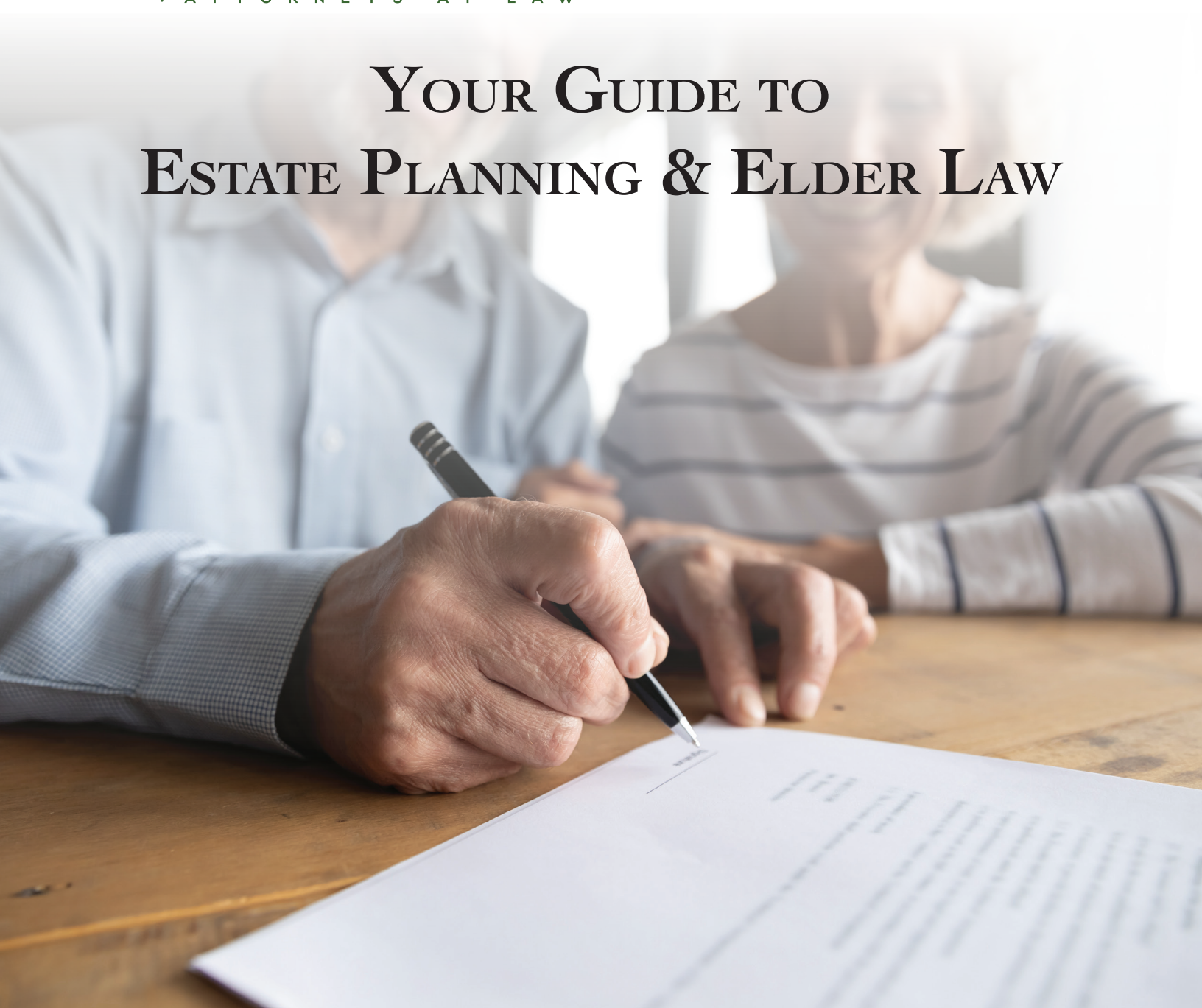




SANDBERG,
STETTLER, &
BLOXHAM
ATTORNEYS AT LAW

YOUR GUIDE TO ESTATE PLANNING & ELDER LAW



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STATEMENT OF CLIENT'S RIGHTS

You are entitled to be treated with respect—whether by your lawyer, the other lawyers in the firm, or any support personnel in your lawyer's office.

You are entitled to a lawyer capable of handling your legal matter competently and diligently, in accordance with the highest standards of the professional conduct. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the lawyer-client relationship at any time (court approval may be required in some matters and your lawyer may have a claim against you for the value of services rendered to you up to the point of discharge).

You are entitled to your lawyer's independent professional judgment and loyalty, uncompromised by conflicts of interest.

You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your lawyer at reasonable intervals. You may refuse to agree to any fee arrangement that you find unsatisfactory. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.

You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.

You are entitled to have your legitimate objectives respected by your lawyer, including whether or not to settle your matter (court approval of a settlement is required in some matters).

You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.

You are entitled to have your lawyer conduct himself or herself ethically in accordance with the Utah Rules of Professional Conduct.

