

From the desk of:  
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## ESTATE PLANNING MEMO

### 1. INTRODUCTION.

1.1. **Purpose.** You currently own **Property** and have **Obligations**. You have **Heirs** to whom you want your **Property** to pass. An **Estate Plan** is how you arrange for your **Obligations** to be satisfied and how your **Property** is to be distributed for the benefit of your **Heirs**.

1.2. **General.** If you die without a valid will, your **Estate** will pass by the laws of **Intestate** succession. The State of Washington has laws as to how your **Estate** will pass to your **Heirs** which are called the laws of “intestate succession” You can alter and control the **Administration** of your **Estate** through your **Estate Plan**.

1.3. **Considerations.** Your **Estate Plan** will take many matters into account. A qualified team can help you determine and reach your goals. Each **Estate Plan** weighs competing goals. For example, steps taken to minimize tax considerations take your control away. My primary focus is choosing the right **Estate Plan** for your current situation. Together we will analyze and select the **Estate Documents** best suited for you:

1.4. **Options.** There are many options for creating your **Estate Plan**. Each option has advantages and disadvantages. There are several documents to consider, depending on your age, marital status, wealth and capabilities of your **Heirs**, people available to administer your **Property**, etc. The primary ways to plan for your estate is by **Will** or by **Living Trust**. Common **Estate Documents** are identified in Article 3.

1.5. **Disclaimer.** This Memo is a brief introduction into **Estate Planning**. You should not rely on this Memo in making estate planning decisions. This Memo is not a substitute for a deeper understanding of the various issues. Each person’s situation is unique and requires specific planning. You should use professionals in creating your **Estate Plan**. Please review this Memo from time to time.

### 2. DEFINED TERMS. Defined terms (capitalized and/or in bold) have the following meanings:

2.1. **Administration.** The procedure by which your **Estate** is administered, your debts and obligations dealt with and your **Property** passed to your **Heirs**.

2.2. **CPA.** Community Property Agreement.

2.3. **Directive.** A Health Care Directive, sometimes referred to as a “living will.”

2.4. **Disclosure Statement.** A statement of your legal rights with regard to legal representation.

2.5. **Estate.** All of your **Property** and **Obligations**.

2.6. **Estate Plan.** Your plan for satisfying **Obligations** and transferring your **Property** to your **Heirs**.

2.7. **Estate Documents.** The documents comprising your **Estate Plan**.

2.8. **Heir(s).** Any person entitled to receive any portion of the **Estate** through gift, devise or bequest.

2.9. **Intestate.** Dying without a valid **Will**.

2.10. **Living Trust.** A **Trust** established while the **Trust** creator (“donor”/“settlor”/“grantor”) is alive.

2.11. **Obligations.** Each obligation and liability that is yours and/or is attached to your **Property**.

2.12. **POA.** A Power of Attorney.

2.13. **Probate.** The **Administration** of your **Estate** through the Court, either according to your Will (testamentary) or by the laws of **Intestate** succession.

2.14. **Property.** Property of any type including real property, personal property, tangible property, intangible property, equitable rights and money.

2.15. **Tangible Property.** As defined by statute, tangible personal property that is not used in business and does not involve a title document.

2.16. **Trust.** An arrangement where a “Trustee” controls and manages **Property** to, or on behalf of your “Beneficiaries.” **Trusts** are “living” (made when the creator is alive) or “testamentary” (created by **Will**).

2.17. **Will.** Your last Will.

3. **ESTATE DOCUMENTS.** The following are brief descriptions of documents commonly used in **Estate Plans**. Which documents to use and the terms they will contain are tailored to your personal situation:

3.1. **CPA.** A **CPA** allows a surviving **Spouse** to avoid **Probate**, a potentially huge benefit. There are two primary disadvantages. The first is a loss of flexibility in Estate Planning, e.g., to minimize inheritance taxes. The second is the loss of **Probate’s** benefit of eliminating claims. For example, if the deceased spouse is a doctor or other professional, **Probate** will likely bar any future claim against a surviving spouse. If **Probate** is not used, a future claim could be successfully asserted against a surviving spouse. You can always adopt a wait and see attitude, execute a **CPA** now, but make the decision to use or not use it after the first death.

3.2. **Directive.** A **Directive** establishes your preferences if you are diagnosed to be in a “Terminal Condition” or in a “Permanent Unconscious Condition” (as defined by law). It gives you the right to refuse treatment. You have the option to permit or to bar nutrition and/or hydration.

3.3. **Disclosure Statement.** When dealing with a husband and wife, there is a potential conflict of interest. On rare occasions, an attorney will act as a responsible person under a **Will**. The **Disclosure Statement** describes which legal rights may be affected and has you acknowledge that you understand such effects.

3.4. **Living Trust.** A **Living Trust** may be revocable (the creator can change revoke or change), or irrevocable (once created, it cannot be changed). **Living Trusts** are popular in California due to California’s incredibly high **Probate** fees. A **Probate** in California entitles the attorney to a percentage of the estate as a fee. In Washington, the probate fee is based on the work actually done and is significantly less expensive than in California. We usually recommend a **Living Trust** only in the following limited cases:

3.4.1. **Residential.** Primarily for out of State residential or vacation property. If, at time of death, you own real estate out of State, you have to go through an ancillary (additional) probate in that State. Using a **Living Trust** avoids ancillary probate. If you own commercial or investment property out of State, you should consider different ownership forms, such as a limited liability company.

