Wills & Trusts: A Relocation Planning Guide for Families

STEPS TO TAKE AND MISTAKES TO AVOID WITH YOUR ESTATE PLAN WHEN YOU MOVE

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ABOUT OUR FIRM

Anderson Dorn & Rader

Founded in 1995, the Anderson, Dorn & Rader Law Firm is dedicated to providing you with the highest quality estate planning resources and services so that you can become familiar with all of the existing options. When you visit or call our office, we want you to feel comfortable discussing such important issues concerning both you and your family. We want to arm you with the information you need to make informed decisions about your estate plan and your family's future.

If you have a well-drafted estate plan in place, we will ensure that your estate passes to whom you want, when you want, and is carried out in the manner you have chosen. You can rest assured that your family will not have to endure the public process and costly matter of probate. You can reduce or completely eliminate your estate's exposure to estate taxes upon your death. With proper planning, the government will not be able to take what you have spent a lifetime building. But you need to be aware of the many options that exist in estate planning—and you must choose your attorney wisely.

Why We Do What We Do

Anderson, Dorn & Rader is an estate planning law firm dedicated to providing our clients with the highest quality estate planning documents, counsel, and resources.

Our dedicated team makes your experience with our law firm comfortable, as well as enlightening. When your planning is complete, you will have peace of mind knowing that your plan will provide the best results for your loved ones.

We are also dedicated to making you aware of changes in the law and new strategies as they become available. When these changes occur, when there is a death in the family, or when there are changes in your circumstances, you can be assured that we are available to assist you in modifying your estate plan to meet those changes..

How to Connect with Us

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WELCOME TO OUR COMMUNITY!

You're likely reading this because you or a loved one recently moved (or will be moving) to a new area or state. If you're new to our area, we want to welcome you to our wonderful community!

Whether you are brand new to the neighborhood or have already settled in, we created this guide to help you and your loved ones be as prepared as possible for any major or minor life events. Anytime you move, there are a multitude of decisions and details to look after. Often, one of the last things families consider is how their move could impact their estate plan. If you have a Will or a Living Trust, it is important to know how your estate plan will work (or not work) when you move to a new area or state and what possible updates you'll need to consider.

Our goal is to provide you with helpful information to make sure your estate plan is reviewed and properly updated to work with the new local laws.

Before we jump into the relocation considerations, let's review a few estate planning basics to understand why families plan in the first place and how different estate plans work in general.

ESTATE PLANNING BASICS

Most families we've helped over the years have many of the same goals and concerns especially when considering what will happen in the event of a disability, death or moving to a new area.

- Make sure your plan complies with local laws and works the way you intend in a new state or community
- Minimize or eliminate taxes (income, gift, estate, capital gains and inheritance taxes) and legal fees
- Plan ahead for a possible health issue or incapacity to avoid a humiliating conservatorship and make sure powers of attorney are valid in the new area
- Avoid the public process of probate, if necessary, in the new area
- Avoid creditors or predators for family members who are inexperienced with managing money
- Avoid family fights over money and valuables

IF YOU HAVE A WILL

Your Will establishes how and to whom assets will be distributed upon your death and names a personal representative or executor (the fiduciary) to settle your affairs at death. It also allows you to name a guardian for minor children should you pass away.

A Will only "speaks" at death, which means it only has legal effect when someone passes away. Depending upon how your assets are titled at death, your survivors may need to submit your Will for probate. This is the process of proving to a court of appropriate jurisdiction that a document is a deceased person's Will. When proved to the satisfaction of the court, the document is filed, docketed, and possibly recorded, and is then said to be admitted to probate or probated.

A Will does not provide protection if you become incapacitated during your lifetime.

When Someone Becomes Incapacitated

Incapacity is when individuals can no longer care for or look after their affairs on their own, as a result of an illness or disability. This is common with those who suffer from: dementia, strokes, Alzheimer's, Parkinson's, and/or accidents.