DISCLAIMER

Hiring an attorney is an important decision which should not be based solely on advertising. The Information you obtain from this booklet is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

ABOUT US

Sandberg, Stettler, & Bloxham helps families plan for life, deal with death, preserve wealth, and protect inheritances. Our clients engage us when planning for the two most important aspects of their lives:
Everything they own and everyone they love.

LANDON SANDBERG

Landon Sandberg specializes in Medicaid, Veterans Benefits, and Special Needs Planning. Mr. Sandberg is a frequent lecturer on issues of Medicaid law. He is a graduate of Drake University (JD).

CASEY STETTLER

Casey Stettler specializes in areas of Veterans Benefits, Medicaid, Business, and Estate Planning. Mr. Stettler is licensed to practice in Utah, Texas, and Iowa. He is a graduate of Drake University (JD).

ZACHARY BLOXHAM

Zachary Bloxham specializes in areas of Trust-based Estate Planning, Medicaid, and Appellate Litigation. Mr. Bloxham serves on the Layton City Council. He is a graduate of Gonzaga University (JD).

KELLY WHITE

Kelly White specializes in Litigation, Family Law, and Estate Planning. Mr. White is a frequent lecturer on the issues associated with Guardianship and Conservatorship. He is a graduate of Creighton University (JD).

KOHLE PERKES

Kohle Perkes specializes in areas of Estate and Trust Planning, having joined the firm in 2020. Mr. Perkes is a graduate of Utah State University and Creighton University School of Law (JD).

ESTATE PLANNING BASICS

Most people who undertake the process of planning their estates are motivated by a desire to pass on assets according to their own wishes.

But estate planning is not only about what happens to our assets when we pass away; effective planning follows us through our lives from stage to stage, depending on our specific needs at each stage. Young parents need to protect their minor children in the event something should happen to both parents. Couples close to retirement may need to assure each other that the quality of life to which they are accustomed will continue after the death of one of them. Retired couples may want to protect a lifetime of hard-earned assets to pass on to the next generation.

The bottom line is that planning is for everyone, whether an estate is worth \$1,000 or \$1 million.

Estate planning involves not only planning for death, but planning for medical emergencies and incompetency. When people do not plan for medical emergencies, family members may have to make important health decisions during an emergency without prior guidance from the family member who has fallen ill. The most effective planning is accomplished during good health. Although there is not one universal tool to accomplish all of your planning goals, your attorney is able to employ a number of options to achieve your desired result. Below is a checklist of documents everyone should have in place.

- Financial Power of Attorney
- Healthcare Power of Attorney/Living Will
- Will or Trust-based estate plan





FINANCIAL POWER OF ATTORNEY

A Financial Power of Attorney is a written document that gives a person the ability to designate someone to act as his or her agent regarding financial matters. This person is called the "Agent."

The Financial Power of Attorney can take effect as soon as the document is signed (immediately) or can "spring" into action when a specific event occurs, such as a written certification from a physician that the person has become incapacitated. For a Financial Power of Attorney, the powers given to the agent can be general and/or specific. The agent has "full power and authority to manage and conduct all of the principal's affairs" which can include the power to:

- Manage all bank accounts
- Buy and sell assets, including real estate
- Apply for benefits and participate in government programs
- Hire and fire professionals
- Perform any financial act that the person does for him/herself

It is also important that the person named as the agent be trustworthy and available (close to home). The Financial Power of attorney is "durable," which means it will still exist even if the person becomes incapacitated. The Financial Power of Attorney can be terminated in writing by the principal at any time and automatically ends upon the death of the person.

HEALTHCARE POWER OF ATTORNEY

Utah law allows individuals to confer upon an Agent the authority to make medical and healthcare decision on behalf of the person granting the powers. This is the Healthcare Power of Attorney. By executing a Healthcare Power of Attorney, you are authorizing an agent to make healthcare decisions on your behalf. Healthcare decisions mean the consent, refusal to consent, or withdrawal of consent to healthcare. Healthcare means any care, treatment, service or procedure, the purpose of which is to maintain, diagnose, or treat an individual's physical or mental condition. You may revoke a Healthcare Power of Attorney at any time. Like a Financial Power of Attorney, a Healthcare Power of Attorney is "durable," which means that it will still exist even if the person becomes incapacitated. The Healthcare Power of Attorney can be terminated in writing (by the principal) at any time and automatically ends upon the death of the person.

LIVING WILL

In the state of Utah, a Living Will is defined as an advance directive that allows you to express your intentions regarding withholding or withdrawing life-sustaining procedures if your condition is terminal or you are in a permanently unconscious state. Your condition must be verified in writing by two physicians. Under no circumstance can you be denied comfort care, which is the amount of care necessary to alleviate pain and suffering but not to prolong life. A Living Will must be created by a person with proper capacity. It must be signed and dated by the person creating the document, and it must be witnessed by a disinterested adult other than your attending physician. The Living Will can be revoked by the creator verbally or in writing. When you are admitted to a medical facility, you will be asked if you have an "Advance Healthcare Directive." A Living Will is part of the Advance Healthcare Directive. The Healthcare Power of Attorney is the complementary part of the Advance Healthcare Directive which was explained in the prior section.

