

# Your Estate Matters

Winter 2006-2007

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JONES  
WALDO



## Letter from Your Attorneys

Effective July 31, 2006, we moved our estate-planning law practice to the law firm of Jones, Waldo, Holbrook & McDonough (“Jones Waldo”). We have now become an integral part of the Estates & Trusts Practice Group at Jones Waldo. We are honored that our law firm was recruited to join the Estates & Trusts Practice Group at Jones Waldo. We believe that you will be pleased with the added-value that this change in our business will bring to you. Jones Waldo is a solid, deep-rooted and successful law firm that has thrived as the premier provider of legal services in Utah for 131 years. Jones Waldo lawyers have been educated and trained from the west coast to the east coast and they are among the best and brightest legal professionals in America.

While we will no longer use the firm name “Holmgren & Mitton”, our current estate-planning team has remained together. Randy Holmgren, Matt Mitton, Deacon Haymond, Holly Hanks, Carie Valentin, Kathryn Steorts and others are still here to take care of you the way we always have. The only difference is that we have a new address and phone number (see the bottom of this page). A major benefit to you is that you now have access to the resources of another 75 attorneys and a deeply established law firm that has been in business since 1875.

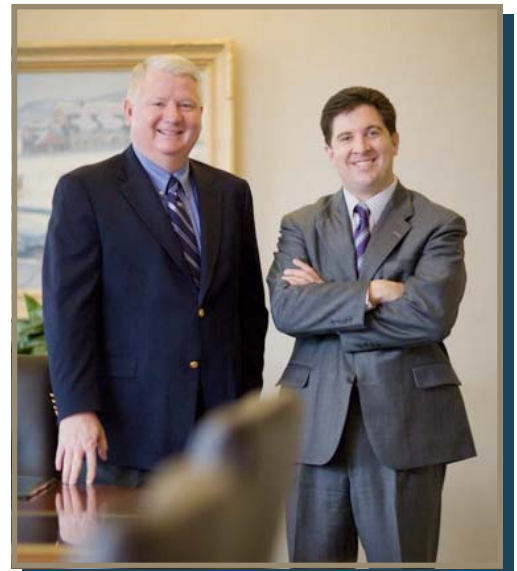
We are confident that you will see great value in the vastly expanded legal services that come from teaming up with a world-class law firm such as Jones Waldo. In just the past few months since we joined Jones Waldo we have already been able to assist many of our clients with other legal services that were previously unavailable, in addition to the estate-planning legal services we provide. If you, or someone you know ever needs legal services in addition to estate-planning, we will personally introduce you to an attorney at Jones Waldo who will be able to take care of your needs. Please visit the Jones Waldo Web site at [www.joneswaldo.com](http://www.joneswaldo.com) for more information or read the “About Jones Waldo” section of this newsletter (page 2).

We hope that you have been satisfied with our work in the past and that you have benefited from the work and advice we have provided to you. We appreciate your loyalty to our law firm over the years. Your business has been very important to us and we value our relationship. Please call us if you have any questions or concerns about your ongoing affiliation with us as we move our law practice to the Jones Waldo law firm.

Best regards,

Randall J Holmgren

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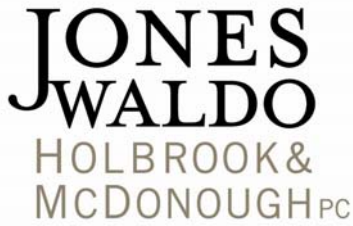
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National Academy of  
Elder Law Attorneys



## About Jones Waldo



Founded in 1875, Jones Waldo has assisted clients with legal concerns, challenges and objectives for more than a century. Today, Jones Waldo has grown into a firm of more than 75 lawyers and is one of Utah's largest and most experienced law firms with offices in Salt Lake City, Park City and St. George, Utah.

Whether in the past or the future, Jones Waldo's success has always been connected to one thing: providing a full spectrum of legal services with a commitment to innovative problem solving and the highest-quality legal talent.

