

BASIC ESTATE PLANNING LAW IN UTAH

Wills, Durable Powers of Attorney, and Advance Health Care Directives

A Presentation to the Utah Wills-for-Heroes Volunteers


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by Deacon Haymond
Jones Waldo Holbrook & McDonough, P.C.
801-534-7254 / dhaymond@joneswaldo.com

I. Introduction

- A. The Wills for Heroes (WFH) program.
 - 1. What it does.
 - 2. Origin and history.
- B. 15 states have now adopted the Wills for Heroes program. There are currently 10 new states in the process of adopting it. By way of comparison, in March of 2008, there were nine states (including Utah) that had adopted the WFH program.
- C. The Utah Wills for Heroes program.

II. What Today's Presentation Will Cover

- A. Acquaint Volunteers with the WFH process in Utah.
- B. Discuss important estate planning issues and common questions likely to arise at the WFH event.
- C. Provide practical tips for Volunteers on interview issues, the WFH software, and situations where the WFH program may not meet the needs of a First Responder. These tips are indicated by a  symbol.
- D. NOTE: By written acknowledgment, the WFH First Responders have agreed that they are not your clients. However, for simplicity and brevity these materials sometimes use the word "client" instead of the words "First Responder" to refer to those individuals who you will be assisting at the WFH event.

III. The Wills-for-Heroes Process in Utah

- A. The First Responder is given a Wills for Heroes Questionnaire (see Attachment 1, at p. 13) to complete and bring to the WFH event.
- B. At the event, the First Responder meets with a Volunteer, who reviews the Questionnaire and answers any questions the First Responder may have.
- C. Using the HotDocs document assembly software, the Volunteer interviews the First Responder and answers the HotDocs interview questions.
 1. In general, the HotDocs interview questions follow the Questionnaire.
 2. A summary of the HotDocs interview questions is set forth in Attachment 2, at p.17.
- D. When all of the HotDocs interview questions are answered, the Volunteer “assembles” (computer-generates) and prints the Wills for Heroes documents, which are:
 1. Last Will and Testament
 2. Instructions for Gift of Tangible Personal Property by Written Statement
 3. Gift of Tangible Personal Property by Written Statement
 4. General Durable Power of Attorney over Assets
 5. Utah Advance Health Care Directive
 - ▶ A sample of these documents will be provided in a separate handout.
 - ▶ An overview of these documents appears in Attachment 3 at, p. 18, and a summary of these documents is set forth in Attachment 4, at p. 19.

NOTE: If you are not yet familiar with the new Utah Advance Health Care Directive, it is recommended that you become familiar with it so you will be prepared to answers questions that First Responders may have about it.
- E. **The computer-generated documents are only a DRAFT of the final WFH documents.**
 1. The Volunteer should review the assembled documents for accuracy and completeness, make any necessary changes, and reprint any changed pages or documents.
 2. The First Responder should also review the documents, especially for spelling of names.
 3. Volunteers may find the HotDocs “Answer Summary” to be a useful tool in reviewing the WFH documents.
- F. When the documents have been reviewed and finalized, the First Responder takes them to a separate station where they will be signed, witnessed, and notarized.

IV. Important Issues – Last Will and Testament

- A. Wills – Typical distribution scheme.** The typical distribution scheme in a Will is depicted in Attachment 5 (p. 25), “Property Passing at Death.” The usual order of distribution is:
1. Specific gifts, if any,
 2. Tangible personal property, and
 3. Residue (i.e., the remaining estate).
- B. Wills – Gift by written statement.** Tangible personal property can most conveniently be distributed as a gift by a written statement. (Utah Code § 75-2-513.)
1. Tangible personal property refers to items of personal and household property and includes motor vehicles, furniture and furnishings, appliances, clothing, jewelry, heirlooms, collections, guns, club memberships, silverware, glassware, china, pets, books, pictures and other works of art, stamp collections, family memorabilia, etc.
 2. Tangible personal property excludes money.
 3. The main advantages to using a gift by written statement are that it does away with the need to mention specific gifts of tangible personal property in the Will and that consequently the testator can revise or revoke the written statement at any time without going through the formalities of changing his or her Will.
 4. Therefore, the Questionnaire and the HotDocs interview questions refer only to specific gifts of real property and money and intentionally omit mention of tangible personal property.
- C. Wills – Nonprobate property.**
1. As depicted on Attachment 5 (p. 25), nonprobate property passes outside the Will and therefore avoids probate.
 2. Examples of nonprobate property:
 - a. Jointly owned property passes to the surviving joint owner(s).

EXAMPLE: a home owned by husband and wife as joint tenants with rights of survivorship passes to surviving spouse, regardless of what the Will says.

- b. Property with a beneficiary designation (such as life insurance, retirement accounts, and P.O.D. accounts) passes to the designated beneficiaries.
3. Explanation to client. The principle of nonprobate property should be pointed out to the client, so that he or she will remember to coordinate the passing of the nonprobate property to be consistent with the dispositive provisions of the Will.

EXAMPLE: John Smith has two children, Jimmy Smith and Suzie Smith. Jimmy is a wealthy dentist and Suzie is a struggling single mother. In his Will, John specifies that 30% of the residue of his estate will pass to Jimmy and 70% of the residue will pass to Suzie.

John also has a life insurance policy that names his “children” as the beneficiaries. But John wants the policy death benefit to pass in the same percentages as his Will. Consequently, he needs to change the beneficiary designation on his insurance policy to match the percentage distributions under his Will.

D. Wills – Choosing a personal representative

1. Duties. In general, the personal representative (also known as the “executor”) files a probate; collects and preserves the decedent’s property; pays the decedent's debts and taxes; and distributes the remaining property to the beneficiaries designated in the decedent's Will. If the decedent’s Will names guardians for minor, incapacitated, or disabled children, the personal representative also will be responsible to have the court appoint those guardians. For more information, see www.utahprobate.com/PRDuties.htm. “List of Selected Duties and Powers of a Personal Representative in Utah.”
2. Who to choose. The ideal person for this task should be trustworthy, fair-minded, and good at detail and follow-through. The most common first choice of a married client for personal representative is the client's spouse. After that, consider trusted adult children, friends or advisors, or a bank trust department.
3. Co-personal representatives. Sometimes a client will want to name more than one person to serve simultaneously as co-personal representatives. This is not recommended because of the extra time required for the co-personal representatives to reach decisions and take action.
4. Co-personal representatives – second marriages. Sometimes a client in a second marriage will want to name their current spouse and one of their children from their first marriage to serve simultaneously as co-personal

representatives. This is usually a bad idea because it virtually ensures a fight between the spouse and the child over estate administration and distribution.