GUARDIANSHIP AND CONSERVATORSHIP (OPTIONS FOR THE UNPREPARED)

If you do not have a Healthcare Power of Attorney, then a court may appoint a guardian to make your healthcare decisions if you become incapacitated. Similarly, if you do not have a Financial Power of Attorney, then a court may appoint a conservator to manage your financial affairs if you become incapacitated. Your guardian and conservator may be, but need not be the same person or entity.

If you need a guardian or conservator, a petition, must be filed in probate court. The court will appoint your guardian or conservator. A person subject to a guardianship or conservatorship is referred to as a "ward." Guardians and conservators must annually report their dealings to the court. The ward always retains the right to legal representation and can request the court to remove or replace the guardian or conservator. Guardianships and conservatorships can be very costly processes but can be avoided with proper planning.



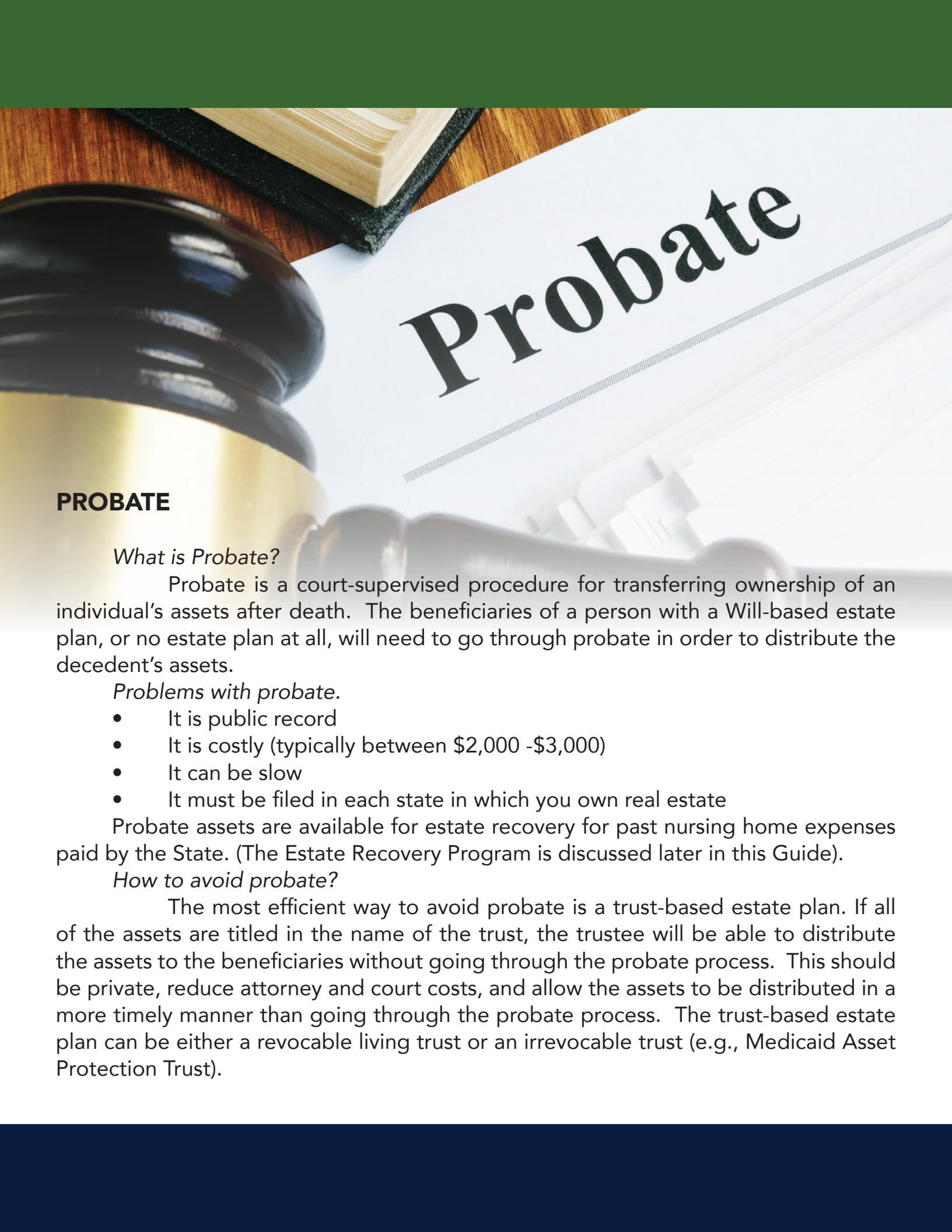
SPECIAL NEEDS TRUSTS AND SUPPLEMENTAL NEEDS TRUSTS

Individuals with physical or mental disabilities often receive benefits for medical care, housing, food assistance, and education through public assistance programs. These need-based assistance programs continually evaluate the individual's assets to determine if they meet bright-line financial requirements. Because of these requirements, passing on assets to special needs individuals without careful planning may decrease or even eliminate these benefits. To avoid the negative effects of unplanned giving, families are frequently instructed to disinherit their disabled family member. While this solution avoids interference with public benefits, it eliminates the possibility of providing for your loved one during your lifetime and after you pass away.

