



SPIEGEL & UTRERA, P.A.

L A W Y E R S

www.amerilawyer.com

THANKS FOR INQUIRING!

***Just think - within minutes you can
order your Living Trust right over the phone.
It's easy. It's quick. And you'll save
a substantial amount of money.***

Listen: I'm glad you inquired about our services because there's no reason for you to spend a ton of money to obtain a living trust, when you don't have to.

If you've priced the same identical services, you know that being there "in person" is costly. Very costly. Yet the services you receive are no better than those you can get from us directly on the phone.

Let me explain...

We will form your Living Trust under the personal direction of a qualified and experienced attorney who makes certain that all requirements are met. For one low fee, you get...

- Your Living Trust
- Memorandum of Living Trust
- Pour Over Will
- 2 Durable Power of Attorneys
- Appointment of Pre-Need Guardians
- Appointment of Health Care Surrogate
- Your Living Will

Included in this fee are all of the above. The works!

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The following is provided to help you understand the pros and cons of Estate Planning:

7 DANGEROUS ESTATE PLANNING MISTAKES

Mistake #1: Relying on the government's estate plan. If you do nothing to set up an estate plan, your property will be distributed according to the laws of the state where you live. The laws may require the judge to give your property to someone other than the person you would have chosen.

Mistake #2: Relying on a will. If you have only a will, your heirs will face serious and costly problems, one of which is probate. True, a will is the most common estate planning tool, but it is not a good tool for you to solely rely on.

Mistake #3: Relying on joint tenancy. Almost everyone owns their home and bank accounts in joint tenancy. Yet joint tenancy often causes families horrible legal nightmares. You have many other options better than owning property in joint tenancy and with substantially less risk.

Mistake #4: Relying on conservatorships and guardianships. These court-supervised methods of dealing with a person's incapacity are costly, time-consuming and horribly burdensome. By setting up a living trust, you avoid the need for conservatorships and guardianships.

Mistake #5: Assuming you can avoid probate because your estate is small. Most people assume their estates are worth far less than they actually are. The small estate exemption that avoids probate is permitted only for estates with a value of less than \$60,000 in personal property. Most estates do not qualify.

Mistake #6: Relying on a form kit for your living trust. No two personal situations are the same. That's why no two living trusts should be drafted the same way. The only estate plan you can depend on is one that is prepared by a qualified attorney to meet your particular needs.

Mistake #7: Relying on the wrong attorney. Most attorneys know very little about estate planning. And some estate planning attorneys earn a substantial part of their income from probating estates. Make sure you hire an estate planning attorney whose primary concern is your best interest and who wants to help you avoid probate.

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9 DISASTROUS MISCONCEPTIONS ABOUT WILLS AND TRUSTS

Misconception #1: A will avoids probate. A will is the primary tool of the probate system. In effect, your will is a letter to the judge telling him how you want your property distributed. The judge then must make sure all your property is collected and appraised, and all your bills and taxes are paid, before he can distribute your property to your heirs.

Misconception #2: A will prevents quarrels over assets. No. Wills are the most contested of all legal documents. Wills actually encourage challenges over assets because once submitted to probate, the contesting party can simply make their case known to the judge without so much as even filing a lawsuit.

Misconception #3: Property can be distributed according to the terms of your will in only a few weeks. No. The typical duration of probate in Florida takes from ten months to three years and costs anywhere from 5% to 8% of the gross value of your estate.

Misconception #4: Living trusts are only for large estates. No. Living trusts are for anyone who wants to avoid the costly and lengthy process of probate. People with estates as small as \$50,000 can benefit from a living trust. People with larger estates can benefit even more.

Misconception #5: A living trust is a public document. No. Your living trust can remain private because it does not have to be recorded or published in any way. The only people who will know about your trust are the people you choose to disclose it to.

Misconception #6: A living trust cannot be changed. Wrong. You can change and even revoke your living trust any time you wish. The decision is entirely up to you.