CONSERVATORSHIP—"LIVING" PROBATE

If you become incapacitated, you may be subject to a conservatorship or guardianship proceeding, also known as "living" probate. In a public trial in probate court, you'll be declared to lack legal capacity due to mental or physical impairment, and a court-appointed guardian will be granted authority over your care and decision making. In some instances, your financial affairs will be managed by one person, while someone else will make decisions regarding your personal care.

There are no guarantees your court-appointed conservator will be someone of your choosing or even someone you know. Many conservators are professionals who receive payment for this service, which your estate will pay for.

AVOIDING LIVING PROBATE

A Will, unfortunately, does not avoid living probate. You may be able to avoid living probate by using a Revocable Living Trust coupled with the following essential documents which provide greater control over your health care and financial affairs in the event of incapacity.

Other Essential Documents for Incapacity

- **HIPAA Release:** Grants access to the medical information of another person
- **Health Care Power of Attorney:** Grants the authority to make medical decisions for another person
- **Living Will:** Expresses end-of-life wishes and decisions
- **Property Power of Attorney:** Grants authority to manage the finances of another person

When Someone Passes Away

WITHOUT A WILL

If you pass away without a Will or any other estate planning documents, it is called dying intestate. When a person dies intestate, determining the distribution of the deceased's assets then becomes the responsibility of the probate court to distribute those assets pursuant to the scheme established by the laws or your state of residence without taking your specific circumstances into consideration.

If you choose not to create an estate plan, you surrender your control of the disposition of your assets to the courts. The government will decide who will make decisions about your affairs after your death. You may or may not know the person chosen and you may have no previous relationship or contact with them. If a court of competent jurisdiction determines that individual should make decisions on your behalf and your family's behalf, your family will have little recourse. The probate process is also public, opening your affairs to anyone interested.

WITH A WILL

When someone passes away with a Will, the estate goes through the "death" probate process before distributions from the estate can occur. This is the legal process where the court administers a person's estate after their death. It ensures all taxes and debts are paid and the deceased's intentions with respect to inheritance of property and assets, as expressed in the Will are carried out by the nominated executor.

Each step involves legal documentation and validation, and more importantly, proper accounting. As noted above, the probate process is a public process which makes your affairs available for anyone to gain access to sensitive information—relatives, neighbors, colleagues, creditors, or possibly even scam artists.

WITH A LIVING TRUST

At death of the creator or "grantor" of a Trust, Trusts go through a process called trust administration. It is important to follow the instructions of the Trust to manage and administer the assets in the Trust according to the wishes of the deceased grantor. The trust administration process is private and can often take less time and cost less than probate (depending on the rules of your new state).

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POSSIBLE ISSUES TO ADDRESS WHEN YOU MOVE

When moving from one location to another, we recommend you seek out a qualified and experienced estate planning attorney to review your existing plan.

A local attorney will determine which parts of your plan will work differently or could create unforeseen issues for either you or your loved ones and they will ensure your plan will work as intended to achieve the best results for your family.

Wills

Most states have different requirements regarding what makes a Will valid; however, if a Will was valid in the state where it was executed, it will be valid in the new state. Even though the Will is valid, there may be other issues that arise from relocating.

For example, some states restrict who can serve as a fiduciary (the person you chose to settle your affairs). If your named fiduciary qualifies in one state, but not another, then your intended fiduciary will not be permitted to serve, and you will have no choice in who does. That fiduciary may be required to satisfy additional requirements, like posting a bond or establishing a restricted depository account, which could cause delays in the distribution of assets to your family and cost unnecessary attorneys' fees.

Probate

All probate matters are public, and anyone has access to those details, however the time and cost of probate can vary dramatically from state to state and even county to county.

If you purchase real property in a new state and do not put it in the name of a Trust, it will be subject to probate at your death. In addition, if you own property in multiple states, your estate will have to initiate multiple probate proceedings. These legal proceeding costs will decrease your estate's overall value and will lower the amount available for your beneficiaries. In addition, your fiduciary may be required to travel to those states to settle those probates, which also decreases the overall value left in the estate.