A Supplemental Needs Trust is a type of trust which is used to help pass assets to a disabled person without affecting their access to public benefits. It is funded with the assets of someone other than the beneficiary. These trusts are more flexible and allow for a variety of distributions for the benefit of the beneficiary. A Supplemental Needs Trust can be established while you are still living and can be funded with assets from more than one family member.

A Special Needs Trust is a type of trust which is used to help a disabled individual remain eligible for public benefits. This type of trust is established with the beneficiary's own assets, such as proceeds from an automobile accident or an inheritance. Because the beneficiary is directly funding the trust, many state and federal regulations place rigid restrictions on how the money can be used and require that the State be the primary beneficiary for up to as much money as they have spent on the beneficiary's behalf. Before setting up a Special Needs Trust, you should consult an attorney to discuss other possible alternatives.

If you desire to include a loved one with disabilities as part of your estate plan, it is critical you consult an attorney to help you navigate this complex and developing area of law.

A wooden gavel with a dark head and a light-colored handle rests on a white document. The document has the word "Probate" written in a large, bold, black serif font. The background is a dark green surface.

Probate

PROBATE

What is Probate?

Probate is a court-supervised procedure for transferring ownership of an individual's assets after death. The beneficiaries of a person with a Will-based estate plan, or no estate plan at all, will need to go through probate in order to distribute the decedent's assets.

Problems with probate.

- It is public record
- It is costly (typically between \$2,000 - \$3,000)
- It can be slow
- It must be filed in each state in which you own real estate

Probate assets are available for estate recovery for past nursing home expenses paid by the State. (The Estate Recovery Program is discussed later in this Guide).

How to avoid probate?

The most efficient way to avoid probate is a trust-based estate plan. If all of the assets are titled in the name of the trust, the trustee will be able to distribute the assets to the beneficiaries without going through the probate process. This should be private, reduce attorney and court costs, and allow the assets to be distributed in a more timely manner than going through the probate process. The trust-based estate plan can be either a revocable living trust or an irrevocable trust (e.g., Medicaid Asset Protection Trust).

OTHER STRATEGIES FOR AVOIDING PROBATE

GIFTS

Advantages

- Avoids probate
- Reduces taxable estate
- Protects assets from the nursing home after the penalty period

Disadvantages

- Loss of some or all control
- You may need the money later on
- May cause tax problems

SURVIVORSHIP PROPERTY

Advantages

- Avoids probate once
- Good option for younger individuals

Disadvantages

- Probate is not avoided at the second death
- Co-tenant is an owner and not a beneficiary
- Liability exposure
- Problems may arise if co-owner dies
- Potential exposure in divorce
- May cause tax problems
- May conflict with will, trust, or prenuptial agreement
- Potential nursing home exposure

BENEFICIARY ARRANGEMENTS

Advantages

- Avoids Probate
- No ownership interest for beneficiary
- No liability exposure

Disadvantages

- Cannot be done with all types of property
- Complex distribution can be difficult
- No protection from nursing home spend-down

REVOCABLE LIVING TRUST

What is a revocable living trust?

A living trust, also known as a revocable trust, revocable living trust, or inter vivos trust, is an effective way to own property during your life and transfer property at your death. You can create a living trust during your lifetime by signing a legal document that directs how property transferred to the trust will be managed, when and to whom the income from the trust property will be paid, and to whom, when, and how the trust property will be distributed when you die. A person setting up a trust is called a settlor, a grantor, or a trustor of the trust, while the person to whom you transfer your property is called the trustee. The people who will receive the income during your lifetime or who will receive the trust property after your death are called the beneficiaries.

Do I need a revocable living trust?

You may decide you need a revocable living trust, but first you should review your own situation with your attorney to decide whether or not a trust is right for you. It could be that a will, some other type of trust, or other arrangements would better fit your situation. Such a determination is dependent on your situation.

Why is there so much publicity about revocable living trusts?

Much of the current interest comes from concern and publicity about the cost and length of time to complete the probate process. In Utah, probate fees generally run in the \$2,000 - \$3,000 range. A typical probate administration may run anywhere from six months to a year or even longer in certain cases. The fees for handling a trust are negotiable between the trustee and the attorney. You should consult with your attorney about the comparative costs of various estate plans.

What are the advantages of a revocable living trust?