Jones Waldo lawyers have the experience, skills and resources necessary to help clients reach their personal and business objectives, even when those objectives may seem beyond traditional law practice. Our firm comprises a number of interrelated practice areas, which equip us to assemble a customized legal team to handle your most difficult challenges. Our services include:

- Bankruptcy and Creditor's Rights
- Tax Planning
- Corporation / Business Planning
- Divorce and Family Law
- Employer / Employee Issues (Human Resources)
- Franchising and Licensing
- Guardianships and Conservatorships
- Securities and Public Offerings
- Personal Injury
- Patents, Trademarks and Copyright
- Real Estate (Development, Finance, Zoning, Sales / Purchase)
- Mergers and Acquisitions

Jones Waldo lawyers are actively involved in community issues - whether serving on the State Board of Regents, on an arts council, or as Utah's only four-term governor. No matter how big a law firm gets, it can never outgrow its community. Jones Waldo is pleased to be in a situation to help make our community better. Through charitable donations and firm-encouraged pro bono work, we're doing our best to make a positive difference in our surroundings.

Whether your needs are local and individual or national and corporate, Jones Waldo has a proven ability to provide proactive and innovative legal counsel in an efficient and economical way that will give you solutions today that carry forward into your future. ■

### CLIENT REMINDERS



- Confirm* that you have documents evidencing that your assets are titled in the name of your Living Trust (or Family Limited Partnership, LLC, Corporation). Monthly statements from banks, investment firms and other financial institutions are good evidence. Also, document that your Trust is the "primary" beneficiary of life insurance and non-tax deferred annuities. (For IRAs, 401(k)'s and other tax-deferred retirement plans, *call us before naming death beneficiaries!*)
- Please remember to call us if your address or phone number changes. To let us know if you would like to get updates and notices from us by email send an email to: [firm@myestatematters.com](mailto:firm@myestatematters.com)
- Let's review your estate plan every year or two, or when your family or financial situation changes. Laws are continually changing. Call and schedule your review.
- If you've refinanced your home loan, or added a second mortgage, the lender may have had you deed the home from your Living Trust back to your name. Call the County Recorder and ask how your home is titled. If it is in your Trust, you're OK. If not, call us and we can help.
- Call your insurance agent and make sure your Trust is named as an "insured party" on real-estate owned by your Trust.

# HAPPY HOLIDAYS & BEST WISHES FOR A HAPPY NEW YEAR



Historic Fire Station No. 9 is an unassuming landmark located at 1724 South Main Street, Salt Lake City, Utah. For decades this fire station and its dedicated crews served members of the community in times of physical crisis. The fire station has since been decommissioned - yet it continues a legacy of serving individuals in times of need.

In 1986, historic Fire Station No. 9 became home to Alliance House - a charitable organization dedicated to serving men and women who are dealing with mental illness. Alliance House partners with businesses to mentor Alliance House members as they overcome the challenges they face in building meaningful, mainstream lives.

Jones Waldo is proud to be a mentoring partner of Alliance House – providing employment opportunities to its members. It has been our privilege to mentor, encourage, and support these hardworking, determined men and women. For more information about Alliance House, please go to [www.alliancehouse.org](http://www.alliancehouse.org).

Jones Waldo commissioned Ian Ramsay, a noted Utah artist, to paint Fire Station No. 9 from a photo taken circa 1950. ■

**RANDALL HOLMGREN & MATTHEW MITTON  
WISH YOU AND YOUR LOVED ONES A  
HOLIDAY SEASON OF LOVE AND WARMTH.**

JONES WALDO HOLBROOK & MCDONOUGH, P.C.