Misconception #7: A living trust must have a separate tax return. No. A revocable living trust does not need a tax return of its own. Your personal tax return is sufficient for the IRS.

Misconception #8: When you set up a living trust, you lose control of your assets. No. When you set up your living trust, you simply name yourself and/or your spouse as trust managers, called "trustees". In this way, you never give up control.

Misconception #9: The cost of your estate plan is only the cost of drafting up the documents. No. The cost of your estate plan is both the cost of drafting the documents and the cost of distributing the property to your heirs. Wills are inexpensive to arrange, but costly once submitted to probate. Initially, a trust costs more than a will, but a living trust completely avoids probate.

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5 DISADVANTAGES OF A LIVING TRUST

Disadvantage #1: Initial cost. While the cost to set up your trust is more than writing a will, the cost to distribute property to your heirs is much less than going through probate.

Disadvantage #2: Your property must be put into the trust. But don't worry. The process of re-titling assets and changing the names on bank and brokerage accounts is easier than you may think.

Disadvantage #3: The potential for poor management. Your choices for successor trustee(s) should be family members or friends you can trust. Corporate trustees, such as banks, are also an option.

Disadvantage #4: Refinancing property is inconvenient. Some mortgage companies and banks require that you take real estate out of your trust before they will refinance your property. When the refinancing is complete, you simply transfer the property back into your trust.

Disadvantage #5: Keeping a list of assets in your trust. When you want to add something to your trust, you simply title it in the name of the trust and add it to your list.

HOW TO SELECT THE RIGHT ATTORNEY TO PLAN YOUR ESTATE

1. Choose an estate planning attorney. Other lawyers simply don't have the knowledge or experience to plan your estate planning.
2. Choose an attorney who wants to help you avoid probate. Warning! Some estate planning attorneys earn their livings from probate, so choosing an estate planning attorney isn't enough.
3. Choose an attorney you like and trust. Nothing is more important than a lawyer/client relationship built on friendship and trust.
4. Choose an attorney who does the work himself. If the attorney gives your work to his assistant or paralegal, then why hire the attorney?
5. Choose an attorney who provides excellent service. When you hire an attorney, you deserve excellent service. Anything less is not acceptable.
6. Choose an attorney who will return your phone calls quickly. If the attorney won't respond promptly to your needs, find someone else.
7. Choose an attorney who charges fair fees. If the fee is too low, the lawyer may be leaving something out. And if the fee is too high, the lawyer may be overcharging you.
8. Choose an attorney who offers free annual reviews. This assures that you'll know when your plan needs attention.

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WHICH ESTATE PLAN IS RIGHT FOR YOU?

	No Will	Will	Living Trust
Average cost to set up	-0-	\$150	\$1500
Average cost after death	\$3000	\$5000	\$ 250
Average total cost of plan	\$3000	\$5150	\$1750
Time to resolve after death	10 mos. - 3 yrs.	10 mos. - 3 yrs.	2 weeks
Avoids probate	No	No	Yes
Avoids a second probate for out-of-state property	No	No	Yes
Documents remain private	No	No	Yes
You keep control	No	No	Yes
Use of assets during resolution	No	No	Yes
Avoids problems of joint tenancy	No	No	Yes
Helps prevent quarrels over assets	No	No	Yes
Reduces estate taxes	No	No	Yes
Avoids guardians & conservators	No	No	Yes
Reduces stress on your family	No	No	Yes
Avoids court involvement	No	No	Yes

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ESTATE TAX

If you are a U.S. citizen or resident alien, there is effectively no estate tax, federal or in Florida (although there may be in certain other states) if your gross estate is under the present limit of \$675,000. Gross estate will include all property at current fair market value on date of death plus any life insurance policies, etc. You may wish to make an inventory of your assets, possibly with the assistance of your financial planner, your accountant, or myself. If you are married, you may each leave \$675,000 to anyone, thereby allowing a married couple to leave \$1,350,000 to the next generation. However, if the husband, for example, leaves his entire \$650,000 to his wife, then when she dies her estate will be over \$650,000 and thus owe around \$200,000 in taxes. This can be changed with a unified credit Trust, which is a little more complicated, but which can allow a married couple to leave up to \$1,350,000 to the children tax-free. The surviving spouse would have all the income and principal if needed. Please ask for a further explanation of this type of Trust if applicable. If your spouse is not a U.S. citizen, you will not get the unlimited marital deduction unless you use a different kind of Trust, called a Qualified Domestic Trust or QDT.