- You can have a person or bank with investment expertise act as a trustee and make investments for you.
- You can avoid the expense and inconvenience of having a conservator manage your property if you become too sick or disabled if your property is in the trust.
- After your death, the trustee can distribute the trust assets directly to the beneficiaries without going through the probate process. This is particularly beneficial if you own real estate.
- After your death, cost and expense will likely be minimal.
- Revocable living trusts can be kept more confidential than a will.

Once I set up a trust, can I change my mind?

Yes. While you are alive and competent, you are in complete control of your trust. You may change or terminate the trust at any time, provided the trust document specifically gives you that right. Upon your death or mental incompetency, no further changes are allowed.

IRREVOCABLE TRUST

Long-term care insurance is the preferred option for protecting assets from nursing home costs. However, when an individual is turned down for long-term care insurance, or is unable to afford the premium, the next best option is an irrevocable trust. This is oftentimes called a Medicaid Asset Protection Trust (MAPT)

Why choose a MAPT over other solutions? Making assets joint with adult children offers no protection since Medicaid considers all of the jointly held assets to be available for the care of the ill parent, except to the extent the child can prove the amount of their actual contribution. Additionally, outright transfers to children are generally inadvisable since those assets then become exposed to the children's debts, liabilities, divorces, etc. In addition, some children spend the money, refuse to give it back when needed, or die before the parent and pass those assets to their heirs. However, in some circumstances, when nursing home care is imminent, it may be advisable to transfer property to other individuals. In such a case, the assistance of an elder law attorney is essential because the amounts to be transferred, or the order of assets transferred, and where to transfer the assets all require the advice of legal counsel. The goal is to protect as many of the assets as possible and to qualify for Medicaid benefits at the earliest possible moment. If someone is aging or is denied long-term care insurance and wants to plan ahead to protect their assets, the best option is to set up a Medicaid Asset Protection Trust.

The MAPT names someone other than you or your spouse as the trustee, usually one or more adult children. The trust assets must be unavailable to you in order for them to be protected. These trusts are ideal to protect the family home, as well as other assets from which the client is only receiving income, or is simply reinvesting. The client's lifestyle is not generally affected because they continue to receive their pension and Social Security checks directly, they can continue to reside in the home, and they preserve all the tax exemptions on the home. The trust may sell and trade assets through the trustee. Nevertheless, the parent retains some measure of control by reserving the right to ultimately change the beneficiaries of the trust.

The MAPT is subject to a look-back period of up to five (5) years. This means if assets are transferred and the client needs nursing home care after five years have passed, the assets in the trust are protected. Nevertheless, it always pays to start early, since you receive credit for the time you accumulate, even if you do not make it five (5) years. For example, if the client needs nursing home care, say, after only four (4) years, then they would only have to pay privately for the one year that remains.

The Medicaid Asset Protection Trust is also flexible. For example, your appointed trustee may sell the home. The money is then paid to the trust, and the trust may buy a condominium, if desired, in the name of the trust so it is still protected. The trust may buy, sell, and trade stocks and other assets. IRA's and other qualified plans stay out of the trust since they cannot be titled in the name of the trust. These types of assets avoid probate as they go directly to the designated beneficiaries at death.

In summary, the MAPT allows clients to not only avoid probate, but also offers asset protection after the assets have been in the MAPT for five (5) years.

PLANNING FOR LONG TERM CARE

Who pays for nursing home care and medical expenses?

- You (private pay)
- Long term care insurance
- Medicaid
- VA Aid & Attendance Pension

There are four primary ways to pay for long term care:

- First, you can pay privately or self-insure for your long term care needs. However, with the average cost of long term care in Utah at over \$60,000/year this can quickly drain your assets.
- Second, you can purchase long term care insurance. Long term care insurance is the preferred method for protecting assets from long term care costs. Oftentimes, however, by the time our clients consider purchasing long term care insurance, they are uninsurable on account of age or health reasons or are simply unable to afford the premiums.
- Third, you can qualify for Medicaid. Medicaid is a federal/state system of health insurance for those requiring financial assistance. In order to qualify, there are income and asset requirements which must be met. Sandberg, Stettler, & Bloxham develops plans for clients to meet the income and asset requirements quickly, and in such a way that their hard-earned assets are spent on them – not the nursing home.
- Fourth, if you are a veteran or the surviving spouse of a veteran, you may be eligible for the VA Aid & Attendance Pension. In order to qualify, you must meet the following tests: military service, medical needs, income, and asset. Once qualified, this pension will help you to continue to pay privately for your care.

WHAT IS MEDICAID?

Medicaid is a joint federal and state system of health insurance for those requiring financial assistance.

- Pays for nursing home care.

General Eligibility

- An individual must be medically eligible.
- Monthly income must be less than the private pay rate of the nursing facility.
- Resource must be \$2,000 or less for the applicant.
- Resources for community spouse must be the lesser of \$130,380 or 1/2 of the countable assets.

