



# Estate Planning

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# Why Plan?

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- Failing to plan can lead to difficult situations upon incapacity and death.
- Resolving those situations can be expensive and emotionally difficult.
- If questions are answered by someone other than the decedent (through Court intervention or parties' agreement), there is no guarantee that the decedent's wishes will be followed.

**Why  
Plan?**

***Dying Without  
a Plan***

**Married?**

**Not Married?**

# Dying Without a Plan (Married)

- Community Property to spouse
- Separate Property:
  - If children:
    - $\frac{1}{2}$  to spouse,  $\frac{1}{2}$  to children;
  - If no children:
    - $\frac{3}{4}$  to spouse,  $\frac{1}{4}$  to parents or siblings of decedent;
  - If no children and no parents or siblings, 100% to spouse.

# Dying Without a Plan (Unmarried)

- To children / grandchildren if any;
- To parents, or if none, to siblings, or if none, to extended relatives.

# Dying Without a Plan (Disposition of Remains)

- In absence of valid directions from decedent, people with authority to make arrangements for body:
  - Spouse
  - Children
  - Parents
  - Siblings
  - “Most responsible party available”

# Why Plan?

## *Incapacity Without a Plan*

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- Guardianship / Conservatorship.
- Court proceedings to determine capacity and person (or entity) best equipped to manage personal care and finances.
- Can be contentious, embarrassing, and expensive to establish.





# What Should the Estate Plan Include?

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- The right estate plan for your client will depend on your client's goals, family, and assets.
- Client may need tax planning, may need to plan for a fractious family, or may simply want assets to pass in a different way than the statutory defaults discussed above.





# Components of Basic Estate Plan

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## Will:

- Directs how assets will be passed at death;
- Names person(s) responsible for carrying out the Will (Executor / Personal Representative);
- May establish one or more trusts on death for tax-planning or control purposes.

## Powers of Attorney:

- Delegate decision-making authority for healthcare and financial decisions.



## **Components:**

### **Powers of Attorney (RCW 11.125)**

Who should make decisions for client if they are alive but unable to manage their own affairs?

How much power should Agent have, and when should it become effective?

Document should help Agent understand their role.



# Components: Wills

Who should administer client's estate (pay last bills, deal with lawyers and CPAs, make sure wishes are carried out)?

Who should serve as guardian of minor children?

How should assets be distributed when client dies?

Is there a need to establish a trust?



## **Components:**

### **Healthcare Directive (RCW 70.122.030)**

Communication from client to physicians and decision-makers regarding care preferences.

*Different than Power of Attorney.*

Also sometimes called “Living Will.”



## **Components:**

### **Directions re Disposition of Remains (RCW 68.50.160)**

Right to control disposition of one's own remains.

Must be in writing and signed by a witness.

Should name Agent to direct type, place, and method of disposition.



## **Components: Trusts**

Can be included in Wills for tax planning or control purposes.

For some people, a Revocable Trust is used as an alternative to a Will as the main dispositive vehicle.

We'll talk more about Revocable Trusts in a bit.





# What Assets are in the Client's Estate?



**Mine. Mine. Mine.  
All Mine!**



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# Community Property

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- For married (and even unmarried) couples, issues relating to separate and community property can crop up when one partner dies.
- Can present issues if not properly planned for.
- Relevant for:
  - Second marriages.
  - Children from prior relationships.
  - Unmarried couples.



**Mine. Mine. Mine.  
All Mine!**



## **Community Property**

- What property belongs to you?
- What property belongs to your spouse / partner?

# Community Property Basics

- Generally, all property other than separate property.
- Commonly, all earnings during marriage, regardless of how titled.
  - **RCW 26.16.030(1)** *Neither person shall devise or bequeath by will more than one-half of the community property.*



## Community Property Basics (Cont'd)

### Separate Property

- All property owned before marriage.
- Gifts or inheritances acquired after marriage.
- Separate property should be kept separate to stay separate.