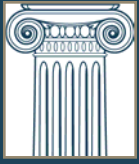


*Ian Ramsay*

*Watercolor: 12x17 in; 2006*

*From the private collection of Jones Waldo*

*© 2006 Jones Waldo Holbrook & McDonough PC*



# TRUST ADMINISTRATION

## What Happens When A Loved One Dies?

One of the reasons for creating a Living Trust is to avoid the expense and hassle of court probate at death. The administration of a trust is far easier and less expensive than a court probate action. However, with any death there are always some administration matters that need to be attended to. The effectiveness of the trust depends upon its proper creation, maintenance, and administration.

During the joint lifetimes of both spouses they will usually serve as Trustees of the Living Trust. An unmarried individual who creates a Living Trust typically serves as the Trustee of his or her Trust. A successor Trustee will step in only in the event that one or both of the spouses in a married Trust, or the unmarried individual creating the Trust, becomes incapacitated or dies. Consult the Living Trust for the order of succession of Trustees and provisions for when it is necessary for a successor Trustee to act.

The following is a brief overview of the responsibilities and duties of your appointed Successor Trustee. It is intended as a general guide only and the named persons should consult with an attorney immediately upon taking over in order to assure that they comply with all legal requirements and properly carry out the directions given by you in your Living Trust, Wills and other estate planning documents.

These “Duties” should be consulted in conjunction with the “Actions Upon Death or Incapacity” document in this section.

In general, all Trustees and Personal Representatives (referred to below as “representatives”) face similar duties and responsibilities regardless of the size of an estate. All steps in the administration of the trust and estate are directed toward three goals:

1. Collection and management of assets;
2. Payment of debts, taxes and expenses; and
3. Distribution of the balance of the estate assets to the named beneficiaries.

Those three goals can be broken down into the following tasks:

**Inventory and Analysis.** The first duty of a representative is to protect and preserve all the assets. The representative should also determine the title and ownership of all assets of the trust and of any assets over which the decedent had ownership or control. The representative should attempt to put together an inventory of all assets and their values as of the date of death. This includes all assets, some of which may not be referred to in the Trust or other documentation. Refer to the section of the Portfolio entitled “Trust Property.”

The “Location List” section may help identify other assets which have not yet been placed in the Trust and which therefore may be subject to the jurisdiction of the probate court and the Personal Representative. Proper determination of the ownership of all assets is important to ensure that all assets are eventually included in the trust or are payable to the trust.

The next step is for the representative to check the powers that they will have over property. Refer to the Will and the Trust documents. An attorney should be consulted if there are any questions as to the extent of the representatives’ powers.

**Collection of Assets.** The next step is to collect the assets. Valuables, such as securities, jewelry and other personal items of substantial value, should be kept in a safe place such as a safe deposit box to which only the representative has access. The “Estate Planning Letter” contained in the Portfolio should be consulted as to the disposition of these valuables. Provided that title of other assets was properly transferred into the name of the Trust, there will not need to be any change of title immediately. However, bank and savings & loan accounts, and security brokerage accounts, may need to be closed or have their ownership changed to reflect the representative’s name. To do this, the representative may need to use the “Certificate of Trust” provided in the Portfolio or may need to prepare an Affidavit of Survivorship and/or Succession. The representatives should thereafter maintain an accurate record of all deposits into and withdrawals from these accounts, reflecting the amount and sources of each deposit and the amount and purpose of each check drawn. Claims may need to be filed in order for the representatives to



# What Happens When A Loved One Dies

(CONTINUED FROM PG. 4)

obtain certain properties to which the decedent's estate is entitled such as life insurance proceeds, employer pension and insurance benefits, Social Security benefits and Veterans' Administration benefits.

**Management of Assets.** The management of assets entails several duties. First, a representative should be sure to maintain adequate insurance on valuable assets by making sure that existing coverages will continue after the decedent's death and making a note of expiration dates on applicable policies, while also checking that coverage reflects current market values. Investment decisions will need to be made. Cash income not needed for other purposes of administration, such as immediate payment of expenses, should be placed in interest-producing investments. The Will and Trust documents should be consulted by the representatives for further direction regarding longer term investments.