Income Eligibility

- Income includes all amounts received each month by the individual for support/maintenance from sources such as Social Security, pension, income from trust, IRAs and annuities from which the individual is receiving a periodic payment, retirement plans, Veterans Benefits, Railroad Retirement, defined benefit plans, etc.
- If an individual is married and institutionalized, only the income attributed to that individual is considered. In other words, the spouse's income is not counted once institutionalization occurs.

Resource Eligibility

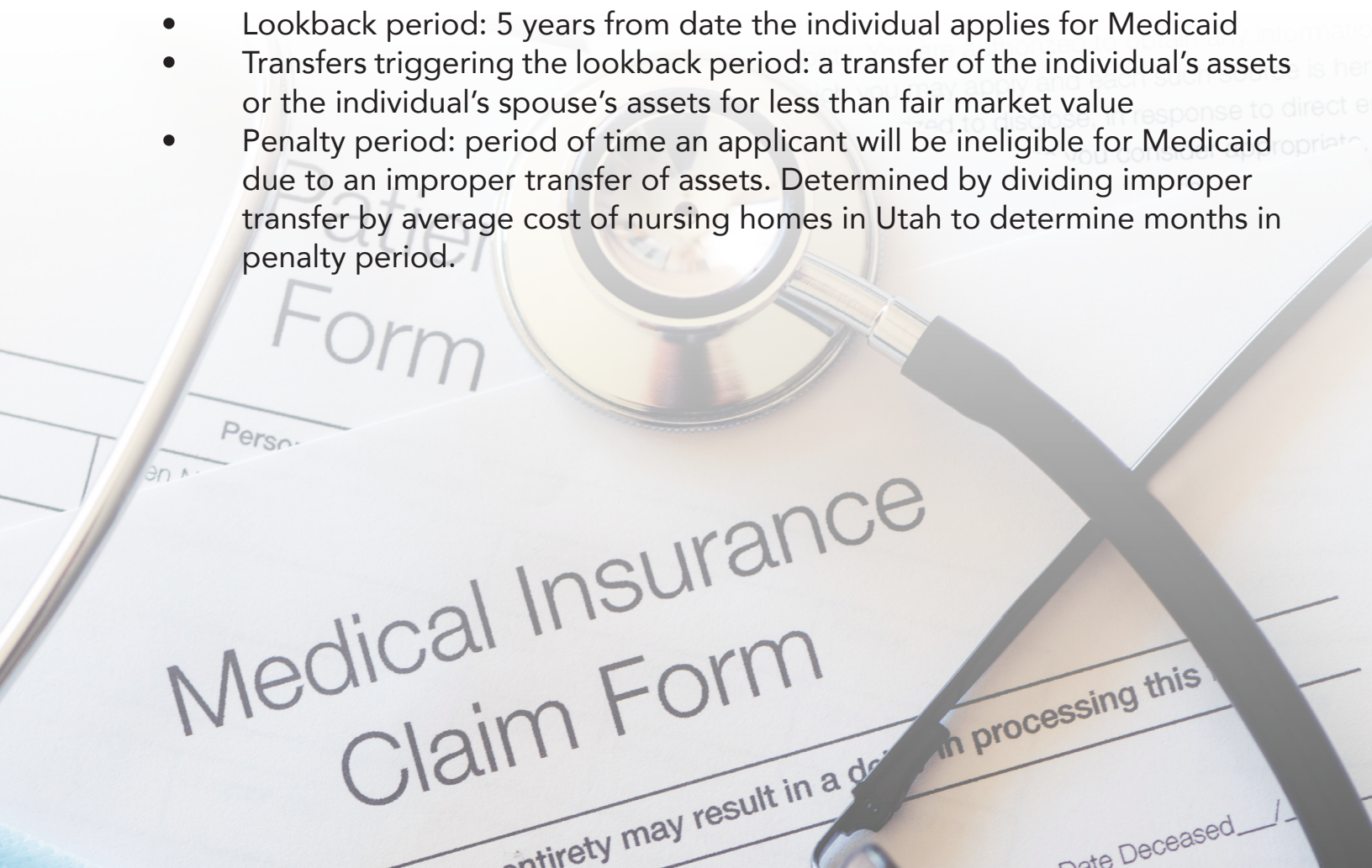
- A resource includes cash, personal property, and real property an individual or the spouse has an ownership interest in and has the legal ability to convert to cash. The applicant must provide documentation of all ownership interests and values of assets to the case worker in a timely fashion before a proper resource evaluation can be completed.
- Once the proper documentation is provided, the total countable resources of the spouse in the nursing home and the spouse in the community are assessed to determine the total amount necessary to provide for the healthy spouse. Any resources exceeding this amount are excessive and must be spent down.

