



Attorneys and
Counselors at Law

200 FORUM BUILDING
777 High Street
Eugene, OR 97401-2782

PHONE: 541/686-9160
FAX: 541/343-8693

James K. Coons
John G. Cox
Douglas M. DuPriest
Frank C. Gibson
Stephen A. Hutchinson
E. Bradley Litchfield
Zack P. Mittge
Thomas M. Orr
William H. Sherlock
Patrick L. Stevens
Mark M. Williams

**THE ELDER LAW DIFFERENCE:
Practical Estate Planning Strategies**
Learning the Law™ Seminar
28th in a Series
April 18, 2007

LIFETIME ESTATE PLANNING STRATEGIES

JOHN G. COX, ATTORNEY

I. INTRODUCTION

- A. Variety of documents
- B. Some are in effect only while alive
- C. Some are in effect only upon passing away
- D. Some are effective both during life and upon passing away

II. EFFECTIVE ONLY WHILE ALIVE

A. Powers of Attorney

- 1. General Power of Attorney
- 2. Specific Power of Attorney
- 3. Durable vs. Non-Durable Power of attorney

3.1 Durable Power of Attorney effective when signed if competent and continue in effect even if become incompetent.

3.2 Non-Durable is effective when signed if competent but does not continue if become incompetent.

B. Advance Directive

- 1. Oregon Statutory Form; form can be confusing but don't change it.
- 2. Provides guidance if you are not able to do so for tube feeding and life sustaining measures in five scenarios.
- 3. Binding on all parties.
- 4. No Oregon case if change form.

- C. POSLT Physician Ordered Sustaining Life Treatment
 - 1. Pink in Color
 - 2. Goes on refrigerator so emergency personnel can see it.

- D. Power of attorney for Mental Health Treatment.
 - 1. Only for mental health treatment.
 - 2. Different from Advance Directive.

III. EFFECTIVE DURING LIFE AND ON PASSING AWAY.

- A. Living or Revocable Trust (sometimes referred to as Loving Trust).
 - 1. Proper legal title is (Name) "Revocable" Trust.
 - 2. A legal instrument signed during one's life which takes effect at the time of signing and directs the management and distribution of the property in a Trust during the life and after death of the one who creates the trust; it can be revoked or amended during life but becomes irrevocable upon death and substitutes for a Will.
 - 3. Settlor. The person who creates the Trust.
 - 4. Trustee. The person who administers the Trust.
 - 5. Settlor can name self as first Trustee. Then need successor trustee on passing of Settlor.
 - 6. No income tax effect by creating Trust.
 - 7. Third persons, such as creditors, do not notice any difference so cannot be used to avoid creditors.
- B. Naming of beneficiaries on life insurance contracts or retirement plans.
- C. Joint ownership with right of survivorship.
- D. Lifetime gifts.
 - 1. Annual exclusion for 2007; \$12,000 per person and indexed to inflation.
 - 2. In addition One Million gift tax credit amount for each person.
- E. Irrevocable Trusts. Usually used only in large estates or where unique planning is needed.

IV. EFFECTIVE ONLY ON DEATH

- A. Will. A legal instrument signed according to certain formalities during life to take effect on death to pass property and which can be revoked or changed up to the time of death.
- B. Probate. A legal process and proceeding of passing title to property with or without a Will if no probate alternative is available.
- C. New Oregon Uniform Trust Code brings Trust Administration closer to Probate Procedure.

D. Probate of a Will.

1. Advantages.

- 1.1 With UTC, not many advantages over trust now as far as finality to proceedings and terminating obligations to creditors.
- 1.2 Easier to hold certain assets than revocable trust such as Subchapter S corporation stock and professional businesses (i.e. MD, CPA or attorney). An advantage if you own a small business or are a professional.
- 1.3 Allows orderly distribution where beneficiaries do not cooperate but so does trust now.
- 1.4 Allows for income tax planning while estate is open but so does trust now.
- 1.5 Partial distributions of property can be made with court approval while the estate is open so can trust now but no need for court approval.

2. Disadvantages.

- 2.1 There are court costs, attorney fees, CPA fees and personal representative (PR) fees to be paid. If the PR is a family member, usually the PR fees are waived because they are income taxable to the recipient and the PR is a beneficiary. Same category of fees for a Trust but generally a quicker process so amounts to less.
- 2.2 Estate must be open at least four (4) months in order to notify creditors. While there is access to funds to pay creditors etc., it requires court approval at some point. A Trust has to be open for four months but there is no need for court approval.
- 2.3 Public has access to court files including terms of the Will and nature and value of property. There is no public access to a Trust and you can use Certification of Trust and FEIN to open accounts.
- 2.4 Provides opportunity for legal challenges as to validity of Will, such as competency of decedent or if decedent was unduly influenced. Now the same thing can happen with a Trust but same low standard both to prove competency.
- 2.5 Must be signed in conformity with certain formalities. Not so with Trust.
- 2.6 A Will must be amended or revoked according to same formalities as execution. No formalities with Trust.

C. Factors In Considering A Revocable Trust versus a Will.

1. Age. The younger the individual, the less need for a Revocable Trust. The older the individual the greater the use of the Trust.
2. Existence of mental or emotional disability. Less so now with UTC.
3. Nature and value of assets in the estate. This cuts both ways.
4. Personality of the individual.
5. Organized versus unorganized. If unorganized, a Trust can be a tool to assist.

6. Likes to be in control versus likes assistance in managing assets. In most Trusts the individual who creates the Trust is the initial Trustor, which means that individual is in control. If the individual is not able to manage the Trust the successor Trustee, usually the spouse, or family member then manages the trust.
7. Attention to detail.

V. CONCLUSION