



ROYBAL-MACK & CORDOVA, P.C

ESTATE PLANNING

The Basics

Prepared for Animal Protection of New Mexico

Planned Giving Workshop

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ESTATE PLANNING IN A NUTSHELL

Estate Planning is an essential function that all families should engage in to maintain and protect wealth. Every person in New Mexico has an Estate Plan, the government created a plan if you die without an estate plan. The government's plan rarely meets the needs of families and does not meet a families needs if there are minor children or special needs individuals that need to be protected.

FAILING TO PLAN, IS PLANNING TO FAIL!

Intestate Succession and the STATE Plan

Many Americans spend their entire lives chasing the **American Dream**, working tireless hours to build wealth and provide for their families. While much work is put into the growth and development stage, few Americans take the time to plan, preserve, and provide for their loved ones once they are gone. The same amount of effort and work should be spent on wealth preservation, in addition to creation.

The State Plan, Intestate Succession

The State plan is a One-Size-Fits-All Plan.

What is covered in the State Plan? Everything that is covered in a will.

The State Plan, or a Will, **DOES NOT** cover, assets in a trust, life insurance, IRA, 401k and Other Retirement Accounts, POD Accounts, TOD Deeds.

WHO GETS WHAT?

It depends!

Two important issues in Intestate Succession are Asset Identification and Beneficiary Identification.

Community Property v. Separate Property

Children, Spouse, Parents, Siblings

Common Issues: Adopted Children, Foster Children, Paternity, Grandchildren, Half-Relatives, Second Marriage, Blended Family...

Escheat... what is that?

A BASIC ESTATE PLAN

Will, POA, Healthcare Directive

WILL

A will is a legal document that outlines your plan regarding asset distribution. A will can also nominate a guardian for minor children, and can provide for a testamentary trust.

Requirements

- Who may make will. An individual **eighteen** or more years of age who is of sound mind or an emancipated minor who is of sound mind may make a will. NMSA 1978 § 45-2-501,
- In **writing**. NMSA 1978 § 45-2-502;
- **Signed** by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction. NMSA 1978 § 45-2-502; and
- Signed by at least **two individuals**, each of whom signed in the presence of the testator and of each other after each witnessed the signing of the will as described in Subsection B of this section. NMSA 1978 § 45-2-502.

Common Questions

- What is the difference between a Living Will and a Last Will and Testament?
- **Who** will receive property upon your death?
- **What** they will receive?
- **When** they are to receive it?
- **How** they are to receive it?
- What is an Executor? What do they do?
- Who should I name as my Personal Representative?

POWER OF ATTORNEY (POA)

What is a Power of Attorney and do I need one?

A power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. See Uniform Power of Attorney Act, 46B-1-101 NMSA 1978.

POAs can be all encompassing, springing and can cover the following subject areas:

*Real Property,
Tangible Personal Property,
Stocks and Bonds,
Commodities and Options,
Banks and Other
Financial Institutions,
Operation of Entity or Business,
Insurance and Annuities,
Estates,
Trusts, and Other Beneficial Interests,
Claims and Litigation,
Personal and Family Maintenance,
Benefits from Governmental Programs or Civil or Military Service,
Retirement Plans,
Taxes.*

The most common question regarding Powers of Attorney are Durable and Successor Agents.

HEALTHCARE DIRECTIVE

What is the difference between a **Will** and a **Living Will**? A better name for a living will is a Healthcare Directive.

What should I consider in drafting an Advanced Healthcare Directive?

- Springing or Not?
- End of Life Decisions
- Anatomical Gift Designations
- Do I really need a HIPPA Waiver?

THE PROBATE PROCESS

And why you want to avoid it.

In a Nutshell

- Application for formal or informal Probate;
- Application to Appoint a Personal Representative;
- Investigation and Notice to Creditors;
- Inventory and Accounting;
- Settle all creditors, including tax authorities;
- Transferring the Assets to the new Owners;
- Filing a Final Accounting and Closing the Estate.

The probate process can be costly, and burdensome. You will have filing fees, appraisals, attorney's fees and accountant's fees to consider.

IMPORTANT TITLING CONSIDERATIONS

Individually Owned

Owned outright. Testator's name is listed as the owner on the title, deed, contract ect. Assets owned under this classification will be distributed under the State Plan, or your Will.

Jointly Owned

Multiple people are named as owners on the title, deed, contract ect. This classification generally includes tenants in common and joint tenancy with the rights of survivorship.

Property owned as **Tenants in Common** is generally treated as individual property and will pass similar to Individually Owned property.

Property owned at **Joint Tenants** with rights of survivorship will automatically pass to the surviving joint tenants upon death. This will occur outside the probate process and outside any estate planning documents

Subject to Contractual Arrangements

These assets typically include those procured by contract, i.e. retirement plans, annuities, life insurances, payable on death accounts, trust agreements. These assets pass outside the probate process and outside any estate planning documents. Caveat - - - You can name a trust as a beneficiary to exercise control over these assets beyond the contract.

WHAT IS A TRUST

A trust is a legal document through which your assets are placed into a trust for your benefit during your lifetime and then transferred to designated beneficiaries at your death by your chosen representative, called a "successor trustee." A person who creates a trust is called the trustor. The person who manages and administers the trust is called the trustee. In many cases, the initial trustor and trustee are the same person.

WHY WOULD I WANT A TRUST INSTEAD OF A WILL?

Probate Avoidance

The trustee administers the trust and distributes your property as described in the trust.

Enhanced Control of Estate Distribution

A will is similar to a concert ticket, one time use. A trust can provide more control over your estate. Contractual assets can be funneled into the trust and can be distributed under specific direction. Asset distribution can be delayed, and controlled with specificity. Inheritance can be **Divorce Protected, Creditor Protected, Tax Protected, Spendthrift Protected, Disability Concerns, Addictive Behaviors in Beneficiaries, Incentive Legacy Planning.**

Privacy concerns, Public v. Private

Administration of a Trust generally happens outside of public purview. Probate litigation occurs in a public forum in a court house.

Types of Trusts

- Testamentary Trust
- Living or Inter-Vivos Trust
- Revocable
- Irrevocable
- Special Needs Trust
- Ect.

COMPARISON

Considerations	No Will	Basic Will	Basic Living Trust
Allows you to select Beneficiaries	No	Yes	Yes
Personal Representative	No	Yes	Yes
Guardians for Minor Children	No	Yes	Yes
Trustee	No	No	Yes
Avoids Probate	No	No	Yes
Asset Management for Children over 18	No	No	Yes
Protects Owner from Conservatorship	No	No	Yes



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DON'T PLAN TO FAIL!

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