

Planning Ahead: Estate Planning Strategies to Avoid Probate and Tackle Elder Law Challenges in Retirement

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ASU Retiree Association

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ATTORNEY AT LAW



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Bivens & Associates, *at a glance*



- Drafting Estate Planning Documents
- Post-death Probate & Trust Administration
- Business Entity Formation
- Elder Law
- Special Needs Planning
- Guardianships/Conservatorships
- Long Term Care Planning
- Serving Arizona for 20 years

2021-2024– Ranking Arizona

#1 ESTATE/TRUST LAW



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Stephanie A. Bivens, Esq., CELA
Attorney | Author | Speaker



MOST INFLUENTIAL
WOMEN
IN ARIZONA
2022

Honors & Distinctions

- **Certified Elder Law Attorney** by National Elder Law Foundation (fewer than 600 nationwide)
- **AZ Business Leaders 2023 by Ranking Arizona**
- **Most Influential Women In Arizona 2022 by Ranking Arizona**
- **America's Most Honored Lawyers 2022 – 2024**
- **Top Attorneys in the Southwest 2023**
- **Southwest Super Lawyers 2019- 2024 Elder law**
- **Top Valley Lawyers- Estate Planning**
- **Attorney of the Month- Attorney at Law Magazine, Greater Phoenix**

Author

- How to Pay for Long Term Care in Arizona Using Free Government Benefits
- Private Information Guide: A Personal and Financial Organizer



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Goals of Estate Planning

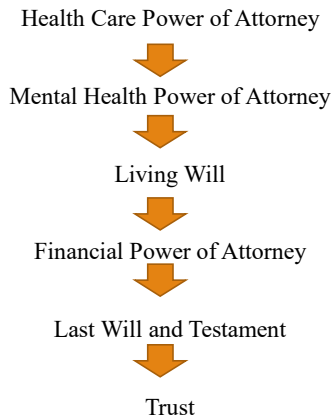


- Decide who will make medical decision on your behalf
- Establish who will handle finances
- Structure finances so loved ones are well cared for
- Strategize best way to minimize costs of dying from funeral expenses to taxes and legal fees
- Determine if beneficiaries can handle an inheritance
- Avoid family conflict
- Determine who will care for minor children
- Documents your wishes

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Comprehensive Estate Plan



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Health Care and Mental Health Power of Attorney



HCPOA

- Designates Agent(s) to make medical and out-patient mental health treatment decisions for patient
- Effective when patient is not able to communicate his/her medical treatment wishes
- Also contains patient directions for organ donation, autopsy and final disposition instructions
- May allow Agent to control visitation between patient and others
- May authorize Agent to handle funeral/burial/cremation arrangements
 - ***WITHOUT HCPOA- Surrogate Decision Maker Law applies.***

MHPOA

- Designates Agent(s) to consent to in-patient mental health treatment in Level One behavioral hospital
- Avoids Court Guardianship for in-patient mental health Level One behavioral hospital treatment
 - ***WITHOUT MHPOA- Court Guardianship with Inpatient Mental Health Authority likely required.***

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Living Will



Written Instruction regarding patient's wishes for Medical Treatment:

- Typically used for End-of-Life Treatment directions
- Quality of Life vs. Quantity of Life
- Not same as DNR "Do Not Resuscitate"
- Gives family/Agent under HCPOA clear instruction on decisions to be made



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HIPAA Release



Governs disclosure of Patient's Private Medical Information

- Used to release medical information to any number of persons named
- Effective during patient's capacity and incapacity
- Allows for "committee work" by family in assisting persons with Dementia



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Supportive Decision-Making Agreements



- Gives older adults and persons with disabilities the help they need to make choices about their own lives.
- Adult “supporter” designated on Agreement who may:
 - Provide supported decision-making, including assisting the adult in understanding the options, responsibilities and consequences of the adult’s life decisions, without making those decisions on behalf of the adult;
 - Assist the adult in accessing, collecting and obtaining any information that is relevant to a life decision, including medical, psychological, financial, educational or treatment records;
 - Assist the adult in understanding the information listed above; and
 - Assist the adult in communicating the adult’s decisions to appropriate.
- Supporter is NOT a surrogate decision-maker for the adult and does not have authority to sign legal documents or bind the adult in a legal agreement.
- New option under the law- enacted fall of 2023.



