VASALLO LAW GROUP

Estate Planning Guide

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FROM THE ATTORNEY

Frank A. Vasallo, Esq

Welcome to the VASALLO LAW GROUP's Probate and Estate Planning Guide. My name is Frank Vasallo, and I am honored to share this resource with you. As an attorney passionate about helping families protect what matters most, I've seen firsthand the importance of proactive estate planning. My goal with this guide is to simplify the complexities of probate and estate planning, making it accessible and practical for everyone.

After graduating from Berklee College of Music with a degree in Jazz Composition, I pursued my legal education at Nova Southeastern University Shepard Broad College of Law. There, I was a proud member of the NSU Trial Association, participated in the Trial Advocacy Summer Institute, and earned recognition on the Dean's List along with the Pro Bono Honor Program Bronze Award. My practice areas include Business and Civil Litigation, Contract Disputes, and Real Estate Litigation, but estate planning holds a special place in my heart because it touches every family, including my own.

In this guide, you'll find essential information on navigating probate, the power of a Revocable Trust, and other critical estate planning tools. Our aim is to debunk common misconceptions—like the belief that a Last Will and Testament avoids probate—and provide clarity on how to best secure your family's future. Beyond estate planning, our firm is here to support you in real estate, family law, business matters, and more.

Thank you for trusting us as your legal resource. We are here to guide you every step of the way.
Warm regards,

Frank A. Vasallo, Esq
Founder

1. Understanding the Probate Process

Probate is the legal process through which a deceased person's estate is managed and distributed.

This involves validating the Last Will and Testament (if one exists, if not then distributed according to Florida's Law of Intestacy), identifying assets, paying debts and taxes, and distributing the remaining property to the rightful heirs.

COMMON MISCONCEPTION:

A LAST WILL AND TESTAMENT DOES NOT AVOID PROBATE.

Many believe having a Will prevents probate, but it simply guides the court on asset distribution. Probate is still required to validate and execute the Will.

Why Probate Can Be Costly:

- **Attorney Fees**: Typically around $4,000 minimum.
- **Additional Costs**: 3% of estate assets exceeding $100,000.
- **Time-Consuming**: Probate can take months or even years.

2. What is Estate Planning?

Estate planning is the process of anticipating and arranging for the management and distribution of a person's estate during their lifetime, in case of incapacitation, and after death.

Key Goals:

- Planning for incapacity.
- Reducing uncertainties in probate.
- Maximizing estate value by minimizing taxes and expenses.
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Estate planning can be simple or complex, based on individual goals. It often includes:

- Revocable Trusts
- Last Will and Testament
- Beneficiary Designations
- Property Deeds
- Powers of Attorney (POA)
- Living Wills with Healthcare Surrogacy Designations

3. Trusts

A **Trust** is a legal arrangement where a **Trustor (Settlor)** transfers assets to a **Trustee** to manage for the benefit of **Beneficiaries**.

Common Types:

- **Revocable Living Trust**: Flexible, allows changes during your lifetime.
- **Irrevocable Trust**: Cannot be changed without agreement by Trustee and Beneficiaries, however asset protection benefits.

Benefits:

- **Avoids probate.**
- Provides privacy (unlike Wills).
- Irrevocable Trusts offers asset protection.
- Manages assets in case of incapacity.

4. The Power of a Revocable Trust

A Revocable Trust is one of the most effective tools for estate planning. It allows you to manage your assets during your lifetime and ensures a smooth transfer to your beneficiaries without the need for probate.

This type of trust is ideal for individuals who want to protect their assets, retain full control, and provide clear instructions for the distribution of their estate, all while avoiding the delays and costs associated with probate.

As the creator of the Revocable Trust, you maintain complete authority and control over your assets for as long as you live.