E. Wills - Spouse issues

1. Effect of a prenuptial agreement. If a client has a pre-nuptial agreement, the client's estate plan needs to be consistent with the pre-nup.




Interview Tip: Explain to the client that dealing with pre-nuptial agreements is not within the scope of the Wills for Heroes program and that the client probably should seek assistance from an estate planning lawyer to fully deal with this issue.

2. Effect of a later divorce. If the client later divorces, the divorce will preclude the former spouse from claiming "surviving spouse" status under the Will; it will revoke any revocable disposition of property to the former spouse by Will, trust, deed, life insurance, retirement or pension plan, etc.; and it will revoke a nomination of the former spouse as personal representative. (Utah Code §§ 75-2-802(1), 75-2-804(2).)
3. Intestate share of a surviving spouse. Sometimes a client will ask what the surviving spouse would be entitled to outside the Will. The answer is that a surviving spouse is entitled to the decedent's entire intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse. If any of the decedent's surviving descendants are not descendants of the surviving spouse (for example, children from a previous marriage), then the surviving spouse is entitled to the first \$50,000, plus one-half of any balance of the intestate estate, minus any nonprobate transfers to the surviving spouse. (Utah Code § 75-2-102.)
4. Second marriage. A client in a second marriage is sometimes faced with the challenge of wanting to provide for the surviving spouse upon the client's death but also wanting to be sure that the children from the first marriage are not disinherited. Frequently, this challenge centers on the surviving spouse's rights in the marital residence.
 - ▶ Practical solution: One simple solution to this challenge is for the client to purchase sufficient life insurance to provide an appropriate inheritance to his children from the first marriage and then let the surviving spouse keep the marital residence. This avoids the risk that the surviving spouse may convert the marital residence to her own use, and the unpleasant situation of the children from the first marriage waiting for the surviving spouse to die before they receive their inheritance.

 **Interview Tip:** The WFH program is not set up to provide solutions to this problem. If the client needs a more sophisticated solution to achieve their goals regarding the balancing of the interests of the second spouse and children from the previous marriage, then the client probably should seek assistance from an estate planning lawyer to achieve their goals.


5. Disinheriting a spouse. Unless there is an enforceable pre-nuptial agreement permitting it, a married individual cannot disinherit his or her spouse. By law, the surviving spouse is entitled to an elective share of the deceased spouse's estate, which equals one-third of the "augmented estate." (Utah Code § 75-2-202(1).)

▶ Partial distribution to a spouse. This same rule applies to a partial distribution to a spouse. If the distribution is less than one-third of the augmented estate, the surviving spouse will be entitled to receive the distribution and then petition for the difference between the distributed amount and the elective share.


 **HotDocs Tip:** To make a partial distribution to a client's spouse/partner with the rest going to the client's children (such as children from a prior marriage) as equal-priority beneficiaries, at the Estate Disposition Information dialogue, under Client gives remaining property (Residue) to:

- Skip the Spouse if he/she survives and Children in equal shares options,
- Check the Other beneficiaries in specified percentages option, and
- There list the client's spouse/partner and children and their percentage distributions.

F. Wills - Children issues


 **HotDocs Tip:** At the Child List screen, for each living child be sure to TAB PAST the "Deceased" box. Otherwise, HotDocs puts in extraneous characters in the list of children on page one of the Will.

1. Protection from inheriting too soon. Many parents want to protect their children from inheriting too soon, before the child has had the opportunity to attend college or get started in a trade or career. The Wills-for-Heroes Last Will provides this protection in its Article 3, in a section, entitled "Optional Trust for Beneficiaries under Specified Age," which gives the executor the authority to create a trust for a minor under a specified age.

 **Custom Drafting Tip:** By default, the specified age is 25. If the client wants a different age, the Volunteer should edit the document after it is assembled. The number "25" appears only once in this section, on the second line,

immediately before the defined term “(the ‘Distribution Age’).” Simply replace “25” with the age desired by the client.


2. Unequal distributions to children. Occasionally, a client will want to make unequal distributions to children rather than equal shares.

 **HotDocs Tip:** To make an unequal distribution among children, at the Estate Disposition Information screen, under Client gives remaining property (Residue) to:, skip the Children in equal shares option, check the Other beneficiaries in specified percentages option, and there list the client’s children and their percentage distributions.

3. Other special child situations. Other special situations regarding children that may occur include:


- a. Stepchildren. Some clients with stepchildren may want them to inherit under the Will, the same as their natural children.
- b. Disinheriting a child. Very rarely, a parent will want to disinherit a child.

The HotDocs software provides for both these situations.

 **HotDocs Tip:** If a child is to be disinherited, they should not be listed with the other children on the Child List screen.


- G. Wills - Guardian issues.** A parent with minor children or a disabled or incapacitated child will want to name guardians to care for the child(ren) in the event of the parent’s untimely death. In assisting this parent, the Volunteer may want to raise some or all of the following issues with the client:

1. How to name guardians. A guardian can be named as an individual or a couple.

 **Interview Tip:** If the client designates a couple as guardians, the client may not have thought about what would happen if the couple were to divorce, which could possible disqualify them from being guardians if their appointment is joint. Consider explaining this to the client. If, notwithstanding a divorce, there is one individual of the couple who the client would want to continue as guardian, the client may want to name that person as the sole guardian instead of the couple.

2. Notice to guardians. Although not legally required, it is a good idea for the client to notify persons who the client has named or would want to name as guardians. If the reaction of the proposed guardians is negative, then the client will likely want to choose someone else.


