GUIDE TO ESTATE PLANNING

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What's Your Estate?

An estate isn't just expensive property surrounded by a fence.

Your estate is everything you own in your own name, and your share of anything you own with other people. Your property can be **real**—meaning land and buildings—or **personal**, such as jewelry, a stamp collection, or a favorite table or chair. Money is property, too, as are stocks and bonds, a mutual fund account, or a life insurance policy.

The actual value of your estate is computed only after you die—when you're not around to figure it out. But it isn't a mystery. The idea behind **estate planning** is that you know what you own, what it's worth, and what you want to happen to it—both during your lifetime and after your death. If your estate is large enough, you may have to do some **tax planning** as well.

LEAVING YOUR ESTATE

Since you own the property in your estate, it's your right to say what will happen to it. You might tell your spouse, your children, or your lawyer what you want to happen, but unless it's written down, there's no assurance your wishes will be respected.

There are several ways to make clear what you want to happen to your estate.

- You can write a **will** to specify who gets what after you die
- You can create one or more **trusts** to pass property, or income from that property, to others
- You can name **beneficiaries** on retirement accounts, insurance policies, and other investments so they will receive the payouts directly
- You can own property **jointly** with other people, so that it becomes theirs when you die

Since wills and trusts are legal documents, you should consult your lawyer about them. Naming beneficiaries is simpler, usually requiring only your signature. And owning property such as homes and bank accounts jointly—especially with your spouse—is fairly standard.

WHAT'S YOUR ESTATE WORTH?

Finding the value of an estate is a two-step process—adding up what it's worth and then subtracting debts, certain bequests, and the expenses of settling it.

Usually, the valuation is figured as of the date of your death. The alternative is to value the estate six months after you die, if waiting will decrease its value and therefore reduce the potential tax.

An estate's worth is figured by finding the **fair market value** of its real, personal, and investment property. That's not easy to determine ahead of time, in part because market values change over time, and in part because evaluators may appraise the same property differently.

Just as everything you own is part of your estate, what you owe reduces its value. Your income taxes, mortgages or other debts, funeral expenses, and the costs of settling your estate—which can be substantial—are all deducted from your estate's assets. So is the value of any property you transfer to a charity or to your surviving spouse if he or she is a US citizen.

MAKING A PLAN

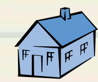
Estate planning can be a complicated process because it requires forward thinking and sometimes difficult decision-making. While financial matters—selling your business, for example—may require attention, the real issue is deciding what you want to do with your assets. So it demands attention from everyone, not just the very wealthy.

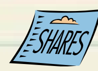
SETTING A VALUE

One workable definition of fair market value is the amount someone would be willing to pay for your property, and that you'd be willing to accept—assuming that neither one of you is under any pressure to buy or sell, nor guilty of any misrepresentation.

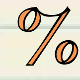
An Estate Inventory

If you own your home, investments, an IRA or 401(k), and an insurance policy, the value of your estate may be greater than you think. Here's a checklist of what might be included:


Real estate



Securities (stocks, bonds, and mutual funds)


Interest and dividends you're owed that haven't been paid

Bank accounts

All tangible personal property

Life insurance policies you own

No-fault insurance payments due to you

Annuities paid by contract or agreement

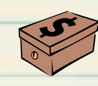
Value of any retirement savings plan, including IRAs

Claims paid for pain and suffering, even after your death (but not claims for wrongful death)

Income tax refunds

Forgiven debts

Dower and curtesy interests


UGMA and UTMA custodial accounts for which you are the custodian, if you created the accounts

Closely held businesses

ESTATE PLANNING

What's in a Name?

If your estate includes everything you own, you want to be pretty clear about what ownership means.

Most people think of real property when the subject of ownership comes up, but all kinds of property—bank accounts, stocks, mutual funds—can be owned in a variety of ways. The way you own your property determines the flexibility you have to sell it while you're alive, and also what happens to it after you die.

Basically, there are four ways to be a property owner:

- By yourself, as a **sole owner**
- As a **joint owner**
- In an arrangement called **tenants by the entirety**
- As **tenants in common**

In addition, if you're married and live in a community property state, half of what you buy or earn during your marriage legally belongs to your spouse.

