including you. Accountants manage your finances. Doctors confirm that you need some-one to care for you. The law requires periodic reports to make sure everyone is looking out for your interests. What's more, all these people must be paid for their services. You bear this expense.

**Private Supervision.** Revocable Living Trusts do not require Court supervision. In your Trust, you decide whom you want to care for you in the event of your mental or physical incapacity. This usually includes family members or friends. When you design your plan, you control the outcome because the plan is set up exactly the way you want it. By setting up a plan that allows for private supervision -- with no Court interference -- you save a great deal of money and make sure that your wishes are carried out.

### **Step #2: Choose the method for dealing with your incapacity that is right for you.**

**Court Supervision. Advantages:** If you want the Court to dictate the care you receive, dictate how to use your assets, and make decisions for you, then you should use a guardianship and conservatorship. **Disadvantages:** You lose control because the judge makes decisions about your care. Long delays are common. You pay a high price because guardianships are expensive to set up and maintain. You lose your privacy because your personal and financial affairs are open to public view. The emotional strain of reporting everything to the Court takes a toll on you and your family.

**Private Supervision** through a Revocable Living Trust. **Advantages:** You and the people you select make all the decisions. You maintain control. You can make decisions quickly. You save money because a Revocable Living Trust is less expensive than a guardianship. You don't have to involve a variety of lawyers, doctors and accountants. You maintain your privacy because your documents are not open to the public. And you reduce stress on your family. **Disadvantages:** Generally, none.

### **Step #3: Learn how you can distribute property during your lifetime and after your death.**

**Court Supervision.** The laws of all states are written so if you do nothing to plan your estate, the Court will distribute your property according to the laws of the state where you live. If you write a Will, and the Court is satisfied that the Will is valid, under the supervision of the Court your property will be distributed according to the terms of your Will. This process is called probate.

**Private Supervision.** You can distribute your property privately, without Court involvement. Your choices consist of the following:

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For legal advice, please consult with an attorney.

Joint Tenancy With Right of Survivorship: You should own property in Joint Tenancy only in very rare circumstances. Review my “8 Dangers of Owning Property in Joint Tenancy” in this handout.

Gifts: Gifting is a good way to get property out of your estate so it avoids probate and reduces estate taxes. Currently, the IRS limits the value of assets you can give without paying a gift tax to \$13,000 per person per year. The downside of gifting is that you lose control of the asset. If you give property to your children, they might sell it against your wishes. And if you outlive your child, your gift may not be returned to you.

Revocable Living Trust: A Revocable Living Trust is a separate legal entity that holds title to property. After you set up a Trust, you put property into your Trust, called “funding the Trust.” At the time of the funding, you change the title on real estate deeds to the name of the trustee and trust, such as the “John Jones, Trustee of the Jones Revocable Living Trust, Under Agreement Dated (u/a/d) July 1, 2004.” When you transfer personal property and real estate into your Trust, you no longer own these assets in your own name. This means these assets don’t have to go through probate.

**Step #4: Choose the method for distributing your property that is right for you.**

**Court Supervision.** Will or no estate plan: Either is easy to maintain during your lifetime, and your distribution plan is supervised by the Court through probate. In the worst case situation, probate can cost thousands of dollars and take months or even years to complete. You lose all privacy because your file is a matter of public record. Small estates can transfer title without the need for qualification, but this method is not available to most estates.

**Private Supervision.** Revocable Living Trusts allow you to control your property without Court involvement. Revocable Living Trusts completely avoid probate if properly funded before death. They avoid the dangers of Joint Tenancy. They keep your affairs private. Upon your death, subject to payment of debts and taxes, your estate is able to transfer to your heirs within a few days. Plus, your Revocable Living Trust eliminates the need for a guardianship or conservatorship.

**Step #5: Act now, while you are competent to make your own decisions.**

None of us likes to think that we may become incapacitated or die. Yet it happens every day. We all have friends who have been injured in car accidents. We all know people who have had heart attacks, even when they were in “excellent health.”

If you want to see how dramatically people’s lives change every day, just watch the news. You’ll see car accidents, plane crashes, shootings, heart attacks, drownings...the list seems endless. And yet every one of those people thought their day would end just as safely as it began. Will you be next? The greatest gift you can give your spouse and your children is an asset protection, elder law, and estate plan -- a plan that you have designed to carry out your wishes when something happens to you. This is how you can insure that you won’t become a burden to your children.

I sincerely hope you live a long, happy life in excellent health. I also hope you have your asset protection, elder law, and estate plan ready to protect your family from probate and the other problems we all face every day.