YOUR ESTATE PLANNING DOCUMENTS SHOULD INCLUDE:

REVOCABLE "LIVING TRUST"

You are the Grantor or Trustor, that is, the person transferring the assets to the Trustee (yourself as Trustee) to be administered according to your written Trust agreement. You will also most likely serve as the initial Trustee to administer the Trust. If you are married you may both establish a joint Trust, with both signatures required, or more likely with one signature being sufficient (just as a joint checking account). This way if one of you becomes incapacitated, the well spouse will be able to sign alone.

However, if you are a foreign person, or if your spouse is not a U.S. citizen, your spouse will generally not be a Trustee. Instead, you will be required to use a bank or U.S. person. The estate tax consequences of being a non-U.S. citizen are complicated.

If you are a widow or widower, you may wish to have a son or daughter listed as Co-Trustee with either signature required. Or you may wish to serve as sole Trustee, with a son or daughter listed as Successor Trustee, to serve only if you become incapacitated or die. If that son or daughter is unable to serve years from now when needed, you will want to list several successors in order that they would serve. You will want the Trust never to be without a Trustee that you have chosen.

If you have no children, or your children cannot serve, or you wish not to use your children, you may choose any person even if not related to you. You may also choose a bank with Trust powers, although you should be aware of the yearly costs. However, in a large, complex estate, a banking institution with Trust powers may have advantages that outweigh the costs. Should your spouse be a resident or non-resident alien you will be required to use a U.S. person, which is best a bank, if you wish to preserve the marital deduction for estate tax purposes. Your particular situation should be discussed on an individual basis.

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In most situations, you, or you and your spouse will be Co-Trustees, and when you both are no longer capable of managing the assets, your child will serve. The reason we call this a "living" Trust is that, should you ever become **incapacitated**, the Trustee of your choice will handle things for you while you are living, rather than have the court appoint an expensive stranger as your guardian.

The Trust will also provide that while you both are living, all the income will belong to you both, no matter who is Trustee. This makes it a "Grantor Trust" so that you do not need a special tax identification number and you do not need to file any different tax returns. You use your social security number and file the same 1040 tax return as you did before.

The Trust will say where the assets will go after you, or you and your spouse, pass away. It in fact will function as your "Will" without having to be probated, as to assets properly transferred to the Trust. Our Trust will provide how the assets will be distributed no matter which children survive. We will generally list percentages after each beneficiary. You may provide that the beneficiary will inherit only "if living" or you may provide that if not living then that share will pass equally to that person's lineal descendants (possibly your grandchildren), which is called "per stirpes" (which means "by the roots").

Generally, your Trust will list your children equally, although a Trust should be designed to meet your individual needs and situation. You should make notes for yourself prior to your visit with me of any concerns or questions you will wish to discuss with me.

POUR-OVER WILL

The purpose of the Pour-Over Will is to put any asset into the Trust through probate that you neglected to put in your Trust during your life. For example, your spouse may find, after your death, a forgotten stock certificate that is still in your name alone. The stock transfer agent will not know who to pay after your death and will hence require you to get a probate court order as to whom to pay. The Pour-Over Will may then be used to get this asset into the Trust so it can be divided and distributed with the rest of the estate. Or, there may be an asset you do not own until after your death, such as an insurance settlement from the insurer of the truck that killed you. The Pour-Over Will may designate the Trustee of your Trust as the Personal Representative who has authority to sue the truck driver and will direct that any proceeds be paid by the probate court into your Trust. Although most of the Pour-Over Wills are never used, it is important to have one in case it is needed. The Pour-Over Will may also be probated to extinguish claims of creditors if that is a concern. The costs of such a simpler probate, if needed, will be far less expensive than a full probate of all assets and in the meantime the Trust assets can be accessed.