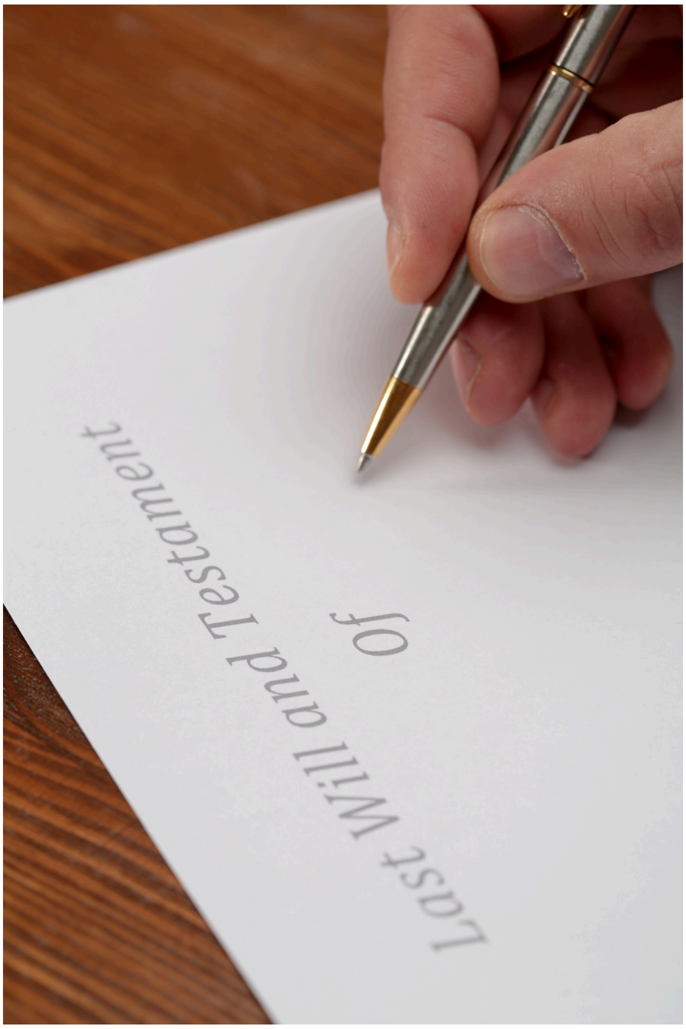
Key Benefits:

- **Avoids Probate**: Assets in a revocable trust bypass the probate process.
- **Maintains Privacy**: Unlike a Will, trust details are not part of public records.
- **Flexibility**: Can be modified or revoked during your lifetime.
- **Incapacity Planning**: Ensures continuous management if you become incapacitated.

The Revocable Trust is ideal for Individuals who:

- Own **multiple pieces of real estate**, especially in separate states (to avoid ancillary probate)
- Have **blended families** or complex family dynamics
- Desire **privacy** regarding their estate distribution
- Want to **ensure asset management** in the event of incapacity
- Are **business owners** needing succession planning
- Wish to provide for **minor children**, **individuals with disabilities**, or beneficiaries with specific needs

5. Last Will and Testament



A **Last Will and Testament** is a legal document that outlines your wishes regarding the distribution of your assets after death. It allows you to specify who will inherit your property, appoint guardians for minor children, and name a **Personal Representative (Executor)** to manage your estate and ensure your instructions are carried out during the probate process.

Key Points About a Will

- **Does NOT Avoid Probate**: Assets go through court, which can be slow, costly, and public.
- **Clear Asset Distribution**: Specifies who gets what, reducing confusion.
- **Prevents Family Disputes**: Clear instructions help avoid conflicts.
- **Names Guardians for Minor Children**: You choose who cares for them.

Without a Will (Dying Intestate in Florida)

- Florida law determines who inherits your assets.
- The court appoints someone to manage your estate.

Why Have a Will—But Consider a Trust

- **Control**: Decide who inherits and manages your estate.
- **Protection**: Secure your family's future.
- **Peace of Mind**: Your wishes are clear.

Why a Trust Might Be Better:

- **Avoids Probate**: No court delays.
- **Saves Time & Money**: Faster, more cost-effective process.
- **Privacy**: Unlike a public Will, it remains confidential.
- **Covers Incapacity**: Manages your assets if you become unable to do so.

A Trust offers more control, privacy, and efficiency than a Will alone.

6. Powers of Attorney (POA)

A **Power of Attorney** (POA) is a legal document that grants authority to an Agent (also known as an Attorney-in-Fact) to act on your behalf in legal, and financial. The powers granted can be broad or limited, depending on the type of POA.