3. Right of surviving natural parent to serve as guardian. In general, a surviving natural parent has the right to be appointed guardian of a minor child, unless the parent is adjudged incapacitated or unless all parental rights of custody have been terminated or suspended by circumstances or prior court order. (Utah Code §§ 75-5-202(2), 75-5-202(1)(b)(iii), 75-2-204.) The Wills for Heroes Last Will anticipates this and states that the named guardians would only serve if the surviving natural parent could not serve.

 **Interview Tip:** If the client is in a second marriage and has minor children from a previous marriage, the client needs to understand that under the Will their former spouse has the first right to serve as guardian.

V. Important Issues – Durable Power of Attorney and Advance Health Care Directive

A. General Durable Power of Attorney over Assets

1. The client should read the first section of the Power of Attorney, entitled “NOTICE TO PERSON SIGNING THIS DOCUMENT.” This section cautions the principal, in capitalized bolded type, that this is an important legal document that gives the agent broad powers, which will exist indefinitely unless revoked by the principal.
2. Springing versus immediate power. The Power of Attorney form currently has only a “springing” power, i.e., under Section 3 it takes effect when two physicians certify the principal's "incapacity to carry on my normal affairs because of a mental or physical impairment."

 **HotDocs / custom drafting tip:** In some situations a married client who names his or her spouse as the agent may want to make the power immediate. WFH is considering adding this function to the HotDocs software or, in the alternative, providing instructions on how to edit the document after it is generated to make the power immediate.

3. Agent’s powers and duties. An agent has the powers set forth in the Power of Attorney and has the fiduciary duty to act on behalf of the principal. In this regard, the “Advisory Note to Agents” cautions the agents that: “Under Utah law, Agents are prohibited from engaging in any transaction(s) on the principal's behalf where the Agent (or parties related to the Agent) will receive a ‘substantial beneficial interest’ or where the Agent has a substantial conflict of interest, unless prior approval for said transaction(s) is obtained from a Utah Court.”

4. Who to choose as agent. The ideal person for this task should most of all be trustworthy, and of course should also be competent in dealing with financial matters. The most common first choice of a married client for agent is the client's spouse. After that, consider trusted adult children, friends or advisors.
5. Authority to engage in prohibited actions. In the WFH Power of Attorney, subsections (r) through (u) of Section 7 permit the client to select powers (by initialing them) which are otherwise prohibited by statute:
 - a. The power to create, modify, or revoke an inter vivos revocable trust created by the principal.
 - b. The power to fund, with the principal's property, a trust not created by the principal.
 - c. The power to make or revoke a gift of the principal's property, in trust or otherwise.
 - d. The power to designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.

If the client is unsure whether or not to select these, it is the author's opinion that it would be better to leave them out.

6. Co-personal agents. Sometimes a client will want to name more than one person to serve simultaneously as co-agents. As with personal representatives, this is not recommended because of the extra time required for the co-agents to reach decisions and take action.
7. Agent's duty to account to interested parties. Sometimes a client will want to know what protection there is against the agent abusing his or her power. Under the statute, the agent must notify interested parties when the agent begins to act on behalf of the principal and must account to those parties if requested. (Utah Code § 75-5-501(2).)

B. New Advance Health Care Directive

1. The new Advance Health Care Directive is really two forms in one:
 - a. Part 1 contains a health care power of attorney.
 - b. Part 2 contains a living will.

In addition, Part 3 tells how a directive is revoked or changed, and Part 4 contains the signature and witness blocks.

2. Review of provisions in Part 1
3. Review of important provisions in Part 2

- a. Option 1, “I choose to let my agent decide,” is a common choice for a married person.
- b. If Option 3 is chosen (“I choose not to receive care for the purpose of prolonging life”), then the client must choose between (a) or (b). If the client chooses (b), then the client needs to carefully consider which choices under (b) to initial, and not simply initial them all automatically.

VI. Dealing with Common Client Questions

- A. Questions about choices in Questionnaire and HotDocs interview.
- B. Questions regarding the content of the WFH documents.
- C. Related concerns.
 1. Questions about probate. This can be handled various ways. Here are three hypothetical ways to respond to a question about probate.

DIALOGUE #1

FR: I want to avoid probate.

Volunteer: I’m sorry, the WFH program is not set up to help you avoid probate.

(Dialogue #1 is an example of what not to do.)

DIALOGUE #2

FR: I want to avoid probate.

Volunteer: Why is that?

FR: I don’t know. I’ve heard that probate is a horrible thing to go through and that it should be avoided at any cost.

Volunteer: Would it change anything if you knew that in Utah, probate usually costs between \$1,000 to \$2,500 and doesn’t take more than a year?

FR: Well, it sounds like probate is not as bad as I thought. I guess I’m okay with it.

DIALOGUE #3

FR: I want to avoid probate.

Volunteer: Why is that?

FR: When my mother died, her estate went through probate, and I was the executor. I hated having to do it, and I don't want any of my loved ones to have to go through it, either.

Volunteer: It sounds like avoiding probate is an important objective for you. The Will we are going to prepare today won't avoid probate. Let me explain some ways you can do that, and then you can decide if you'd like to go ahead with your Will today and later see an estate planning attorney to help modify your plan to avoid probate.

2. Questions regarding taxes – see Attachment 6, “Common Client Questions,” p. 26.
3. Other questions – see Attachment 6.

VII. Conclusion

ATTACHMENTS
to
Basic Estate Planning Law in Utah

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Attachment 1 – WILLS FOR HEROES QUESTIONNAIRE

Instructions: Please complete this questionnaire before your meeting with the Wills for Heroes volunteer. See the last page for explanations of legal terms in the questionnaire, which are marked with an asterisk ().*

Name _____
(Your name as you want it to appear in your Last Will and related documents.)

Home address and county

Street _____
 City, state and zip _____
 County _____

Telephones Home _____ Work _____ Cell _____

Marital status
 Married
 Unmarried with a domestic partner
 Single

Spouse/partner _____

My children	<u>Child's name</u>	<u>Child's birth date</u>	<u>Minor child's other parent (if not your spouse)</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

(If you have more children, please list them on the back of this form.)

