

# Selecting an Attorney in Montana to Develop an Estate Plan or Administer an Estate (Probate)

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*This MontGuide describes a process for selecting an attorney to help Montanans develop an estate plan and/or administer an estate (probate).*

**WHEN SELECTING AN ATTORNEY** to help develop an estate plan, it is helpful to have one who is well-informed about Montana will and trust laws, and other legal tools. You want the attorney to develop an estate plan tailored to your needs, by considering your age, health, family, income, assets, goals, and other circumstances.

If the goal is to find an attorney to help settle an estate or administer a probate, then look for one who is knowledgeable about the probate process and trust law in Montana. Attorneys have different areas of expertise. For example, an attorney who excels in litigation may not be the best choice for developing an estate plan or administering a probate. This MontGuide describes important steps to consider when selecting an attorney in Montana to help develop and implement an estate plan or to provide legal help with the probate process.

## Step 1a: If searching for an attorney to help develop an estate plan, the first step is to organize information the attorney needs to know.

The attorney will need to know about you and your assets, family, and estate planning goals. Make a list of assets you own. MSU Extension provides a checklist, “What My Attorney Should Know” in the MontGuide [Estate Planning in Montana: Getting Started](#).

**Complexity of assets.** The more complex your assets, the more competence in estate planning you want an attorney to have. All Montana estate planning attorneys should be capable of developing an estate plan for basic assets such as a home, vehicles, and financial and investment accounts when the value of those assets is not large enough to raise a federal estate tax concern.

During 2021 the federal estate and gift tax exemption is \$11.7 million per individual, or \$23.4 million for a married couple. In 2026, however, the exemption reverts to \$5 million with an inflation adjustment. With new political leaders at the national level, the exemption could change before 2026.

Retirement accounts, including Individual Retirement Accounts (IRAs --traditional and Roth), 403(b), 457, and 401(k) accounts, have unique, technical rules. If your retirement account balances are large, your attorney should understand federal and state income tax rules.

Family businesses add complexity. If you are involved with a farm, a ranch, or any other business, the attorney should have knowledge and experience with tax issues for legal entities such as partnerships, limited liability companies, and S and C corporations.

If you own real property in another state, you may face estate, inheritance, or other tax issues in that state. Your attorney should have the ability to manage the out-of-state property in your estate plan. Owning assets in other countries adds significant complexity.

**Complexity of family:** Your family is another factor to consider when selecting an estate planning attorney to develop your estate plan. Whether you are single, a couple in a long marriage with all children being from the marriage, a couple with no children, a blended family with “his,” “her,” or “their” children, or find yourself in some other situation—all could have an effect on an estate plan.

If you have family members with disabilities, your attorney should understand special needs trusts, ABLE savings accounts, and other planning techniques to avoid the loss or interruption of needs-based benefits to the disabled family member.

If you wish to leave assets to a friend or relative who lacks skills or judgment to manage them, then you will want an attorney who can advise about provisions to include in a trust. The attorney should consult you about selecting a trustee and successor trustee for a trust. An attorney should also tell you about the advantages and disadvantages of other alternatives for minors, such as the Montana Uniform Transfers to Minors Act.

**Estate Planning Objectives (Goals).** The attorney will need to know the goals you hope to achieve with your estate plan. MSU Extension provides a checklist of “Common Estate Planning Objectives” in the MontGuide [Estate Planning in Montana: Getting Started](#). For example, a goal may be to avoid probate because you have heard it is expensive and slow. Your attorney should tell you about Montana’s informal probate and the costs and time associated with that process, as well as alternatives.

If you decide to avoid probate, there are many ways of doing so. You and your attorney may discuss ownership and beneficiary designations that allow for nonprobate transfers. See the MSU Extension MontGuide Nonprobate Transfers at this website: <http://store.msuextension.org/publications/FamilyFinancialManagement/MT199509HR.pdf>.

- Transfer on death (TOD) registrations allow the transfer of stocks, bonds, mutual funds, and other securities without probate.
- Payment on death (POD) designations allow the transfer of bank, credit union, and other financial institution checking and savings accounts and certificates of deposit to specific individuals without probate.
- Transfer on death deeds (TODD) allow the transfer of real estate in Montana to beneficiaries without probate. Not all states, however, have authorized transfer on death deeds.