Exempt Resources

- Principal place of residence, if occupied by spouse at home
- Household goods and personal effects
- Life insurance with face value of \$1,500 or less
- Term life insurance
- Medicaid compliant irrevocable funeral contracts
- One motor vehicle
- Transfers made prior to the 5-year lookback period
- Transfers of principal place of residence to an adult child who has resided in the home for at least two years prior to the individual's institutionalization, which resulted in the individual being able to continue to live at home because of the care provided by the adult child

Transfers

- Lookback period: 5 years from date the individual applies for Medicaid
- Transfers triggering the lookback period: a transfer of the individual's assets or the individual's spouse's assets for less than fair market value
- Penalty period: period of time an applicant will be ineligible for Medicaid due to an improper transfer of assets. Determined by dividing improper transfer by average cost of nursing homes in Utah to determine months in penalty period.



ESTATE RECOVERY PROGRAM

Finally, do not forget about the perils of the Estate Recovery Program!

Q: *What is Medicaid estate recovery?*

A: Estate recovery seeks to obtain from the Medicaid recipient's estate or trust, the full cost of Medicaid benefits paid on behalf of the deceased Medicaid recipient.

Q: *When does estate recovery take place?*

A: Recovery will only be made:

- After the death of the Medicaid recipient's surviving spouse.
- When the deceased Medicaid recipient has no surviving children under age 21.
- When the deceased Medicaid recipient has no surviving child of any age who is considered blind or disabled under Medicaid regulations.

Q: *Is a person's home subject to estate recovery?*

A: Yes. A Medicaid recipient's home will likely be subject to estate recovery in the form of a Medicaid Lien. After an individual has been permanently institutionalized and has received Medicaid benefits, the State may place a TEFRA lien on the home. A TEFRA lien is intended to protect the State's interest in the Medicaid recipients accruing care costs and must be satisfied prior to the home being sold. The State may also choose to file a lien on a Medicaid recipient's home after their death. Similarly, this type of Medicaid lien must be satisfied prior to the home being sold.

Q: *Does a Will or Revocable Living Trust protect assets from estate recovery?*

A: No. Utah's Medicaid program and other creditors are paid before any assets are distributed to heirs or other beneficiaries, both under a Will and a Revocable Living Trust.

VA AID AND ATTENDANCE PENSION

What is Aid and Attendance?

The VA Aid and Attendance Pension provides benefits for veterans and their surviving spouses who require the regular attendance of another person to assist in eating, bathing, dressing and undressing, or taking care of other needs of that nature. It also includes veterans and their surviving spouses who are blind, confined to a nursing home, or who are receiving care in an assisted living facility. Care being given by a family member(s) may qualify in many circumstances. If you would like to know if the care you are giving a parent or relative would qualify them to receive this benefit, please call our office to set up a consultation.

Who is eligible for Aid & Attendance?

To be eligible for this benefit, the veteran must have served in active duty at least 90 days, with at least one day during a "war-time period," and having been discharged honorably. Service in combat is NOT required. A service-connected disability is NOT required. In addition to the service requirement, the applicant must meet requirements for medical needs, income, and assets. The war-time service periods are as follows:

- WWII 12/7/1941 thru 12/31/1946
- Korean Conflict 6/27/1950 thru 1/31/1955
- Vietnam 8/5/1964 thru 5/7/1975 (back to 2/8/1962 if time served in Vietnam)
- Gulf War 8/2/1990- current

What is the monthly benefit?

Pension with Aid and Attendance can provide up to \$2,050 per month to a veteran, \$1,318 to a surviving spouse, or \$2,431 per month to a couple.

What is the medical needs test?

Some of the medical conditions necessary to qualify an individual for this benefit include assistance with the following: dressing or undressing; bathing; other hygienic needs; attending to the wants of nature; eating; adjustment of any special prosthetic orthopedic device; being legally blind in both eyes; or any incapacity – physical or mental – that requires ongoing supervision and assistance to ensure safety and well-being.

What is the income test?