# Not Married?

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- No “common law” marriages.
- Does “community property” doctrine apply to unmarried couples?
  - No, **but...**

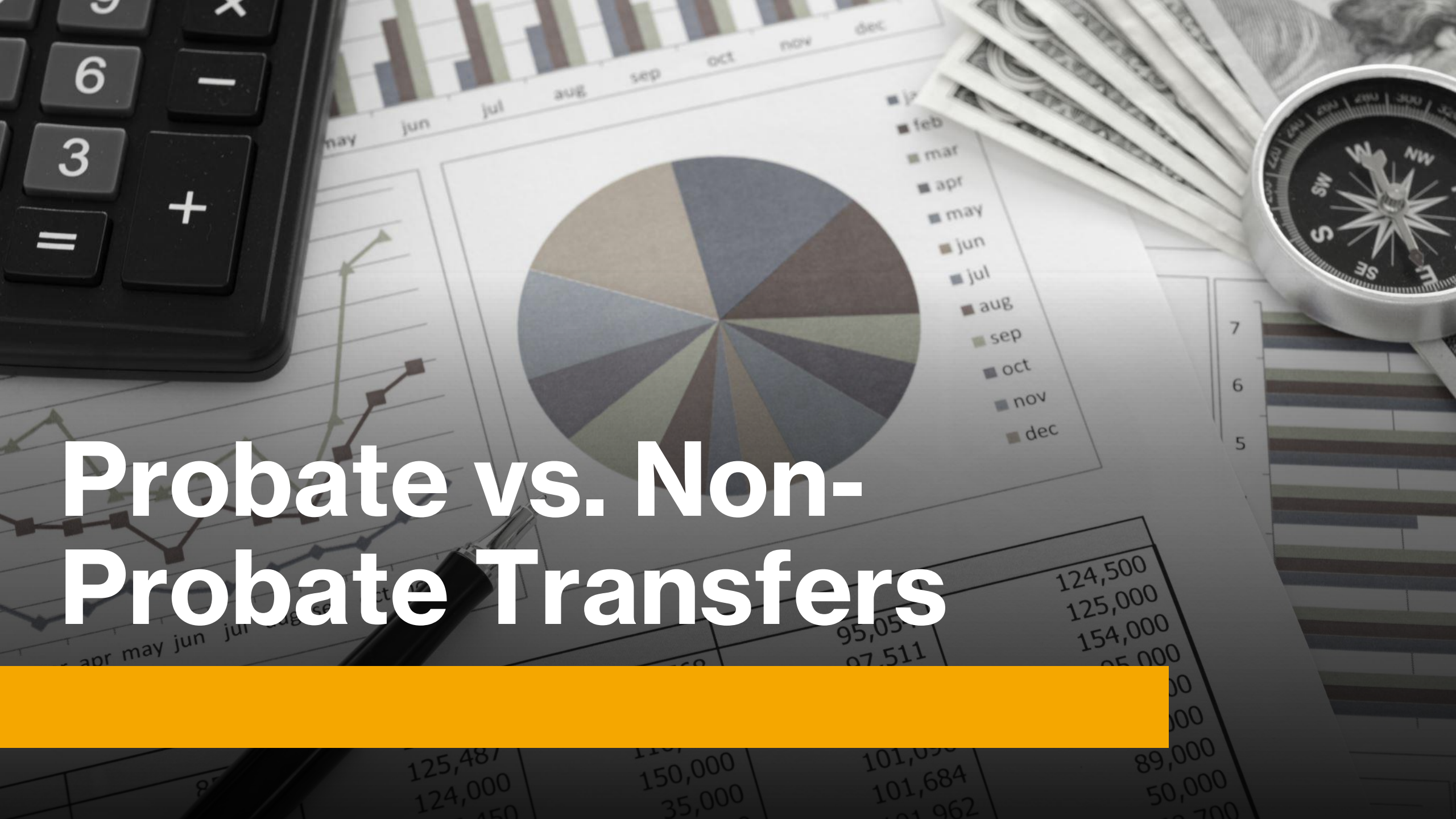


# Just & Equitable Division Even if Unmarried

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- Under the Committed Intimate Relationship doctrine, courts may find that property of unmarried couples acquired during the relationship should be distributed in a “just and equitable” manner at the relationship’s end.
  - **Same standard as divorce.**
  - **Only applies to property acquired during relationship (unlike divorce).**