My deceased children (if any) _____

	<u>Name</u>	<u>Birthdate</u>
Stepchildren to treat as my "children" under my Last Will (if any)	_____	_____
	_____	_____
	_____	_____

(List here only those stepchildren, if any, who you want to treat the same as your children under your Last Will. Do not list any other stepchildren.)

Additional children *Which of the following two statements is most true? (Choose one)*
 I may have additional children (natural or adopted) in the future.
 I am certain I will not have any additional children in the future.

DISTRIBUTION OF MY ESTATE*

	<u>Description</u>	<u>Recipient</u>
Gifts of cash or real estate	_____	_____
	_____	_____
	_____	_____

(Describe specific gifts, if any, of cash or real estate that you would like to make at death. Note that you may also make gifts of tangible personal property by a written statement. *)*

Gift of my remaining tangible personal property*

To whom do you want to give your remaining tangible personal property (after your gifts, if any, by a written statement*)? (Check all that apply – numbers indicate beneficiaries' priority)

1) To my spouse/partner, if he/she survives me
 2) To my children
 3) To other beneficiaries (describe): _____

*(Gift will be distributed to the beneficiary(ies) with the highest priority.
 Example: If you choose #1 and #2, your remaining tangible personal property will all go to your spouse/partner, if he/she survives you; if not, then it will all go to your children.)*

Gift of my remaining property

To whom do you want to give the remainder of your property and how do you want it to be distributed? (Check all that apply – numbers indicate the beneficiaries' priority)

1) To my spouse/partner, if he/she survives me
 2) To my children in equal shares
 3) To other beneficiaries in the following percentages:

<u>Beneficiary</u>	<u>Relationship</u>	<u>Percentage</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*(Gift will be distributed to the beneficiary(ies) with the highest priority.
 See Example in the preceding section. The share of a deceased child or other beneficiary will be divided among the descendants of the deceased child or beneficiary.)*

Instructions for special distributions:
Unequal distribution to children: to make an unequal distribution to your children, skip #2, check #3, and there list your children and their percentage distributions.
Partial distribution* to a spouse/partner: to make a partial distribution* to your spouse/partner with the rest going to your children (such as your children from a prior marriage) as equal-priority beneficiaries, skip #1 and #2, check #3, and there list your spouse/partner and children and their percentage distributions.

Disinheritance List disinherited child(ren), if any: _____

MY FIDUCIARY* CHOICES

For each of the following fiduciaries (i.e., personal representative, guardian, financial agent, and health care agent), your choices will be asked to serve in the sequence shown, i.e., if your first choice cannot serve, then your second choice will be asked to serve, and so on.

**My personal
representative***
(executor*)

Who do you choose to serve as the personal representative (executor) of your estate?

- 1) _____
- 2) _____
- 3) _____

**Guardians* of my
minor children**
(individuals or
couples)

If you have any minor children (under 18), who do you choose to serve as their guardians, other than your spouse (or the child's other parent, if he/she is not now your spouse)?

- 1) _____
- 2) _____
- 3) _____

My financial agent*

Who do you choose to serve as your financial agent under your Power of Attorney?*

- 1) Name: _____
Address: _____
Telephone: _____
- 2) Name: _____
Address: _____
Telephone: _____

**My health
care agent***

Who do you choose to serve as your health care agent under your Advance Health Care Directive?*

- 1) Name: _____
Address: _____
Home: _____ Cell: _____ Work: _____
- 2) Name: _____
Address: _____
Home: _____ Cell: _____ Work: _____

ADDITIONAL QUESTIONS

Military service I ___ **have** / ___ **have not** ever served in the Armed Forces of the U.S.

Net worth My current net worth ___ **does** / ___ **does not** exceed \$500,000.

Explanation of Legal Terms in the Questionnaire

An **Advance health care directive** is a legal document in which you choose a *health care agent* to act on your behalf, set forth the extent of your health care agent's powers, and state your desires regarding when and under what circumstances life-sustaining medical treatment should be withheld or withdrawn from you.

Your **Estate** means the property you own at death.

Executor – see *Personal representative*.

Fiduciary refers to a trusted person who acts on behalf of another and includes a *personal representative, guardian, financial agent, and health care agent*.

Financial agent means a trusted person who you choose to manage your finances and make financial decisions for you when you are no longer capable of doing these things for yourself.

Guardian means a trusted person who you choose to care for your minor child(ren) (under 18) if both you and your minor child(ren)'s other parent are deceased. A guardian can also be chosen to care for a person over 18 who is adjudged to be legally incapacitated.

Health care agent means a trusted person who you choose to make medical decisions for you when you are no longer capable of making them for yourself. A health care agent will have access to your medical records if you lose health care decision-making capacity and will have any additional powers granted to them in your *Advance Health Care Directive*.

Partial distribution means a distribution under your Last Will to your surviving spouse of less than 100% of your estate. NOTE: a surviving spouse is legally entitled to an *elective share* of the deceased spouse's estate. A surviving spouse can sue for his or her elective share if the Last Will makes a distribution to the surviving spouse that is less than the surviving spouse's elective share.

Personal representative means a trusted person who you choose to administer your estate and make the gifts and distributions designated in your Last Will.

A **Power of attorney** is a legal document in which you choose a *financial agent* to act on your behalf and which sets forth the extent of the financial agent's powers.

Tangible personal property refers to items of personal and household property and includes motor vehicles, furniture and furnishings, appliances, clothing, jewelry, heirlooms, collections, guns, club memberships, silverware, glassware, china, pets, books, pictures and other works of art, stamp collections, family memorabilia, etc.

Written statement means a written document signed by you or in your handwriting that describes (1) items of tangible personal property you wish to give at death and (2) the recipient of each item.