JT TN W/ROS

This cryptic acronym, which frequently appears on bank accounts and mutual fund statements, stands for **joint tenants with right of survivorship**. It means that both owners have equal access to the property while they're alive, and the property belongs to the survivor when one of them dies. For example, if you and your mother have a joint checking account with survivorship rights and your mother dies, the money is yours.

ESTATE IMPLICATIONS

If you own property jointly with your spouse and you die first, only half the jointly held property is added to your estate. For example, if you and your spouse own a $600,000 house jointly, and you die, only half the value, or $300,000, is counted in figuring the value of your estate.

If the joint owner is someone other than your spouse—such as your child or a partner to whom you're not married—the rule is that the entire value of the property is added to the estate of the person who dies first. If you owned a $600,000 house jointly with a friend, for example, the entire $600,000 would be added to your estate at your death—even though he or she would become sole owner of the house. The only way to avoid this situation, and the possibility of increased tax on your estate, is to be able to prove the amount that each of you contributed to buying the property if you purchased together.

OWNING LIFE INSURANCE

Life insurance is a way to provide financial security for people who outlive you. A life insurance policy ensures that your **beneficiary**, or person you name, receives a **death benefit**, or sum of money when you die.

Death benefits are tax free to beneficiaries. But if you own the policy on your own life—which is customary—the amount of the death benefit is included in your estate.

One alternative is to have someone else—a spouse or child, for example—own a policy on your life and also be the beneficiary. When you die, the policy owner receives the insurance payment but the amount isn't part of your estate. Another approach is to create an **irrevocable life insurance trust** that would own the policy. You can pay the premiums yourself with yearly gifts to the trust. Though you can't change beneficiaries or borrow against the policy's cash value, you can specify how the death benefit is distributed. But you should take this step only with legal and tax advice.

A third alternative is to purchase a second-to-die policy, which covers both spouses but pays the benefit when the second spouse dies. Your heirs can use the payout to cover any debts that may be due. But unless your net worth is substantially more than the two of you can leave tax free, the potential benefits may not justify the cost of a second-to-die policy. Here, too, you should seek unbiased professional advice before you act. Some insurance policies allow you to withdraw money to cover expenses of a terminal illness. The death benefit is reduced by the amount you take out.

POWER CONTROL

Being a property owner gives you the right to control what happens to that property, at least as long as you are healthy, solvent, and of sound mind. And, of course, it also helps if you're around to keep an eye on it. But what happens if you aren't able to exercise control for one reason or another?

One solution is to grant, or give, **power of attorney** to your spouse, sibling, adult child, or close friend—someone you trust to act wisely and in your best interest. This attorney-in-fact, or agent, has the legal right to make most decisions you would make if you were able, as well as the authority to buy and sell property and to write checks on your accounts.

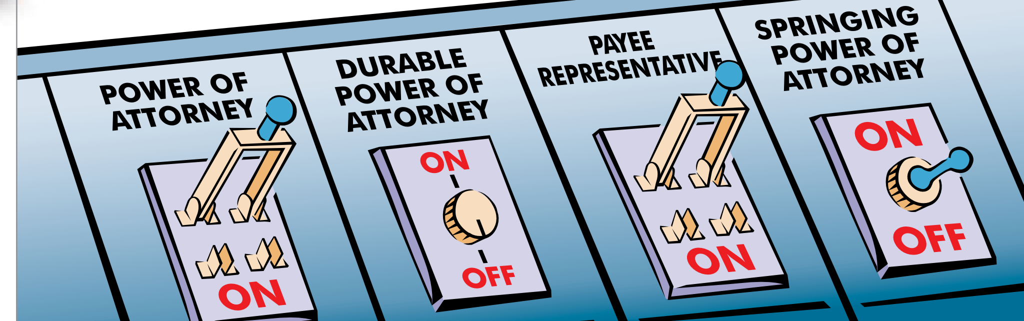
A lawyer can draw up the power of attorney for you, specifying the authority you are granting, and excluding those things you still want to control. It's a good idea for you, as **grantor**, or principal, to update a power of attorney—or even write a new one—every four or five years so it will be less vulnerable to legal challenges.