Be sure to check into the average costs and timeframes that it takes to close a probate in a new area. You may want to discuss how a Living Trust can avoid probate if properly funded (assets are put into the Trust that will avoid probate).

Trusts

Each state sets forth its own rules regarding administration of a Trust both during the life of the grantor (the creator of the Trust) and after the death of the grantor. These considerations include state taxation, asset and creditor protection, the duties and responsibilities of fiduciaries, the rights of beneficiaries, the roles that an independent third party may serve, duration, and privacy.

When you move to a new location, it's important to have a qualified estate planning attorney review any Trusts you created previously, even if they were irrevocable. The original Trust may need to be updated because circumstances have changed or simply to comply with local laws and the attorney can advise how best to accomplish this and any requirements that your trustee will need to follow in the new state.

As mentioned above, if you purchase a new home in your new state and do not retitle the home in the name of your Trust, it would be subject to probate at your death. Any assets that were not previously transferred to the Trust and any new assets not titled in the name of the Trust would be subject to probate.

- Trust Administration

Trust administration varies not only from state to state but also from life to death. During life for example, if an individual sets up an irrevocable Trust, that Trust is subject to administration and irrevocable trusts may be subject to different rules based upon the Trust statutes in that state.

It is also vital to understand what happens when the grantor of a Trust dies. Each state imposes its own rules regarding the duties and responsibilities of trustees and the rights of beneficiaries and third parties.

ADDITIONAL PLANNING CONSIDERATIONS

Here are some common areas of concern where major mistakes can happen when plans are not reviewed or updated:

- **Births, adoptions, children with special needs, and deaths of family members**
  - Each family member should be named and anyone with special needs should be identified to preserve benefits; remove deceased family members to avoid later confusion
- **New marriages, remarriages, divorces, and blended families**
  - Review the protections of a Trust created for a newly married family member, remove anyone who is no longer part of the family and consider protections for a newly divorced family member
- **Changes in beneficiaries, successor trustees, and other named agents**
  - Confirm that each named individual will qualify to serve in the new state and that each understands the role that they will serve
- **Newly purchased or refinanced property not put into the Trust**
  - Inquire whether property should be transferred to the Trust and review any insurance policies
- **Jointly owned property**
  - Consider whether the property should keep its joint character or if titling another way would better suit your new situation
- **Successor trustee and fiduciaries are not informed or prepared to handle the scope of their duties and obligations**
  - Trustees, successor trustees, and fiduciaries should consult with a qualified estate planning attorney to understand their duties

under the Trust and Will, in addition to the duties imposed by state law. Failing to follow the terms of the Trust, Will or state laws will result in a breach of fiduciary duty which could lead to litigation and delays.

- **Maintaining residences or businesses in multiple states**
  - If you plan to have homes in more than one state, it is important to plan for your permanent residence for tax purposes. It's essential to be consistent as to where you consider your residence. If you intend to be a resident of State 1, you should register your vehicle there, have your driver license there, vote there, etc. You should avoid any conflicting representations with another state.
  - If you have a business in one state but reside in another, you should consult with an attorney regarding whether it makes sense to change the domicile of your business
- **Health Care Directives and Powers of Attorney**
  - Each state has statutes regarding the requirements for health care documents and powers of attorney. The forms from your prior state may work in your new state or they may not. If they do not and you fail to update them with the properly recognized forms, you may need to go through a "living" probate as described earlier in this guide.
  - Most of the time, these documents are needed in an emergency or unplanned situation and that is not the time to find out a provider will not accept them because they are missing key concepts or language or are just unfamiliar.
  - These forms give someone else the power to act on your behalf, usually because you are unable to do so. As such, if that individual cannot use the document as intended, your care could be decided upon by provider policy rather than your expressed wishes. Likewise, if a financial institution does not accept the power of attorney presented, your family may not be able to access your funds without court intervention.
- **Incapacity and Medicaid Planning**
  - If you are concerned like millions of Americans of becoming incapacitated or paying for a long-term illness or care, reviewing your estate plan is critical, especially when moving to a new area.
  - Each state manages Medicaid differently. Some states make qualifying for Medicaid relatively easy, while others impose more significant restrictions. If you sold your home when you moved, that may affect your ability to qualify for Medicaid and other long-term care benefits.