In due course, it may be necessary to sell some of the estate's assets, either because an item should be disposed of to avoid needless expense or loss through depreciation in value, or to create cash for payment of expenses, taxes or legacies to beneficiaries. Assets should not be sold before first consulting an attorney to ensure that appropriate authority exists or can be obtained. Holdings in a closely held corporation, partnership or sole proprietorship may pose special concerns and problems – the representative may be required to continue or windup the business in order to avoid a serious risk of loss to the estate.

Again, an attorney should be consulted before the representative acts with regard to any businesses.

Trustees have the responsibility to carry out the directions of the Living Trust exactly as they are written. Unfortunately, in carrying out the terms of the trust, trustees can be exposed to legal penalties and even litigation. Trusts provide for investment standards, such as the Prudent Person Rule or the Prudent Investor Rule. Especially during the period of administration, it is critical that the proper investment standard be applied and that the trustees comply with all the legal requirements.

**Valuation of Assets.** Proper valuation of assets can have important income tax, capital gains tax, property

tax, estate tax, and inheritance tax implications. All assets should be valued when a person passes away. In some situations, a formal appraisal is not necessary, but for certain assets (e.g., real estate, business) a written appraisal by a certified appraiser is essential. Consult our law firm.

**Allocation of Assets Between Living Trust “Sub-Trusts”.** Married couples may have a Living Trust(s) known as either an A/B or A/B/C trust. The A, B, C trusts are “sub-trusts” of the Living Trust. (In some cases there will be no “sub-trusts.”) Upon the death of the first spouse, the assets of the trust must be properly allocated to the A, B, or C sub-trusts. In most cases, this ensures that the deceased spouse's assets remain available for use by the surviving spouse, but they are largely sheltered from future estate taxes, creditors, lawsuits, and spouses. There are many technical considerations to be made in determining which of the sub-trusts will hold title to the various assets. For those considerations, please consult our law firm.

**Re-Titling of Assets.** To maintain protection against estate taxes, creditors' claims, lawsuit claims, and other dissipation of trust assets, it is essential that each asset be titled to the proper sub-trust and that the Sub-Trusts have appropriate bank accounts and tax identification numbers.

**Determination of Necessity for Qualified Disclaimers.** A “qualified disclaimer” is one of the most frequently used post-mortem estate planning techniques to take advantage of estate-planning opportunities or to correct lifetime planning errors. A “qualified disclaimer” of the decedent's assets is only available if the decedent's representatives and/or the surviving spouse do not exercise “dominion and control” over the decedent's assets. It is extremely important that no withdrawals or changes to title are made to any of the decedent's assets until the attorney in charge of the trust administration has had the opportunity to evaluate and discuss any disclaimer planning opportunities.

**Obtaining Taxpayer Identification Number.** A taxpayer identification number must be secured for the “B” Trust (a.k.a. “Family” or “Shelter” Trust) and the “C” Trust (a.k.a. “Marital” Trust), if there is one. Form SS-4 must be filed with the Internal Revenue Service.



## What Happens When A Loved One Dies

(CONTINUED FROM PG. 4)

Very special care must be taken to assure that the Internal Revenue Service will recognize and respond to inquiries from the Trustee.

**Determination of Need to File Form 706 and Filing.** For a married couple there is generally (but not always) no estate tax payable upon the first death (assuming the surviving spouse is a U.S. Citizen). As long as the deceased spouse left all of his or her interest in assets to the surviving spouse, in a way that qualifies for the “unlimited marital deduction” against estate taxes, there is probably no estate tax or inheritance tax owed at that time. However, there is frequently a need to file IRS Form 706 (Federal Estate Tax Return) to report to the IRS what the value of the decedent’s assets are and to ensure some or all qualify for the “unlimited marital deduction” against estate taxes. Proper filings of these forms will establish a value for the assets and can create protection against future estate taxes. The current estate tax rate is nearly 50% of the value of taxable assets.