Since a general power of attorney is revoked if you become physically or mentally disabled, you can take the additional step of granting **durable power of attorney**. Unlike a limited or general agreement, durable power is not revoked if you become incompetent, so you're not left without someone to act for you when you need assistance most. But not all states allow durable power, so check with your legal adviser.

You can also establish a **springing power of attorney**, which takes effect only at the point that you're unable to act for yourself. In every case but the last, you can revoke the power at any time or choose a different agent.

A LESSER POWER

Unlike someone with power of attorney, a **payee representative** can receive your income and pay your bills—but nothing more. You still control your other financial affairs. But this arrangement helps you keep your accounts in order if you can't do them yourself because you're ill, traveling, or just too busy.



Estate Taxes

Fewer than 0.1% of estates owe federal estate taxes.

The advantages of accumulating wealth may be offset by the possibility that part of your estate will be vulnerable to federal taxation. That happens if the estate's total value is larger than the exempt amount that you can transfer tax free. While the primary focus in creating an estate plan is ensuring that your property goes to the people and organizations you want to benefit, limiting the potential tax bill is also important.

Estates valued at less than the exempt amount
PAY NO ESTATE TAX

Estates of any size, left to US citizen spouse
PAY NO ESTATE TAX

Estates valued over the exempt amount left to anyone but spouse
PAY ESTATE TAX

HOW TO FIGURE ESTATE TAX

First, determine the value of the gross estate

Then, subtract the estate's expenses and reductions to find the TAXABLE ESTATE

Next, figure the tax amount due on the value of the taxable estate

Finally, subtract the credits that apply to find the NET ESTATE TAXES

WHO PAYS ESTATE TAXES?

Your estate will owe federal estate taxes if you die in 2025 if your taxable estate is larger than $13.99 million. That includes fewer than 0.1% of all estates. If you're married, the same is true for your spouse, so together you can leave an estate worth $27.98 million. In fact, if your estate doesn't need the full exemption, any excess is portable and can be added to your surviving spouse's $13.99 million exemption.

However, if you've made taxable gifts in your lifetime, those gifts count as part of the $13.99 million tax-free total unless you've already paid the tax that's due on those amounts. Taxable gifts are amounts over $19,000 you give to a single person in the course of a year.

The highest federal rate your estate will pay on its taxable value is 40%, which is just slightly more than the highest rate on ordinary income, which is 37% in 2025.

However, many states also tax estates. In some cases, the rates reach 16% and the exempt amount is as low as $1 million. You should consult your tax adviser and estate attorney about the state taxes that may apply and take that potential cost into account in your long-term planning.

SAVING TAXES

Although the size of the estate you can leave tax free has increased, the value of what you own may have increased too. Not only should you keep careful track of what your estate is worth, but you should have an **estate plan** in place to avoid, or at least minimize, these taxes.

It's smart to create your plan with your professional advisers, since the rules and regulations are complex. But the more you know about what you want to achieve, the easier and probably cheaper it will be to move ahead.

The plan you create should let you take advantage of several of these money-saving options:

- If you're married, you can use the **marital deduction** to leave everything in your estate to your spouse tax free if he or she is a US citizen
- You can reduce the size of your estate by making annual **tax-exempt gifts**
- If you're married and your spouse agrees, you can each make an annual tax-free gift, effectively doubling the amount, even if only one of you has earned the money
- You can make annual tax-exempt **charitable gifts** equal to half your adjusted gross income in most cases

If your spouse dies first, you're entitled to carry over any portion of estate tax exemption he or she didn't need to increase the amount you can leave tax free. But you must elect this feature, called portability, on the estate tax return of the first to die using IRS Form 706.

PAYING ESTATE TAXES

If estate taxes are due, the estate itself must pay them within nine months of your death, in most cases. It's your job, though, to anticipate the tax bill and plan so that there's enough money to pay it. If the estate doesn't pay when the tax is due, your heirs may be liable for the taxes themselves. That might mean having to sell assets at a loss, or tapping their own savings to meet the obligation, which is probably not what you intended in making them your beneficiaries.