Attachment 2 – SUMMARY OF HOTDOCS INTERVIEW QUESTIONS

Category	Information needed
Client Information	<ul style="list-style-type: none"> - Name, gender, other names, and birth date - Street address, city, home county, and ZIP code - Home phone, cell phone, work phone - Marital status [If “<i>married</i>”: name of spouse] [If “<i>unmarried with domestic partner</i>”: name of domestic partner] - Children? - Served in armed forces?
Child List	Name, birth date, deceased?
Other Child Information	<ul style="list-style-type: none"> - Any minor, incapacitated, or disabled children? - Treat any stepchildren as children under the Will? [If “<i>yes</i>”: name(s), birth date, deceased?] - Expect any additional children? - Disinherit any children? [If “<i>yes</i>”: name(s)]
Estate Disposition Information	- Specific gifts? [If “ <i>yes</i> ”: describe each property item and beneficiary(ies)]
after gift by written statement	<ul style="list-style-type: none"> - Client gives remaining Tangible Personal Property (TPP) to: [] surviving spouse/partner, [] children, [] other beneficiaries? [If “<i>other beneficiaries</i>”: names of TPP beneficiaries] - Client gives remaining property (Residue) to: [] surviving spouse/partner, [] children in equal shares, [] other beneficiaries in specified percentages? [If “<i>other beneficiaries in specified percentages</i>”: names of other beneficiaries and percentages]
Personal representatives	- Names in order to serve
Guardians	- Names in order to serve
Financial agent	- Name and address of agent and alternate agent
Health care agent	<ul style="list-style-type: none"> - Agent’s name, address, and phones (home, cell, work) - Alternate agent’s name, address, and phones (home, cell, work)
Execution Information	- Execution date, county; witnesses’ names and addresses

Attachment 3 – OVERVIEW OF WILLS FOR HEROES DOCUMENTS

DOCUMENTS

OBJECTIVES

Last Will
and
Testament
of John Smith

- Dispose of property at death
- Name personal representatives
- Name guardians

General Durable
Power of
Attorney
of John Smith

- Name financial agent (immediate or springing)
- Specify agent's scope of authority

Utah Advance Health Care
Directive of John Smith

Health Care
Power of Attorney

Living Will

- Name health care agent
- Specify agent's scope of authority

- Specify preferences regarding withdrawal of life-sustaining care

Excluded issues include:

- Out-of-state residents
- Probate avoidance
- Living trust planning
- Community property issues
- Pre-nuptial agr. planning
- Divorce protection
- Asset protection
- Spouse or adult children trusts
- Second marriage trusts
- Special needs trusts
- Medicaid planning
- Business succession planning
- Tax planning

Attachment 4 – SUMMARY OF WFH DOCUMENTS

A. DOCUMENT OUTLINES

(Key provisions are **bolded** and marked with an asterisk (*).)

LAST WILL AND TESTAMENT

Preamble: Identifies the testator and county of domicile; revokes earlier Wills and codicils.

***Article One - My Family**. Identifies the testator's spouse (or unmarried domestic partner) and children; stepchildren (if any) to be treated the same as the client's children under the Will; and children, if any, to be disinherited.

Article Two – Administration of My Estate. Deals with payment of estate expenses, payment of succession taxes, and exemption of retirement plan assets from being used to pay estate expenses.

Article Three – Disposition of My Estate.

A. ***Specific Gifts**. Allows the testator to make gifts of specific items (which can include real estate and money) to designated beneficiaries. If the beneficiary predeceases the testator, the gift lapses and is distributed as part of the residue of the estate.

B. ***Gift of Tangible Personal Property by Written Statement**. Refers to a gift of tangible personal property by written statement in which the testator makes gifts of specific items of tangible personal property (except money) to designated beneficiaries.

C. ***Gift of Remaining Tangible Personal Property**. Disposes of the testator's tangible personal property remaining after the foregoing gifts to any of the following: (1) spouse, (2) children, and (3) designated beneficiaries.

D. Cost to Distribute Personal Effects. Designates the cost to distribute personal effects as an estate expense.

E. ***Distribution of Residue of My Property**. Disposes of the remaining estate to any of the following: (1) spouse, (2) children in equal shares, and (3) designated beneficiaries in specified percentages.

F. ***Optional Trust for Beneficiaries under Age 25**. Gives the executor authority to create a trust for any beneficiary under age 25, to be held in trust until the beneficiary reaches that age.

G. Lapse Distribution for a Non-Profit Organization. If the testator names any non-profit organization as a beneficiary and it is not in existence when the testator dies, then that

[Attachment 4 – Summary of WFH Documents]

gift will be distributed to a successor organization or substitute organization with a similar purpose.

H. Failure of Beneficiaries. If all the foregoing distributions fail, then the testator’s estate is distributed to his or her heirs under the intestacy statutes.

***Article Four – Nomination of Personal Representative.** Names personal representatives for the estate to serve in the order listed.

***Article Five – Nomination of Guardian.** Nominates guardians for the testator’s children who are minors or under a legal disability to serve in the order listed.

Article Six – Simultaneous Deaths. Provides that in the event of a simultaneous death of the testator and a beneficiary, the testator is presumed to have survived the beneficiary.

Article Seven - Miscellaneous. Includes miscellaneous provisions; the last one is a forfeiture clause.

Signing and Self-Proving Provisions. Contains signature blocks for the testator and two witnesses with the language to make the signatures self-proving.

INSTRUCTIONS FOR GIFT OF TANGIBLE PERSONAL PROPERTY BY WRITTEN STATEMENT

Contains instructions for testator to make a gift of tangible personal property by a written statement.

GIFT OF TANGIBLE PERSONAL PROPERTY BY A WRITTEN STATEMENT

A form for a testator to make a gift of tangible personal property by a written statement.

GENERAL DURABLE POWER OF ATTORNEY OVER ASSETS

NOTICE TO PERSON SIGNING THIS DOCUMENT. Cautions the Principal, in capitalized bolded type, that this is an important legal document that gives the Agent broad powers, which will exist indefinitely unless revoked by the Principal.

ADVISORY NOTE TO AGENTS. Advises Agents that they are prohibited from engaging in conflict of interest transactions unless prior court approval is obtained.