# Probate vs. Non-Probate Transfers

125,487  
124,000  
1450

110,  
150,000  
35,000

101,050  
101,684  
101,962

89,000  
50,000  
2,700

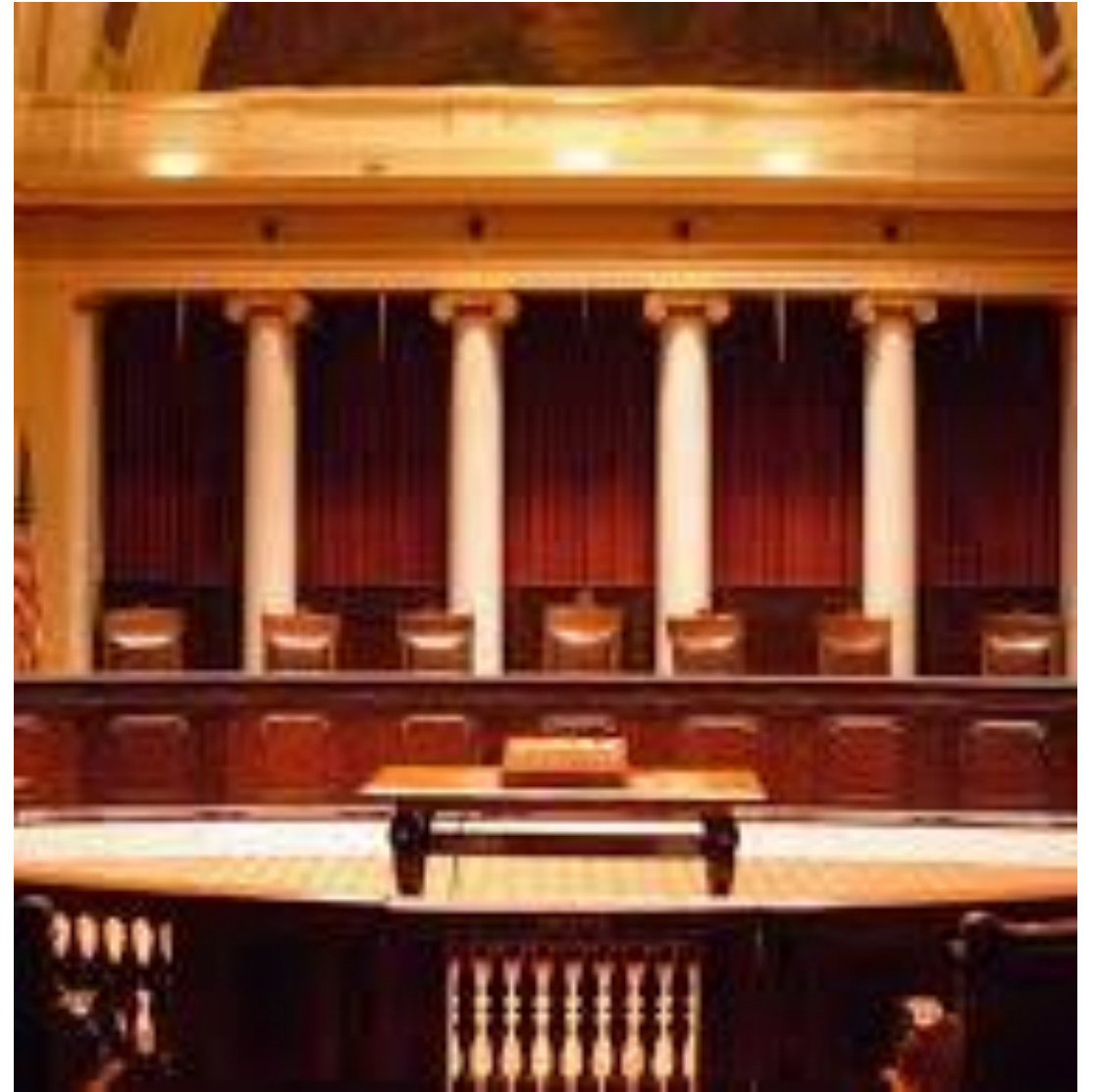
124,500  
125,000  
154,000  
25,000  
000  
000

95,050  
07,511

7  
6  
5

# What Is Probate?

- Court-supervised process of paying debts and transferring assets.
- The official “proving” of a Will.



# Non-Probate Transfers

Retirement  
Accounts

Life Insurance

Transfer on Death  
Accounts

Transfer on Death  
Deeds

Accounts / Property  
Held as “Joint  
Tenants with Right  
of Survivorship”

Community Property  
Agreement

Revocable Trusts





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# Do You Need a Living (Revocable) Trust?