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Durable Financial Power of Attorney



- Designates Agent(s) to handle financial matters for the principal.
 - Agent(s) selection
 - Effective Date (immediate or springing)
 - Medicaid Gifting
 - Gifts to My Agent
 - Vulnerable Adult Section
- ***WITHOUT FPOA IN EFFECT- COURT CONSERVATORSHIP MAY BE REQUIRED***
- Every Adult needs a Durable Financial Power of Attorney



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Last Will and Testament



- Holographic (hand-written)
- Signed by Testator, and two witnesses – may be attested and self-proved
- Appoints Personal Representative (PR)
 - Persons/Entity responsible for administering estate
- Distributes "Estate" assets only
- Probate is required to grant PR authority to act
- Probate required if Estate has >\$100,000 real property or >\$75,000 in other assets
- ARS Sec.14-5301. Spouse by Will may appoint a Guardian for his/her Surviving Spouse
 - Effective if appointing spouse will likely become unable to care for the incapacitated person within two years, or upon death of appointing spouse



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Revocable Trust



Three parties to a Revocable Trust:

- Trustor
- Trustee
- Beneficiary

Advantages of Trust (over Will):

- Avoids probate, private
- Protects against financial exploitation of vulnerable Trustor
- Easier lifetime and post-death administration



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Direct Beneficiary Designations



- Life Insurance
- Annuities
- Retirement Accounts (e.g., 401K, IRA)

- Real Property- Beneficiary Deed

- Brokerage Accounts- Transfer of Death (TOD)
- Bank Accounts- Pay on Death (POD)

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Personal Property Memorandum



- Separate Document referred to in both Will and Trust
- Lists personal property (i.e., household items and personal effects) to be given to specific individuals upon death of property owner
- Handwritten, dated and signed
- Avoids family fights over personal property
- ****Valuable or Sentimental items****

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How to Avoid Probate



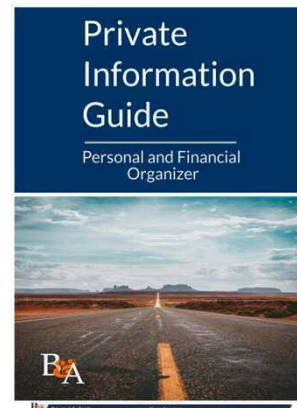
- **Jointly Titled Accounts** (e.g. husband-wife)
 - Not recommended parent-child
- **Trust titled assets**
- **Beneficiary designations** (e.g., life insurance, annuities, retirement accounts, POD-bank accounts, TOD- brokerage accounts, vehicles- ADOT beneficiary form)
- **Real Property** – Beneficiary Deed, JTWROS, or CPWROS

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Bonus: Private Information Guide- Personal and Financial Organizer

- Guidebook of your life: personal, medical, and financial information
- Prepare for the unexpected
- Don't leave family scrambling and confused searching for your important life information
- Saves time, stress and money for those handling your affairs in event of incapacity or death
- Attorney Crafted after 20+ years working with families
- Easy to Use fillable .pdf format
- Arrives in your In-Bin
- Compliments any estate plan



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Comprehensive Estate Plan



Health Care Power of Attorney



Mental Health Power of Attorney



Living Will



Financial Power of Attorney



Last Will and Testament



Trust



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Estate Plan Review



Once your plan is in place, periodic review is required. Have your plan reviewed if:

- > 3 Years Old
- Economics or personal changes
- Death or incapacity of Named Agents, Successor Trustees, Personal Representatives
- Out of State documents



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Thank You. Questions?



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