***1. *Designation of Attorney-in-Fact (Agent). Names the Agents in order to serve.**

[Attachment 4 – Summary of WFH Documents]

2. Creation of General Durable Power of Attorney. Creates a general durable PoA.
- *3. **Effective Time for Authority**. Creates a “springing” power effective upon the written opinion of two physicians certifying the Principal’s “incapacity to carry on my normal affairs because of a mental or physical impairment.”
4. Power to Provide for the Principal's Support. Authorizes the Agent to do all acts necessary to maintain the Principal’s customary standard of living.
5. Retirement Plans and Annuities. Authorizes the Agent to act with respect to the Principals’ qualified retirement plans and annuities.
6. Tax Matters. Authorizes the Agent to act on the Principal’s behalf with respect to tax matters, including the signing and filing of returns.
7. Statement of Additional Authority Given.
(a) – (q) [*see Sample Documents.*]

***”Under Utah Code § 75-5-503, a section which governs the exercise of powers of attorney, an Agent cannot take any of the following four actions unless expressly authorized below. These four actions are extremely broad powers for any Agent. If you do not initial below, your Agent cannot take these actions. If you are unsure as to whether to grant your Agent the authority below, you should not check these boxes.**

- _____ (r) Create, modify, or revoke an inter vivos revocable trust created by the Principal.
- _____ (s) Fund, with the Principal's property, a trust not created by the Principal or by a person authorized to create a trust on behalf of the Principal.
- _____ (t) Make or revoke a gift of the Principal's property, in trust or otherwise.
- _____ (u) Designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the Principal's death.

8. Reliance of Authority by Others. Protects third parties who rely on this Power of Attorney.
9. Governing Law. Designates Utah as the governing law.
10. Hold Harmless Provisions for My Spouse. Holds spouse who acts as Agent harmless provided he or she uses the Power of Attorney for the parties’ JOINT best interests.
11. Effect of Divorce Proceeding. Removes a spouse as Agent in the event of a divorce.
12. Limitations Upon Authority Of Agent. Prohibits Agent from amending or revoking the Principal’s last Will.
13. Revocation of Prior Powers of Attorney. Revokes all previous powers of attorney except those granted by a financial institution to deposit or withdraw funds from an account to which the Principal is a signatory.
14. Ratification. Ratifies all acts of the Agent made in good faith even when the Principal is disabled, incompetent, or incapacitated.
15. Protection For Agent. Protects the Agent for actions taken in good faith.
16. Protection for third parties relying on Agent's exercise of power. Protects persons who without negligence and in good faith rely on this Power of Attorney.
- *17. **Nomination of conservator**. Nominates the Agent to be the Principal’s conservator pursuant to Utah Code § 75-5-410(1).

[Attachment 4 – Summary of WFH Documents]

18. Revocation. Revokes the Power of Attorney upon written notice of revocation from the Principal to the Agent; suspends the Power of Attorney if the Agent questions the Principals' competency to revoke the power.

Signature and notary

UTAH ADVANCE HEALTH CARE DIRECTIVE [a statutory form]

My Personal Information. My name, address, phone numbers, and birth date.

Part I: My Agent (Health Care Power of Attorney)

- A. No Agent. I do not want to name an agent.
- B. My Agent. My agent's name, address, and phone numbers.
- C. My Alternate Agent. My alternate agent's name, address, and phone numbers.
- D. Agent's Authority. Boilerplate text detailing my agent's authority.
- E. Other Authority (yes/no). May grant agent (1) immediate HIPPA authority to access medical records, (2) authority to admit declarant to long-term care facility.
- F. Limits/Expansion of Authority. Describe limits/expansion of agent's authority.
- G. Nomination of Guardian (yes/no). Nominate agent as guardian.
- H. Consent to Participate in Medical Research (yes/no). I authorize my agent to consent to my participation in medical research or clinical trials.
- I. Organ Donation (yes/no). Authorize agent to agree to organ donation.

Part II: My Health Care Wishes (Living Will). Choose only ONE of these four options:

Option 1 – I choose to let my agent decide whether to withhold life-sustaining care.

Option 2 – I choose to prolong life as long as possible.

Option 3 – I choose not to receive care for the purpose of prolonging life.

If Option 3 is chosen, then (a) or (b) must be chosen:

(a) I put no limit on the ability of my health care provider or agent to withhold or withdraw life-sustaining care, OR

(b) My health care provider should withhold or withdraw life-sustaining care if at least one of the following initialed conditions is met:

___ I have a progressive illness that will cause death.

___ I am close to death and am unlikely to recover.

___ I cannot communicate and it is unlikely that my condition will improve.

___ I do not recognize my friends or family; my condition likely will not improve.

___ I am in a persistent vegetative state.

Option 4 – I do not wish to express preferences about health care wishes in this directive.

**B. FULL TEXT OF QUESTIONS
FROM THE ADVANCE HEALTH CARE DIRECTIVE FORM**

[Attachment 4 – Summary of WFH Documents]

Part I: My Agent (*Health Care Power of Attorney*)

E. Other Authority

My agent has the powers below ONLY IF I initial the "YES" option that precedes the statement. I authorize my agent to:

YES (Initial) NO (Initial) Get copies of my medical records at any time, even when I can speak for myself.

YES (Initial) NO (Initial) Admit me to a licensed health care facility, such as a hospital, nursing home, assisted living, or other facility for long-term placement other than convalescent or recuperative care.

F. Limits/Expansion of Authority

I wish to limit or expand the powers of my health care agent as follows:

G. Nomination of Guardian

Even though appointing an agent should help you avoid a guardianship, a guardianship may still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a guardianship is ever necessary.

YES (Initial) NO (Initial) I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my alternate agent, to serve as my guardian in the event that, after the date of this instrument, I become incapacitated.

H. Consent to Participate in Medical Research

YES (Initial) NO (Initial) I authorize my agent to consent to my participation in medical research or clinical trials, even if I may not benefit from the results.

I. Organ Donation

YES (Initial) NO (Initial) If I have not otherwise agreed to organ donation, my agent may consent to the donation of my organs for the purpose of organ transplantation.