To be sure there's money available in your estate to pay the taxes, you can leave instructions for **liquidating**, or turning into cash, specific assets, or selling your share of a business. The best method of coming up with the cash depends on your own financial situation. But don't assume that decisions that seem obvious to you will be just as clear to someone else. It's a good idea to get tax and legal advice, and then spell out what you think should happen in a letter of instruction to your executor or your heirs.

A SEPARATE IDENTITY

Because an estate has an identity separate from the person whose property it was and from that of the executor, it needs its own federal ID number and its own bank account. Executors can apply for the number from the IRS using Form SS-4.

RESIDENCE AND DOMICILE

Federal estate taxes are figured at the same rate no matter where you live. But where you hang your hat can make a big difference when it comes to state taxes. For starters, real estate and tangible personal property are taxable in the state where they're physically located whether you are a resident of that state or not. Intangible personal property—stocks, for example—are taxable in the state of your legal residence, or domicile. There can only be one of those, no matter how many residences you have.

HIGH-TAX STATE

If there's a question about your domicile, documents showing where you voted, maintained bank accounts, registered your car, or the residence you declared in your will can be used to prove which place you considered home. One thing you should check while you're able to is the consequence of owning property in different states. You might decide to put some or all of those assets in a living trust.

LOW-TAX STATE

TAKING DIFFERENT BITES

Estate taxes are taxes on the value of the property in your estate, and they're usually paid by the estate. There's a federal estate tax and, in some states, a state estate tax.

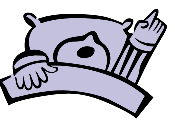
Inheritance taxes are state taxes your beneficiaries pay for the value of the property they receive from your estate. You can specify in your will that your estate should pay whatever inheritance taxes are due to save them from having to sell the property they inherit in order to be able to pay the tax.

Wills

Where there's a will, there's a way to make your wishes known.

A will is a legal document that transfers your property after you die, and names the people who will settle your estate, care for your children who are minors, and distribute your assets to your beneficiaries.

With rare exceptions, a will has to be a formal, written document that meets the legal requirements of the state where it's **executed**, or prepared. In some circumstances, a hand-written will, known as a **holograph**, passes muster. In very rare cases—usually a deathbed situation—an oral will, known as a **nuncupative** will, may be considered valid.



But why take a chance? Making a will is one situation where doing the right thing is easy and relatively inexpensive.

WHAT'S THE WORRY?

If you die **intestate**, that is without a will, you'll have lost control over what happens to your property. And your estate will probably end up paying a lot more to settle your affairs—meaning that less will be available for your heirs. Any estate, large or small, can be settled faster if you've made a will naming the people, charities, or other institutions you want to inherit your property.

If you're married and die intestate, your property will go to your spouse and any children you have. Each state has a specific formula for dividing the estate, some giving a greater percentage to the spouse and others favoring the children. If you've been married more than once, or have children from different marriages, the rules for dividing your property could produce results you wouldn't be happy about.

If you're not married, your relatives—the ones the court decides on—inherit. Chances are that what you intended to leave to friends or to charitable, religious, or educational institutions will go instead to a distant relative, perhaps even one you weren't very fond of. The bottom line is that if you're unmarried, childless, and without property, you can justify waiting to make a will. Otherwise, you can't.

ANYTHING DOESN'T GO

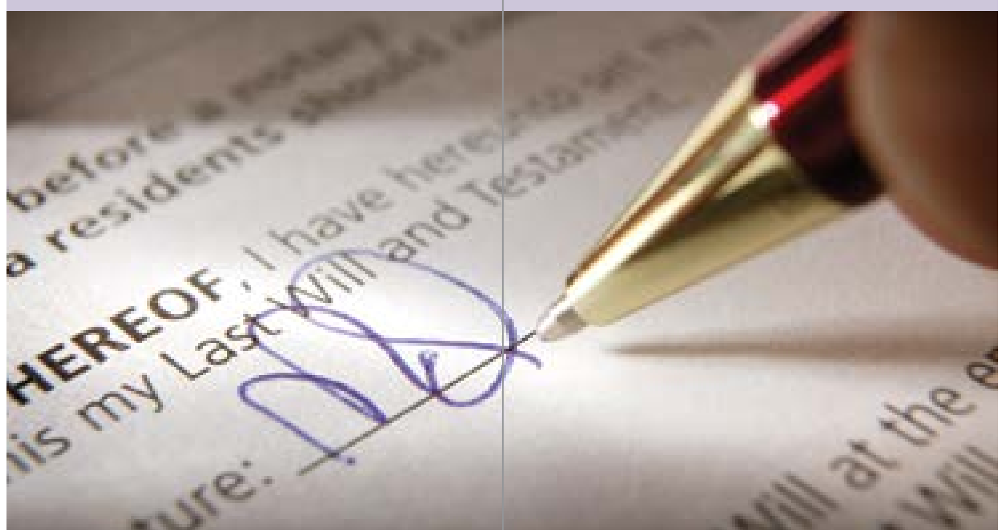
You can divide your estate pretty much as you wish, though there are some things you can't do if you want your will to survive a court challenge.