With proper planning and administration, the assets may be discounted in value which can result in a significant reduction in future estate taxes. Also, some assets can be removed from the taxable estate of the surviving spouse (including future appreciation of such assets) thereby minimizing or eliminating estate taxes upon the death of the surviving spouse.

If it is determined that there is a requirement for filing Federal and State estate & inheritance tax return forms, **they must be filed within 9 months of the date of death.** If necessary, a 6-month extension may be granted as long as estimated taxes are paid at the 9-month mark. Penalties and interest are assessed for failure to pay taxes in a timely manner. Only a few accountants have the required knowledge or experience to prepare and file these forms and take advantage of the tax laws that are available.

The handling of estate tax issues is significantly different from other accounting practices. Our law firm utilizes qualified accountants to assist in the preparation of these tax return forms.

**Filing of Other Tax Forms.** A Form 1041 may be required to report income taxes of the “B” and “C”

sub-trusts (referenced above). They should be prepared and filed in a timely manner. There are other filings that may need to be filed: Notice of Fiduciary Relationship, Request for Prompt Assessment, and Request for Discharge of Personal Liability. Our law firm ensures that you are aware of all necessary filings.

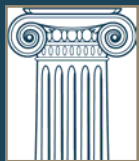
**Distributions and Accounting.** The trustee is not authorized to simply make his or her own personal decisions regarding the distribution of assets. The representatives must carry out the decedent’s intentions as expressed in the terms of the Living Trust or Will. Specific distributions and residuary distributions must be handled in a particular manner. Again, the first step is for the representatives to consult the appropriate estate planning documents in order to clearly define their duties and powers in this area.

Creditor claims may need to be paid and, depending on whether they are paid from a probate estate or from the Trust, the representative may have different responsibilities and latitude. Professional fees may be paid to the attorney, accountant and others, including the Personal Representative or Trustee – but the Will or Trust must first be consulted. Some of the fees and expenses may not be payable until the probate or trust estate is ready for distribution to the beneficiaries.

Beneficiaries may be entitled to ongoing payments of income and/or principal for a period of time beginning with the death of the decedent, or may be entitled to lump sum payments. The representative may be allowed to distribute property in kind or sell properties and distribute cash. The provisions relating to the distributions to beneficiaries are contained in the Living Trust document. On final distribution of the remaining assets, it is advisable for the representative to obtain a receipt and release from each beneficiary.

Trust administration is highly preferable to probate. Unfortunately, families are often required to do the most difficult tasks at the most difficult time. If the administration is supervised by those who have experience, it is not a forbidding task to understand.

Our firm has helped hundreds of families through this difficult process, and we are available to assist you during this time of special need. ■



# TRUST PROTECTORS

## Are Your Interests Being Looked After?

Many people are well aware of the benefits of using trusts. Revocable trusts allow you to avoid probate and provide relatively uninterrupted management of trust assets in the event of your disability. Irrevocable trusts supply you with a means of removing assets from your taxable estate and allow you to provide for a loved one while limiting his or her access to the trust assets as you have provided under the terms of the trust agreement. However, some people are apprehensive about transferring assets to an irrevocable trust because of the finality of the transfer and thereby lack of control over the assets by the creator. What happens if the creator's intent for creating the trust is not being fulfilled? What if the tax laws change, as they quite often do, leaving the purpose for creating the trust no longer necessary? A Trust Protector may be just what the doctor ordered.

Trust Protectors, which are also known as Special and/or Independent Trustees) are being increasingly utilized to provide added flexibility in both revocable and irrevocable trusts. The Protector strategy has long been used in foreign asset protection trusts and in the United Kingdom, and its use in domestic trusts is becoming increasingly common. What exactly is a Protector? A Protector is someone the trust creator chooses to make decisions regarding the trust that the creator may not make without suffering an adverse tax or other consequence, such as having the trust corpus included in the creator's estate.