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OTHER RELOCATION CONSIDERATIONS

TAX PLANNING

Most states will recognize a Trust or Will as "valid," if it is valid in the state where it was executed. However, even if the document is valid, it may not address state taxation issues. Each state can impose its own income, gift, estate, and inheritance taxes and understanding how those taxes work and planning for them is essential for anyone relocating to a new primary residence state.

For example, a married client with $2 million may not need to do tax planning in a state without a state estate or inheritance tax. However, if they move to another state in which their assets exceed the state estate tax exemption amount, then tax planning as it relates to their estate plan may make more sense in order to shelter the state exclusion amount from being included in the survivor's taxable estate.

COMMUNITY PROPERTY VS. NON-COMMUNITY PROPERTY

Forced Election

If you move from one state to another, the new state may make different provisions for your spouse at your death. Each state has rules regarding how much a decedent spouse needs to leave the surviving spouse which is called an elective share.

For example, community property states typically don't have an elective share while non-community property states almost always do. However, even among the non-community property states, the size of the elective share can vary. In many states, it's one-third but in some it's significantly more.

If you are a married couple and your planning was designed to provide the elective share amount but no more, you will want to confirm that it still works in the new state by talking to a qualified estate planning attorney.

Step-Up in Basis

Often attorneys in a non-community property state don't know what to do about community property due to unfamiliarity. However, it should be preserved if possible due to the beneficial step-up in basis of both halves at the death of one of the spouses. It is important if you move from a community property state to a non-community property state to preserve the character of property from that community property state unless and until you have consulted with an estate planning attorney to discuss your options. Make sure your new attorney is experienced and knowledgeable regarding community property.

When clients move into a community property state, often they'll want to change all their property (or at least whatever had been owned together) into community property to get that advantageous "double" step-up in basis. If you are moving from a non-community property state to a community property state, it is important to review your assets and discuss whether it makes sense to convert them to community property.

YOUNG FAMILIES AND CHILDREN WITH SPECIAL NEEDS

Families with young children should also consider who they had previously named as guardians. Do those guardians now live in another state and if so, would they be willing to relocate to raise your children or are you comfortable with your children moving to another state if you die while they are minors? Your plan may need to be updated to address what is in the best interest of your children and how you would like them to be raised.

Adult dependent children present another complex area for relocating clients. If a guardianship was established in the prior state, then it may be desirable to transfer it to the new state. Even if no formal guardianship exists, if you make medical or financial decisions for an adult child, you should consult with an attorney in the new state to determine whether you need specific documents to continue making those decisions.

The new state may require you to obtain Letters of Guardianship demonstrating your legal authority to make medical or financial decisions for that child and the new state may require annual doctor exams, reports, and accounting.

POSSIBLE CONSEQUENCES IF YOU FAIL TO REVIEW YOUR PLAN

If you do not plan for the above issues in your estate plan, below are a few of the potential consequences:

- Unnecessary taxes, fees, and administrative costs
- Assets spent on nursing home and other long-term care needs rather than leaving an inheritance for the family
- Distribution of assets to beneficiaries who have creditor issues or whose assets would last longer if placed in a Trust
- Children's inheritance lost or reduced due to lack of protection from divorces, creditor claims, and other issues
- Confusion and stress
- Family disputes which can delay receipt of assets and/or dissipate assets to attorneys
- Your plan fails to work the way it was intended

NEXT STEPS

Be sure to use our step-by-step **Relocation Action Plan Checklist** and **Estate Plan Review Checklist** to help identify any possible areas of concern.

Feel free to contact our office at **(775) 823-9455** anytime to review your questions so you can feel comfortable knowing your plan will work the way you intended when you and your family need it the most.

We look forward to meeting you soon!

NOTES

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