WHAT YOU CAN DO

- ✓ You can limit the inheritance to one or more of your children or, in most states, leave them nothing at all. But it's better to say so directly in the will. If you don't mention them, they might claim you simply forgot, or the laws in your state might say that children who aren't named in the will are entitled to a share of the estate, just as if you'd died intestate.
- ✓ You can specify whether your beneficiaries' heirs inherit their share if the people you name die before you do.
- ✓ In some states, you can include an ad terrorem clause that provides that anyone who contests your will loses whatever legacy you had provided for them. However, the court could rule there was a legitimate reason for challenging the will.
- ✓ You can add a legally executed codicil, or amendment, to your will to add, remove, or change beneficiaries or bequests.

WHAT YOU CAN'T DO

- ✗ No state lets you disinherit your spouse, as long as you're legally married, unless there's a legal pre- or post-nuptial agreement. Most require you to leave a certain percentage of the total estate. In fact, a surviving spouse has the right to **elect against a will**. This means rejecting the terms and bequests of the will and taking instead the minimum percentage that state law sets as the spouse's share of the estate if there were no will.
- ✗ Louisiana won't let you disinherit your children. Several other states make it hard.
- ✗ You can't impose conditions that are either illegal or against public policy. For example, if you tie a beneficiary's right to an inheritance to a restriction on getting married or membership in a certain organization, your will might be successfully challenged.
- ✗ You can't write in changes or cross things out of the will after it has been signed and witnessed.



ESCHEATING ALWAYS SHOWS!

If you die without a will and have no relatives, your estate is **escheated**, or turned over, to the state where you live. That's probably how your friends will feel. More than half of all Americans die intestate, including many who leave a large estate and minor children. A small percentage of wills are invalid for one reason or another.

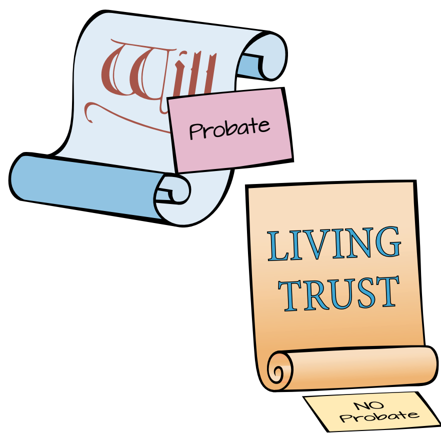
THE PROBATE QUESTION

Any property that is transferred by will is subject to **probate**, the legal process of proving, or verifying, your will through the courts. Because the process can be slow, costly, and sometimes perverse, probate has a bad reputation.

However, you can't avoid probate even if you don't make a will. The only thing you accomplish is to give the probate court—sometimes called surrogate's court or orphan's court—more authority over your affairs, since the court will appoint an administrator to handle your estate.

A clear, unambiguous will has the best chance of surviving the probate process without hassle or extra expense. And the more property you have already transferred directly to your beneficiaries, the more you reduce potential problems.

One workable alternative is to create a **living trust** to transfer the bulk of their property outside the probate process. But you still need a will to leave property that isn't covered by the trust and to name an executor for your estate and a guardian for any minor children.