The amount of authority given to the Trust Protector is up to you. You may limit the Protector's powers to only certain areas, such as removing and appointing trustees, or you may broaden them to include the ability to amend the trust as well as add beneficiaries. Whichever direction you choose to take, you'll want to give your Trust Protector the ability to modify the trust

terms to conform with changes in the law.

Choosing a Trust Protector is an important decision. You can name a Trust Protector, Co-Trust Protectors or a committee of Trust Protectors who would serve similarly to a Board of Directors over your trust. You want to choose a person who will ensure that your intent for creating the trust is being upheld by the Trustee. Therefore, it is important to make your selection wisely, and to discuss your choice with the Trust Protector beforehand so that the appointed person

or persons are aware of the responsibilities that are involved.

The Trust Protector should not be the Trustee or the trust creator. Generally, the Trust Protector should be an independent third party, although it is not a requirement. The risk in naming a related party as your Trust Protector is the appearance of influence over the

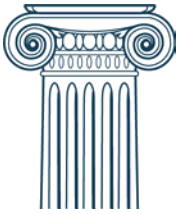
Trust Protector by the trust creator. Such appearance of impropriety may lead the Internal Revenue Service to attribute the Trust Protector's powers over the trust to the trust creator. This could risk inclusion of the trust assets in the creator's estate.

Look at a Trust Protector as your Trust's own personal bodyguard. He or she is there to make sure that your intentions are not disregarded. However, Trust Protector provisions must be drafted in a particular manner depending upon over which type of trust you wish the powers to apply. Therefore, it is imperative that you consult with a qualified estate planning attorney familiar with the use of Trust Protectors to be sure that adverse consequences do not ensue. Protect your objectives, otherwise all your planning may have been done in vain. ■



# JONES J WALDO

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## What's New?

- ◆ **August 2006:** Randy and Matt completed vital IRA training provided by nationally known IRA Trainer, Ed Slott. This training helps us assist clients with complicated IRA planning issues.
- ◆ **September 2006:** Matt was invited to speak to Farm Bureau Financial Services Agents about estate planning issues in Des Moines, Iowa, at their national meeting and in Salt Lake City.
- ◆ **October 2006:** Randy, Matt and Deacon attended the *American Academy of Estate Planning Attorneys* Fall Summit held in San Diego, California where they focused on the most current estate and tax planning issues.
- ◆ **October 2006:** Randy has been admitted to practice law before the United States Supreme Court in Washington, D.C. He was nominated by former U.S. Solicitor General, Kenneth Starr, and was sworn in at a ceremony held in open court in Washington, D.C. and presided over by Chief Justice John Roberts which was attended by all nine Supreme Court Justices.
- ◆ **November 2006:** Randy, Matt, and Attorney Deacon Haymond all recently presented estate planning seminars for members of several local Credit Unions. The seminars are presented as an added value service for Credit Union members.
- ◆ **November 2006 thru March 2007:** Randy and Matt have been invited to speak to farm and ranch families around the State of Utah this winter. These seminars are being held in 17 communities and are sponsored by the Utah Farm Bureau Federation as an added benefit to their members and the public.
- ◆ **November 2006:** Randy and Matt recently attended the Salt Lake Estate Planning Council's Fall Institute held in Salt Lake City. The Institute brings together many local professionals in the estate planning field.
- ◆ **November 2006:** Matt recently presented an educational estate planning seminar for a group of Utah Power & Light (now Rocky Mountain Power) retirees at their offices in Salt Lake City.
- ◆ **November 2006:** Randy recently received the highest possible peer reviews from the rating service Martindale Hubbell (AV rating).
- ◆ **December 2006:** Both Randy and Matt were recently named to *Utah Business Magazine's* 2007 "Legal Elite" list of attorneys in Utah, as nominated by their peers. Many other Jones Waldo attorneys were also named on this list in various other areas of law.
- ◆ **December 2006:** Matt was recently invited to speak on estate planning issues that concern families with special needs loved ones. The meeting was held in Salt Lake City and was hosted by the Fragile X Association of Utah.