[Attachment 4 – Summary of WFH Documents]

PART II: MY HEALTH CARE WISHES (*LIVING WILL*)

I want my health care providers to follow the instructions I give them when I am being treated even if my instructions conflict with these or other advance directives. My health care providers should always provide health care to keep me as comfortable and functional as possible. **Choose only one of the following four options by placing your initials before the statement you are choosing. Do not initial more than one option.** If you do not wish to document end-of-life wishes, initial Option 4. You may choose to draw a line through the options that you are not choosing.

Option 1

_____ (Initial) **I choose to let my agent decide.** I have chosen my agent carefully. I have talked with my agent about my health care wishes. I trust my agent to make the health care decisions for me that I would make under the circumstances.

Option 2

_____ (Initial) **I choose to prolong life.** Regardless of my condition or prognosis, I want my health care team to try to prolong my life as long as possible within the limits of generally accepted health care standards.

Option 3

_____ (Initial) **I choose not to receive care for the purpose of prolonging life,** including food and fluids by tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care and routine medical care that will keep me as comfortable and functional as possible, even if that care may prolong my life.

If you choose this option, you must also choose either (a) or (b), below.

_____ (Initial) (a) I put no limit on the ability of my health care provider or agent to withhold or withdraw life-sustaining care.

If you selected (a), above, do not choose any options under (b).

_____ (Initial) (b) My health care provider should withhold or withdraw life-sustaining care if at least one of the following initialed conditions is met:

_____ I have a progressive illness that will cause death.

_____ I am close to death and am unlikely to recover.

_____ I cannot communicate and it is unlikely that my condition will improve.

_____ I do not recognize my friends or family and it is unlikely that my condition will improve.

_____ I am in a persistent vegetative state.

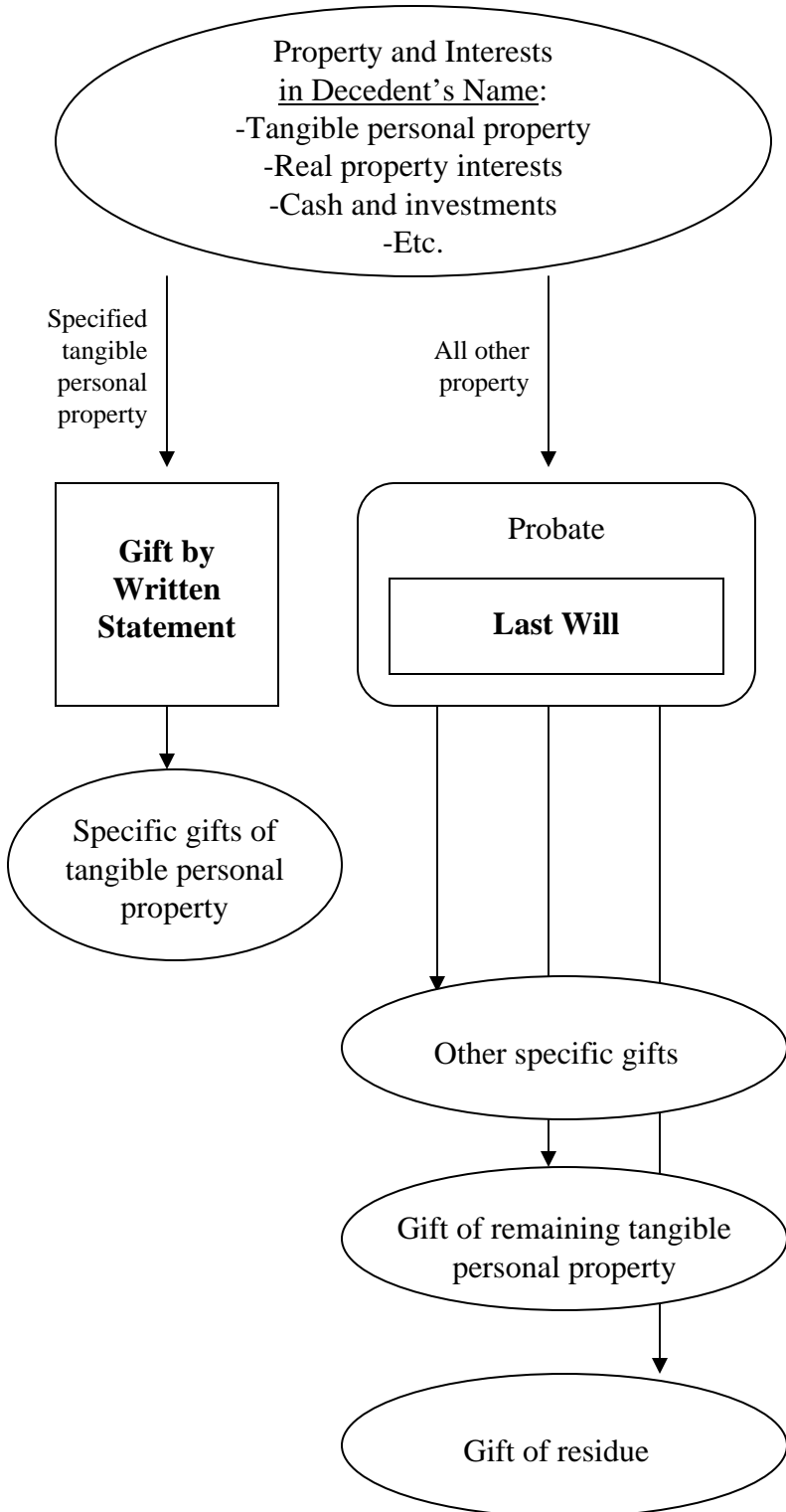
Option 4

_____ **I do not wish to express preferences about health care wishes in this directive**

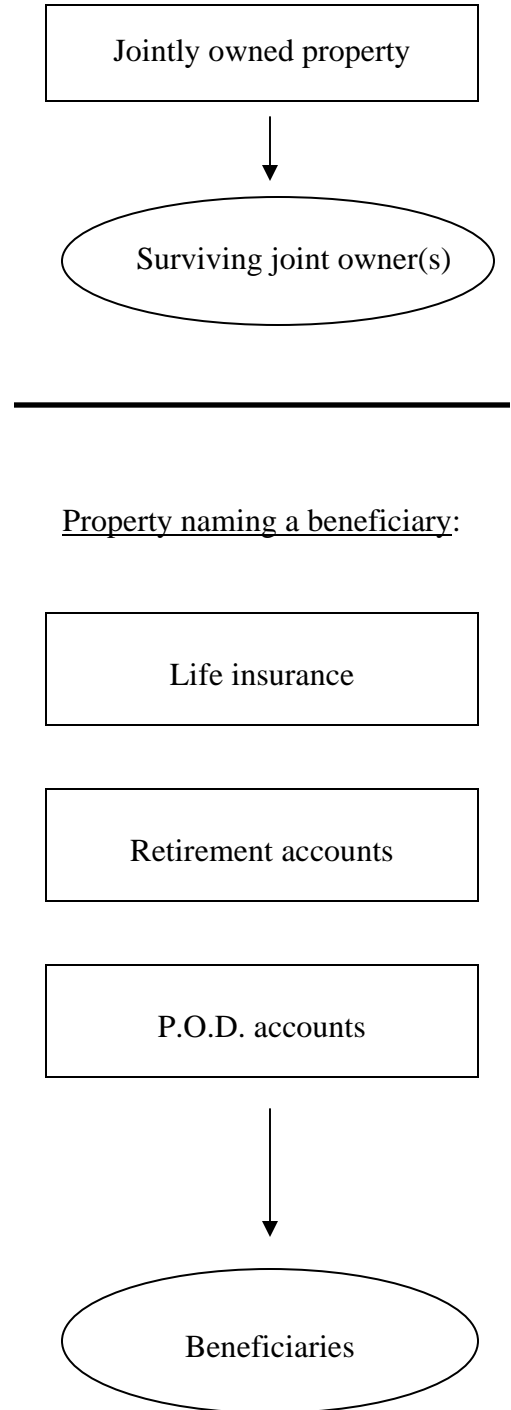
[Attachment 4 – Summary of WFH Documents]

Attachment 5 – PROPERTY PASSING AT DEATH

Probate Property



Nonprobate Property



Attachment 6 – COMMON CLIENT QUESTIONS

The following are examples of the kinds of questions that an estate planning client might ask during an interview to set up a basic estate plan. Some questions are answered and some are not. For those that are answered, the answers, which are indented, are intentionally short.

Probate

1) What is probate and when is it necessary?

Probate is the legal process for settling a person's estate. Usually, the only reason that probate is necessary is to re-title (transfer) a decedent's assets, i.e., except for nonprobate property, a personal representative is needed to sign the deed or other document transferring title to these assets.

2) What does it mean to "avoid probate"?

It means to hold all your property in such a way that probate is not required. Life insurance, for example, avoids probate because the proceeds are paid to the named beneficiaries without any probate.

3) How can I avoid probate?

The most common way is to establish a revocable "living" trust. Other ways include holding property in joint ownership and establishing P.O.D. accounts.

4) Can I just put my children's names on my house?

You could, but it will expose your house to your children's creditors. Also, the house will likely not receive a full step-up in basis upon the decedent's death, resulting in a greater capital gain if the house is later sold.

5) Does a Will avoid probate?

No, it must go through probate to be effective.

6) How much does probate cost? How long does it take?

A simple, uncontested probate may cost between \$1,000 to \$2,500. It takes at least four months and usually doesn't last more than a year.

7) Will I inherit my parents' debts? Who is responsible to pay them?

You won't inherit your parents' debts. But whatever property they own is subject to claims of their creditors. There are, however, certain allowances (the homestead, exempt property, and family allowances) for the benefit of the surviving spouse and children which come ahead of the creditors' claims.

Taxes

1) What taxes do my spouse / children pay on their inheritance?

No estate taxes, unless the estate exceeds \$3,500,000 (in 2009). Income taxes could be due if the estate has more than \$600 of income in its fiscal year. Income taxes could also be due on inherited IRAs, 401(k)s, etc.

Revocable Trusts

1) What is the difference between trusts and wills?

2) Do I need a trust? I have been told trusts are better than Wills.

3) Wouldn't a revocable trust protect my assets from creditors?

4) Wouldn't a revocable trust avoid (or at least reduce) taxes?

Wills

- 1) Will it be OK if I leave property outside my Will (like a P.O.D. account)?
- 2) If I have a Will, can I have a trust?
- 3) Can my Will create a trust? How?
- 4) Do I need to file my Will with the state or county?
- 5) How do I change or revoke my Will?

Spouse / Partner / Significant Other

- 1) I have a pre-nuptial agreement. Does that affect my estate plan?
- 2) I'm in a second marriage. How can I make sure my spouse is taken care of, but not disinherit my children from my first marriage?
- 3) Can I disinherit my spouse?
- 4) What happens if, after I plan my estate, I get divorced?
- 5) How can I make sure that my ex doesn't get my assets?
- 6) How do I provide for my girlfriend / lover / polygamist spouse?
- 7) I'm gay - do I need planning?

Children

- 1) Do I have to give my assets outright to my child?
- 2) What happens to child support obligations when I die?
- 3) Can I disinherit one of my children?

Distribution Issues

- 1) Can I disinherit one of my children?
- 2) What about leaving money to in-laws? (usually a daughter-in-law or son-in-law)
- 3) Can I leave money to my pet?
- 4) Can I leave my pet to someone?

Personal representatives

- 5) What is the difference between a trustee, a personal representative and a guardian?
- 6) Do I need to name a second choice for personal representative?
- 7) Can I name all my children as co-personal representatives?

Guardians

- 1) Who gets my kids if I fail to name a guardian?

Powers of Attorney

- 1) Do I need to name an alternate agent?
- 2) Can I name all my children as co-agents?
- 3) Does my agent have a duty to account to my other beneficiaries?
- 4) Can I change (or revoke) my Power of Attorney? How?

Advance Health Care Directives

- 1) Do I really need an AHCD?
- 2) Can my spouse "pull the plug" on me if I am merely unconscious?
- 3) Do I need to name an alternate agent?
- 4) Can I name all my children as co-agents?
- 5) Can I change (or revoke) my Advance Health Care Directive? How?