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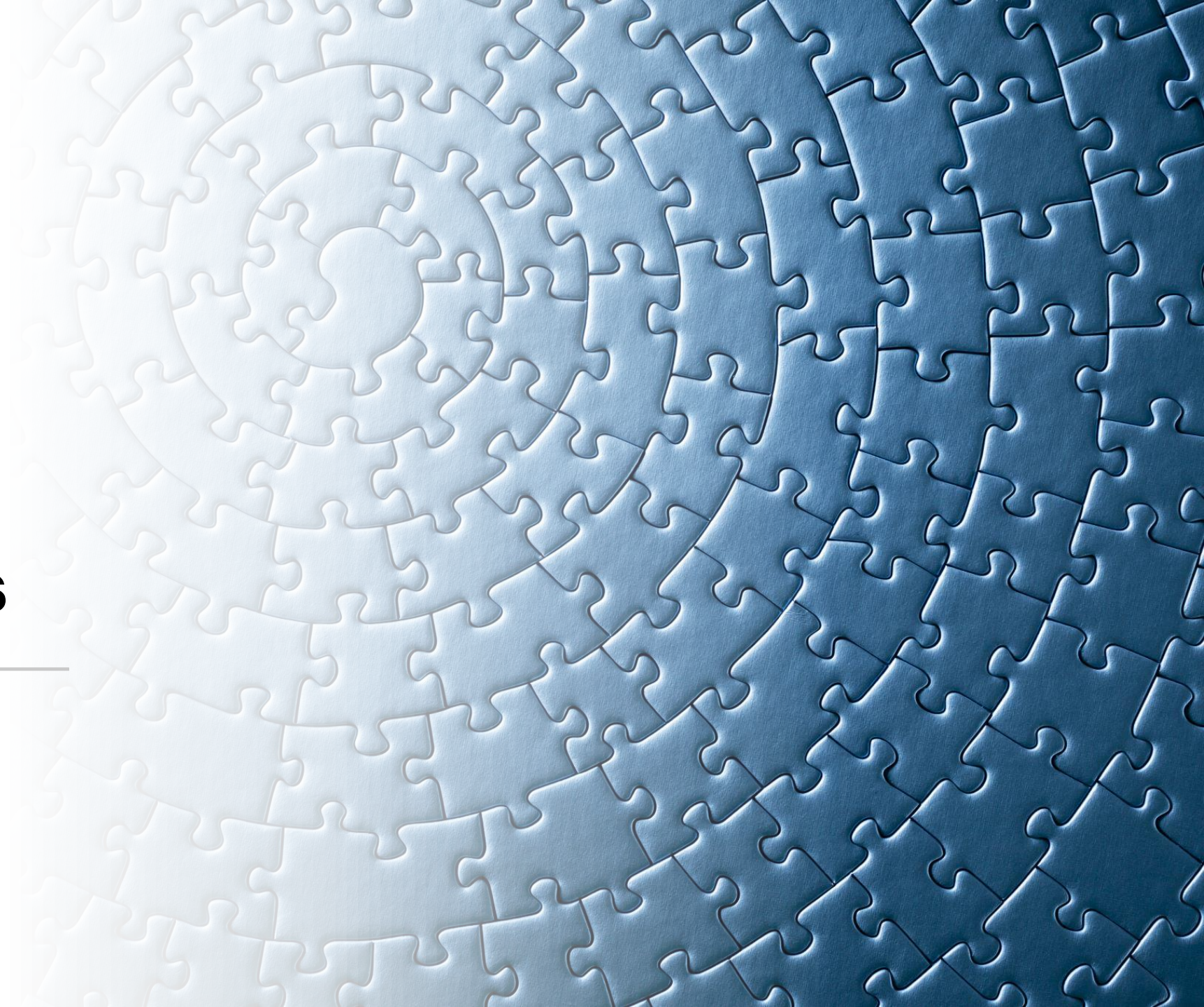
- Sidesteps need for probate when properly funded, because transfers occur during life, and there is nothing left to transfer at death.
- More costly / complicated than Will-based plan.
- Appropriate for people with out-of-state real estate.





# Other Considerations

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**Other  
Considerations:**

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Executor / Personal  
Representative

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Trustees

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**Picking the  
Right  
Fiduciaries**

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Agents for Financial &  
Healthcare Decisions

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Guardians for Minors

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## **Other Considerations:**

### **Picking the Right Fiduciaries**

Take into account family “frictions” and imagine how people might behave when grieving.

If money is not passing outright to children or spouse, who should manage that money?

Ideally, alternates will be younger than client.



# Taxes

- High federal exemption from estate and gift tax.
- Set to expire on Dec. 31, 2025.
- Lower exemption and no “portability” in Washington.
- Transfers may still be free of FEDERAL tax but may be subject to Washington State estate tax.



# Charitable Giving





# Questions?

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