3.4.2. **Life Insurance.** Without a **Trust**, if a spouse ‘A’ has life insurance on spouse ‘B’, when spouse ‘B’ dies, the value of the insurance proceeds are included in spouse ‘A’s taxable **Estate**. If a life insurance **Trust** is used properly, the insurance proceeds would be owned by the **Trust** and kept out of the spouse ‘A’s taxable **Estate**. The tradeoff is that spouse ‘A’ would have limits on their benefit of **Trust Property**.

3.4.3. **Disability.** Where a disabled relative who needs to have their **Property** controlled due to the disability and in order to financially qualify for certain government assistance programs.

XXPlease see the accompanying “Introduction To Trusts Memo” for additional information regarding **Trusts**.

3.5. **POA.** A **POA** is valuable in the event of your incapacity or physical unavailability. XXPlease see the accompanying “Memo Regarding Power Of Attorney” for information regarding **POAs**.

3.6. **Tangible Property Instructions.** This is a flexible planning technique that allows you to make specific disposition of “tangible assets” without having to modify your **Will**.

3.7. **Will.** The **Will** is the keystone of most **Estate Plans**. The primary exceptions are those large estates that rely on **Trusts**. As evidenced by its importance, your **Will** is the most unique document of your **Estate Plan**. The **Will** is drafted to address your needs and concerns. Upon your passing, your **Will** determines how your **Obligations** will be dealt with, how your **Estate** will be **Administered** and how your net **Estate** will be distributed. The **Will** contains technical, legal language. There are 2 types of **Wills**; a “**Simple Will**” and a “**Trust Will**.” A **Simple Will** distributes your **Estate** directly to your proposed heirs. A **Trust Will** creates a testamentary trust that will appoint trustees who will manage all or part of your **Estate** in accordance with guidelines that you establish.

4. **LIMITATIONS.**

4.1. **Background.** Your **Estate Documents** do not affect **Property** that pass by way of contract, including insurance policies, retirement plans, certain **Trusts** and bank accounts. The **Property** covered by such contracts will pass to your named beneficiaries AND NOT as directed by your **Will**. Other contracts, such as **CPAs** and business buy sell agreements may direct how your **Property** is distributed.

4.2. **To Do.** You should take the following steps:

- Make an inventory of all of your **Property**, including contractual rights.
- Determine how your property rights with regard to such **Property** pass upon your death.
- Determine who the beneficiaries are and see if it meets your needs and desires.
- Make such changes in beneficiary designation

## 5. **MISCELLANEOUS.**

5.1. **Current Situation.** This draft of your **Estate Documents** will be based on your current situation and existing tax and other laws. Because of potential changes, you should review your **Estate Plan** every few years. You should immediately review and update your **Estate Plan** upon:

- Any change in your marital status;
- Additions to or losses from your immediate family or other proposed heirs and beneficiaries;
- Substantial changes in the size or extent of your estate; and/or
- Substantial changes in tax and/or inheritance law.

5.2. **Powers Of Trustee.** If you have a living **Trust**, or if your **Will** provides for a testamentary **Trust**, you should be aware the your **Trustee** will have many powers provided by statute. Attached as **EXHIBIT A** is a copy of the relevant statute.

5.3. **Storage.** Keep the originals of your **Estate Documents** in a Bank safe deposit box or a fire proof box at home. Since the main cause of destruction is fire or water damage, your freezer is a good option. Wrap your **Estate Documents** securely in plastic, such as in several freezer bags. Destroy earlier **Wills**. Maintain a copy in an accessible place, such as a desk or dresser drawer. Write the location of the original on the copy, including who has access. **IF YOUR WILL PROVIDES FOR A TESTAMENTARY TRUST**, retain a copy of this memo along with your **Will** so that your Trustee will be aware of the extent of their powers.

5.4. **Taxation.** The size of your **Estate**, the nature of your **Property** and **Obligations**, your marital status, your citizenship status, the identity of your **Heirs**, your history of gifting and how you will distribute your **Estate** will each have an effect upon the inheritance and income tax obligations that must be paid. This Memo does not discuss these important considerations in any meaningful way. However, these are important considerations in many **Estate Plans**.

Please feel free to contact us regarding any questions or concerns you have.

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**EXHIBIT A**  
**SELECTED STATUTES (as of December 14, 2017)**

§ 11.98.070. *Power of trustee.*

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

- (1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;
- (2) Sell on credit;
- (3) Grant, purchase or exercise options;
- (4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;
- (5) Deposit stock or other corporate securities with any protective or other similar committee;
- (6) Assent to corporate sales, leases, and encumbrances;
- (7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;
- (8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;
- (9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;
- (10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;
- (11) Compromise or submit claims to arbitration;
- (12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;
- (13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in [RCW 83.110.020\(2\)](#), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;
- (14) Determine the hazards to be insured against and maintain insurance for them;
- (15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make non pro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;
- (16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he or she resides, or third person;
- (17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in [RCW 11.98.110 \(2\)](#) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

- (23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;
- (24) Limit participation in the management of any partnership and act as a limited or general partner;
- (25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;
- (26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;
- (27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:
- (a) A trustee may not delegate all of the trustee's duties and responsibilities;
  - (b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;
  - (c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;
  - (d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;
- (28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;
- (29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;
- (30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;
- (31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;
- (32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;
- (33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; and
- (34)
- (a) Donate a qualified conservation easement, as defined by section 2031(c) of the internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under section 2031(c) of the internal revenue code or the deduction allowed under section 2055(f) of the internal revenue code as long as:
    - (i)

(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under section 2031(c)(8)(B) of the internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under section 2031(c)(8)(B).

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.