Types of Power of Attorney in Florida:

1. **General Power of Attorney:**
   - Grants broad authority over financial, legal, and personal matters, such as managing bank accounts, buying or selling property, and handling investments.
   - Terminates if you become incapacitated unless it is specifically made durable.
2. **Durable Power of Attorney** *(most typical)***:**
   - Remains effective even if you become incapacitated, making it essential for long-term planning.
   - Must contain specific language stating it is “durable” under Florida Statutes §709.2104.
   - Becomes effective immediately upon signing, unless limited by specific instructions.
3. **Limited (or Special) Power of Attorney:**
   - Grants authority for specific tasks, such as selling a property or handling a single financial transaction.
   - Terminates once the task is completed or after a set time.

CHOOSING AN AGENT (ATTORNEY-IN-FACT):

SELECTING A TRUSTWORTHY, RESPONSIBLE INDIVIDUAL IS CRITICAL, AS THEY WILL HAVE SIGNIFICANT CONTROL OVER YOUR AFFAIRS. CONSIDER THEIR FINANCIAL ACUMEN, RELIABILITY, AND WILLINGNESS TO ACT IN YOUR BEST INTEREST.

Key Legal Considerations in Florida:

- **Execution Requirements:**
  - Must be signed by the principal in the presence of two witnesses and a notary public (Florida Statutes §709.2105).
  - The witnesses cannot be the Agent.
- **Springing POA Not Allowed:**
  - Florida no longer recognizes springing POAs (which become effective only upon incapacity) as of October 1, 2011.
  - Instead, durable POAs are effective immediately unless otherwise specified.
- **Specific Powers Must Be Expressly Stated:**
  - Certain powers, like creating or amending trusts, making gifts, or changing beneficiary designations, require clear, specific language in the POA (Florida Statutes §709.2202).
- **Revocation:**
  - A POA can be revoked at any time while you are competent by providing written notice to the Agent and any relevant third parties.

7. Living Wills & Healthcare Surrogate Designations

A **Living Will** specifies your preferences for medical care if you're unable to communicate, especially concerning life-sustaining treatments.

A **Healthcare Surrogate Designation** appoints someone to make medical decisions on your behalf if you're incapacitated.

Benefits:

- Ensures your **medical wishes are respected**.
- **Reduces family conflicts** during difficult times.
- **Provides clarity** for healthcare providers.

8.Enhanced Life Estate (Ladybird Deed)

An **Enhanced Life Estate Deed (Ladybird Deed)** allows you to retain control over your property during your lifetime and transfer it directly to beneficiaries upon your death—without probate.

Advantages:

- **Full Control**: You can sell, refinance, or change the property anytime without beneficiary consent.
- **Flexible Beneficiaries**: Add or remove beneficiaries whenever you want.
- **No Probate**: The property passes directly to beneficiaries, avoiding court involvement.

It's a simple, affordable way to avoid probate for real estate.

Why a Trust Might Be Better:

While a Ladybird Deed is simple, a Revocable Living Trust offers more benefits:

- **Privacy**: Beneficiaries' names stay private, unlike in a deed, which is public record.
- **Manages More Assets**: A trust handles real estate, bank accounts, and more—all in one place.
- **Covers Incapacity**: A trust manages your assets if you become unable to do so, not just after death.
- **Flexible for Complex Plans**: Better for detailed instructions, like caring for minors or spreading out inheritances.

In short, a Ladybird Deed is simple, but a **trust offers more control, privacy, and protection**.

9. Our Additional Legal Services

At **VASALLO LAW GROUP**, we offer a comprehensive range of legal services beyond estate planning to meet all your personal and business needs:

Family Law
Our experienced team specializes in divorce, custody disputes, alimony, and other family legal issues. We offer compassionate, personalized solutions to protect your family's well-being.

Real Estate
Are you purchasing a new property or need guidance through the closing process? We provide expert legal support for all real estate matters. Schedule a consultation to learn how we can assist you.

Probate
We prioritize providing comfort and clarity during challenging times. Discover why our probate administration services are the trusted choice for families navigating estate matters.

Business Formation & Litigation
Looking to establish a corporation or optimize your business structure? We offer comprehensive guidance on asset protection, entity formation, and litigation support.

Contracts
Ensure your agreements are legally sound and enforceable. We provide thorough contract review, drafting, and negotiation services to protect your interests.

For personalized legal support, contact us today!

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