Depending on your situation, the attorney may recommend you hold title to some or all of your assets in joint tenancy with rights of survivorship. This form of ownership also avoids probate.

Rather than an asset-by-asset approach of designating beneficiaries for each asset, the attorney may recommend the use of a revocable trust to hold title to most, if not all, of your assets. This means of probate avoidance may be particularly useful to make transfers to beneficiaries in specified percentages (or fractions) of your entire estate. Further, the use of a revocable trust may be beneficial if you own real estate in other states. Of course, there are costs associated with creating, maintaining, and terminating a trust that you should explore with the attorney.

In summary, the complexity of your assets, family, and estate planning goals determine the estate planning ability your attorney should have.

### **Step 1b: If searching for an attorney to help probate an estate, the first step is to organize information about the deceased.**

First, because you are also dealing with the loss of a loved one, you may want an attorney who is sympathetic, available, and compassionate. The attorney should be understanding of your needs and recent loss, and should be able to explain the probate process and answer your questions in a professional manner.

If you are nominated as personal representative in the will of the deceased or think you will be appointed as personal representative, you could use the “Common Estate Planning Objectives” checklist from MSU Extension cited on this page to gather information the attorney will need to know about assets of the deceased. In addition, the attorney will need to know if the deceased died with or without a will or trust. Additional information about probate and duties of a personal representative are provided in MSU Extension MontGuides:

Probate in Montana <http://store.msuextension.org/publications/FamilyFinancialManagement/MT199006HR.pdf>

Personal Representative Responsibilities <https://store.msuextension.org/publications/FamilyFinancialManagement/MT199008HR.pdf>

### **STEP 2: Find attorneys to consider.**

There are at least four ways to find attorneys to consider. While some approaches are more effective than others, each can help with the process of finding the best attorney to meet your needs whether it be for probate or to develop an estate plan.

**Request Referrals.** Request referrals for an attorney from people you trust. If they did not like the attorney, ask why. If they say their attorney was “wonderful,” also ask why. Most people are willing to share their positive or negative experiences. You may find friends or relatives mention the same attorney.

You can also ask a banker, credit union professional, financial planner, or accountant for referrals. These professionals are in frequent contact with attorneys who represent local business and estate planning clients. They often can make informed judgements about attorneys. Ask the professionals for reasons why they recommend a certain attorney. You may find they suggest more than one attorney because they do not want to be known as favoring one over another.

**Browse the Yellow Pages.** You could also review the Yellow Pages of the local telephone directory. There may be listings or advertisements featuring the attorneys’ areas of practice, such as probate and estate planning, estate administration, wills and trusts, or elder law.

**Examine Internet Directories.** Some websites list attorneys by their areas of practice, the number of years they have practiced, and reviews from their clients. For example, see [avvo.com](http://avvo.com). However, be cautious of internet directories that promise to find you a qualified attorney. Some directories require attorneys to pay a fee, so not all attorneys appear on their lists.

Martindale Hubbell Rating Services for attorneys lists education, areas of practice, and a scoring system based on ratings by other attorneys. <https://www.martindale.com/areas-of-law/estate-planning-lawyers/montana/>

**Visit Websites.** Most attorneys and law firms have websites. The websites typically list the type of law the attorney practices. Most sites feature photographs of the attorneys with short biographies. Also included are methods of contact, such as an online form, email, and telephone number.

Information appearing in the attorneys' biographies will help you judge their qualifications and experience. Attorneys may say the focus of their practice is "estate planning or estate administrative services." Information about the attorney's undergraduate and law degrees, professional experience, and community volunteerism usually appears in the "about me" section. For example, a listing could show the attorney has a master's degree in tax law or is a certified public accountant (CPA).

Attorneys' websites may include a listing of the attorney's membership in professional organizations, such as:

- Business, Estates, Trusts, Tax, and Real Property Section (BETTR) of the State Bar of Montana.
- Real Property, Trust, and Estate Law (RPTE) Section of the American Bar Association (ABA). [https://www.americanbar.org/groups/real\\_property\\_trust\\_estate](https://www.americanbar.org/groups/real_property_trust_estate)
- The American College of Trust and Estate Counsel (ACTEC) is a national nonprofit association of attorneys and law professors chosen by their peers. <https://www.actec.org>

A firm may feature estate planning articles written by their attorneys. Did the attorney also author articles about estate planning or estate administration for a law journal, the *Montana Lawyer*, or another organization? These publications, if any, may give you a better understanding of the attorney's ability. Some attorneys write blogs and podcasts about estate planning and taxation laws passed by the Montana legislature and Congress.