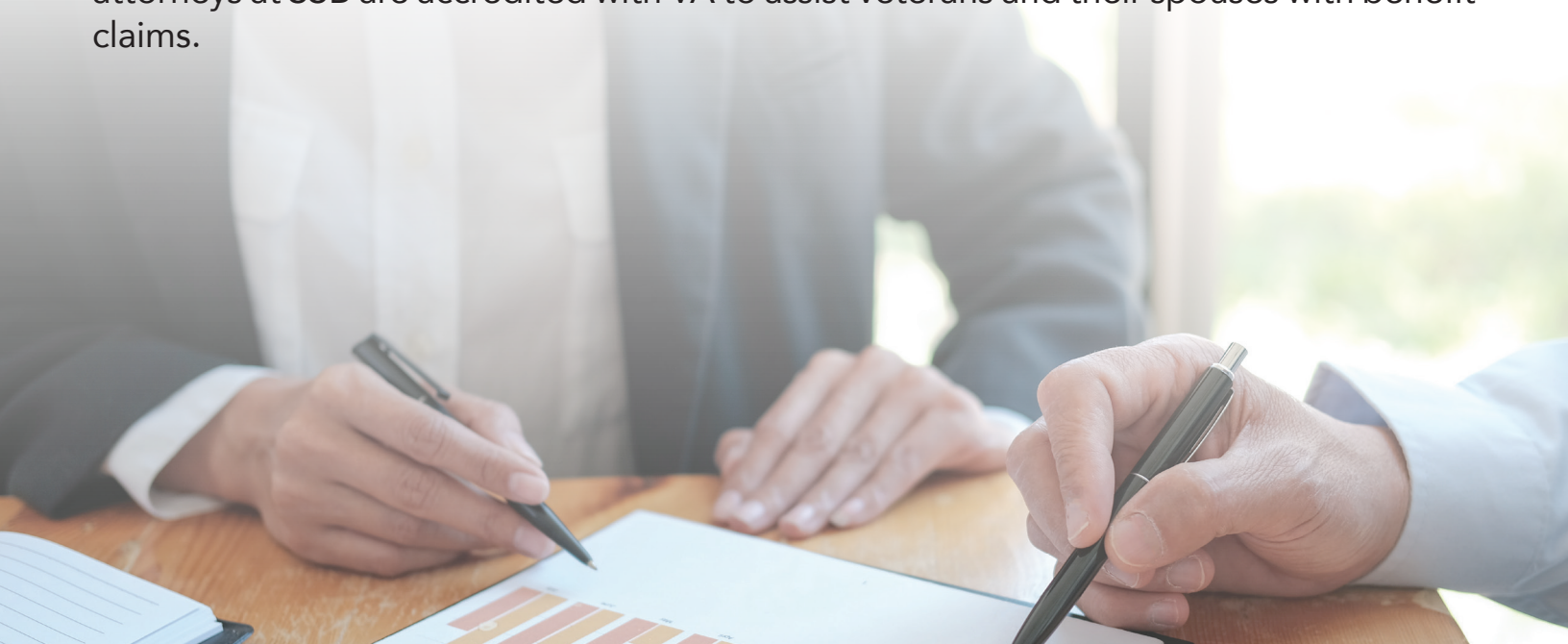
The income of the veteran or surviving spouse cannot exceed statutory amounts established by the VA. The income requirement varies with the situation of each applicant. Generally, the applicant cannot receive income above the monthly pension amounts. However, income is reduced by unreimbursed medical expenses. This means veterans with a household income of \$2,000, \$3,000, or even \$6,000 a month may still qualify for benefits if they have significant medical expenses. Unreimbursed medical expenses may include the costs of Assisted Living Care, Home Health Care, Medical Part B Premiums, and other medical care.

What is the asset test?

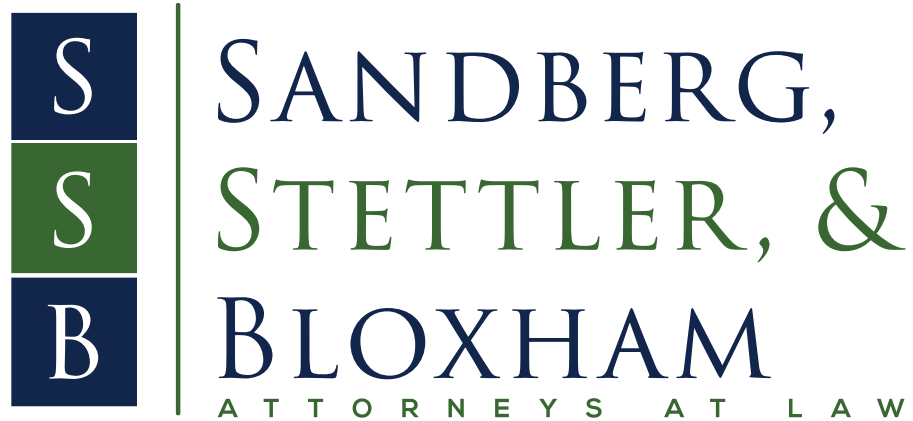
The VA asset limit is \$138,489. The VA currently reviews an applicant's assets on a case-by-case basis. Certain assets are exempt—or can be made exempt through legal planning—and these specifics should be discussed with an elder law attorney prior to applying for the program. As a general rule, veterans with a home (exempt) and other assets totaling less than \$138,489 are likely to qualify if they meet all other requirements.

Where do I start?

Sandberg, Stettler, & Bloxham specializes in analyzing your medical needs, income, and assets in order to qualify you for this well-deserved benefit. Multiple attorneys at SSB are accredited with VA to assist veterans and their spouses with benefit claims.



- ESTATE PLANNING
- WILLS
- REVOCABLE TRUSTS
- IRREVOCABLE TRUSTS
- PROBATE
- TRUST ADMINISTRATION
- ELDER LAW
- MEDICIAD
- NEW CHOICES WAIVER
- VA AID AND ATTENDANCE PENSION
- VA DISABILITY
- SOCIAL SECURITY DISABILITY
- GUARDIANSHIP/CONSERVATORSHIP
- SPECIAL NEEDS TRUSTS
- SUPPLEMENTAL NEEDS TRUSTS
- FAMILY LAW & DIVORCE



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