DURABLE POWER OF ATTORNEY

The Durable Power of Attorney is a document you will keep under your control, but you will tell your spouse and/or child that there is a Power of Attorney authorizing them to act if you are alive, but incapacitated. For example, if you are in a car accident and taken to the hospital, who will be able to get your car from the storage lot to where it is towed?

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If the car is titled in your name alone, your spouse or, if your spouse is out of town or in the same accident, your child or friend cannot sign your name to get the car released without specific written Power of Attorney which states that it survives your disability. We prepare a Durable Power of Attorney for each spouse to the other spouse and, in case your spouse is deceased or also incapacitated, a second Durable Power of Attorney to a child or friend from each spouse. Since some entities, such as the car-tow lot, may require only a simple Power of Attorney, we prepare both a simple form and a long form. Without the Power of Attorney, you would be required to have a guardian appointed by the court, which is expensive and extremely cumbersome. However, there are situations when someone else may require a guardian be appointed by the court and you will want the guardian to be a family member rather than some stranger, attorney, or professional guardian. The law allows you to make a pre-need designation of guardian.

PRE-NEED GUARDIAN DESIGNATION

The Pre-Need Guardian states that if ever a guardian is necessary, you desire it to be your spouse or your child or friend. If, for example, you became incapacitated in a major automobile accident and the other truck driver was sued and his insurer paid a half million dollars into a future medical fund, they would most likely require a court supervised guardian. You can now designate who that person should be and that you prefer that your present investments not be liquidated and reinvested by the court. The pre-need designated person is named in both the long form power of attorney and in the separate "Pre-Need Guardian Designation" form.

HEALTH CARE SURROGATE DESIGNATION

We will also prepare a Health Care Surrogate Designation, in which you designate who will make medical decisions should you not be able. This is sometimes called a Health Care Power of Attorney. The person you designate should also eventually sign the form to indicate their consent to so act before using it.

LIVING WILL

The Living Will, so called, is really entitled "Declaration Pursuant to Life Prolonging Procedures Act". It reflects your desire that you not be connected to the "machine" if you are brain dead or terminally ill, with no chance of recovery. Your spouse or family would have to bring the declaration to the hospital where two doctors would be required to verify that you are terminally ill with no chance of recovery, whereupon you would be disconnected from life-support machines. The reason it has become part of the estate planning package is because it prevents a hospital from keeping you alive by artificial means just to collect several thousand dollars per day, often draining the estate of the surviving spouse.

MEMORANDUM OF TRUST

No matter which kind of Trust, you will also execute a "Memorandum of Trust" which can be copied by every bank where you have an account and every stock broker, insurance company, etc., where you have assets.

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**ONLY \$249.95 GETS YOU A COMPLETE FLORIDA
LIVING TRUST PACKAGE ORDERED IN MINUTES.
CALL TODAY WITH YOUR CREDIT CARD HANDY.**

Do call today. You'll be off the phone and have your Living Trust under way in mere minutes.

P.S. Not sure? Have questions? Call any of the numbers below today. Let us answer them for you obligation-free. We want to help. Thanks.

CORAL GABLES, FL	FT. LAUDERDALE, FL	TAMPA, FL	NEW YORK, NY
CALL: 305-445-2700 800-603-3900 FAX: 305-447-8900 343 Almeria Avenue Coral Gables, FL 33134	CALL: 954-630-9800 800-465-8500 FAX: 954-561-7900 3526 North Federal Hwy Fort Lauderdale, FL 33308	CALL: 813-871-5400 800-658-5900 FAX: 813-870-2500 3623 West Kennedy Blvd. Tampa, FL 33609	CALL: 212-962-1000 800-576-1100 FAX: 212-964-5600 45 John Street, Suite 711 New York City, NY 10038

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with lots of information for you!
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