As a result of this research, you should find two or three attorneys who could help develop an estate plan that meets your needs or to administer a probate. Or, you may conclude only one attorney rose to the top of the list. You may decide to seek legal advice only from that attorney. If you decide two attorneys appear to be a good fit, you may want to meet with each in person.

### **Step 3. Schedule a meeting with the attorney(s) from Step 2 and prepare for the meeting.**

Call the attorney or attorneys you have selected in Step 2 to make an appointment. Ask about the fee, if any, for the meeting. Often, attorneys do not charge for the first meeting. Like you, the attorney wants to assess whether the attorney's knowledge and skills are a fit for your needs, and consider whether you and the attorney "click."

Ask what information you should bring to the meeting. If you are searching for help with developing an estate plan, the

attorney may send a questionnaire for you to complete before the appointment.

Before meeting with the attorney, prepare a list of questions to ask. Did you find any issues when you were selecting an attorney to interview (Step 2) that you want to know more about?

### **Step 4: Take part in the meeting and evaluate.**

First impressions do count. After you move past introductions, explain your goals to develop an estate plan or administer an estate and ask several questions. You may want to take notes of the attorney's responses.

**Experience.** Ask what percent of the attorney's practice consists of estate planning and estate administration. You also want to know the attorney's experience with the following (if relevant to your situation):

- family businesses,
- farm/ranch issues,
- Medicaid and disability issues,
- charitable gifting,
- federal estate tax planning,
- blended families,
- quarrelsome families who threaten to sue, or
- large debt or mortgage issues.

**Fees.** The Rules of Professional Conduct govern the conduct of attorneys in Montana. The Rules have guidelines for setting legal fees, such as time and effort, ability, experience, and reputation. The attorney should be willing to discuss the calculation of fees and what you would pay for an estate plan. Some attorneys prepare estate plans for a flat fee rather than charging an hourly rate. Most attorneys charge an hourly fee for probate services.

**Timeline.** What documents will the attorney prepare? When can you expect to receive the first draft of an estate plan? When does the attorney expect to finish the estate plan? One month? Four months? If you are hiring an attorney to help settle an estate, you should ask comparable questions.

After the meeting you should assess your thoughts and feelings while you were with the attorney.

- Were you satisfied with the attorney's answers to questions?
- Did the attorney listen to you?
- Did the attorney communicate well and clearly?
- Were legal terms fully explained by the attorney?
- Did the attorney explain the calculation of fees?
- Can you see yourself speaking with this attorney concerning very personal matters about your family, friends, and money?

If you feel comfortable with the attorney and believe a good relationship can develop, you may decide to employ the attorney to help develop and implement the estate plan or administer the probate. Or, if you are not certain, tell the attorney you need more time to reflect on the matter.

You may decide to contact one of the other attorneys selected in Step 2. If so, schedule an appointment with that attorney. Did the attorneys interviewed send a follow up letter, phone call or email to confirm the scope of representation and fees? Did the attorneys send useful information about the topics discussed? Such a letter, call, or email may help to reach a decision about which attorney best suits you.

Montanans who have been through the estate planning process emphasize the importance of having a good relationship with the attorney. If you are uncomfortable during your first meeting, you may never develop the type of open communication that is the foundation of a good working relationship.

## Summary

The process of selecting an attorney whose major focus is estate planning or estate administration takes time. However, when you find an attorney you feel comfortable with and trust, you will feel the time spent was worth it. Follow the steps outlined in this MontGuide to find an attorney who can provide the legal assistance needed.

## References

*Attorney Search*, State Bar of Montana, downloaded on December 9, 2020. <https://www.montanabar.org/search/custom.asp?id=2249>.

## Acknowledgement

Representatives from the Business, Estates, Trusts, Tax and Real Property Section of the State Bar of Montana have reviewed this MontGuide and recommend its reading by Montanans interested in learning about selecting an estate planning attorney.

## Disclaimer

This publication is not a substitute for legal advice. Rather, the MontGuide helps families become better acquainted with a process for selecting an estate planning attorney in Montana and administering an estate (probate). Future changes in laws are not predictable, and statements within this fact sheet are based solely upon those laws in force on the date of the publication.



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