JOINTLY OWNED

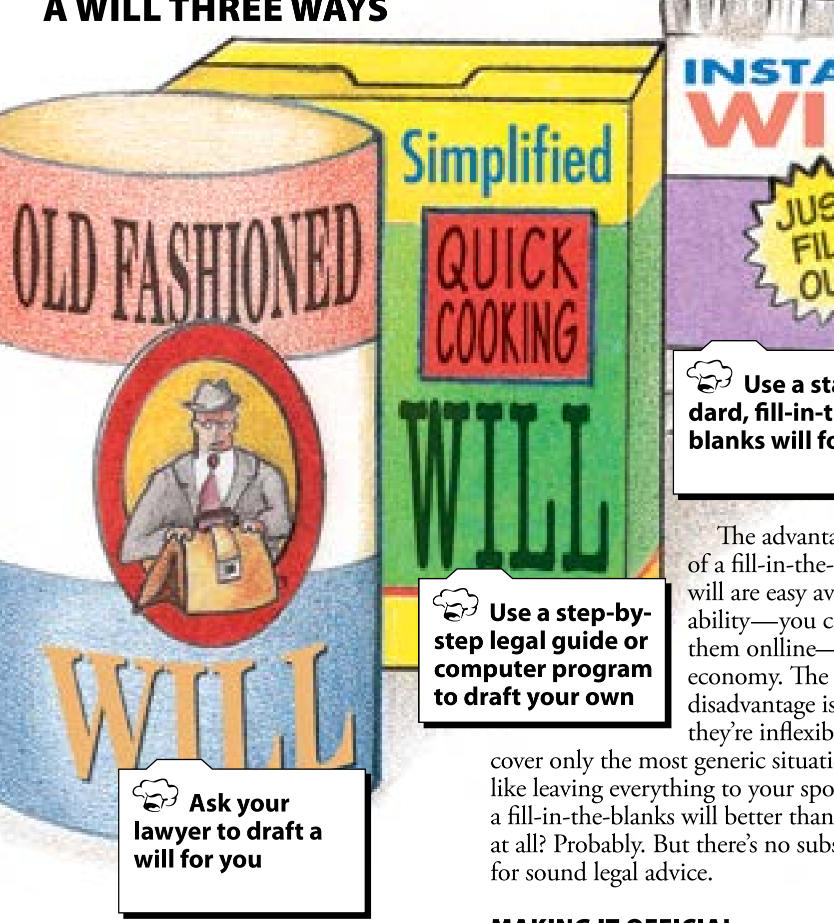
You can't leave jointly owned property to someone other than your joint owner. If you have a joint bank account with one of your children and own your house jointly with another, that property is theirs when you die—whether or not the properties are of equal value. If your will states that your children should share your estate equally, but all your property is jointly held, your wishes can't be carried out. In fact, if one child generously shares her $300,000 inheritance equally with her sibling, she'll be making a potentially taxable gift of $150,000.

Cooking Up a Will

You can follow a number of different recipes to produce a valid will.

While wills are formal, ultimately public, documents, they're also very personal. What they're doing, after all, is detailing the size and distribution of your estate.

YOU CAN MAKE A WILL THREE WAYS



Ask your lawyer to draft a will for you

Use a step-by-step legal guide or computer program to draft your own

Use a standard, fill-in-the blanks will form

The advantages of a fill-in-the-blanks will are easy availability—you can find them onlline—and economy. The major disadvantage is that they're inflexible and cover only the most generic situations, like leaving everything to your spouse. Is a fill-in-the-blanks will better than no will at all? Probably. But there's no substitute for sound legal advice.

WHAT'S BEST FOR YOU

Using a lawyer who specializes in wills and estates is smart, and probably essential if your estate is at all complex, involves real estate, or includes any bequests that might be challenged in court. One disadvantage may be the price tag, since lawyers typically charge by the hour. But getting the details right can be invaluable.

If you use a guidebook or computer program to write your own will, you'll probably spend less to create the document. It may be smart, though, to have a lawyer review your work so that your estate doesn't end up paying court fees or estate taxes equal to the money that you saved by writing it yourself—and more.

MAKING IT OFFICIAL

The steps to making your will official are clearly spelled out in the law. Your **execution**, or signature, has to be **attested to**, or witnessed, by two or three people who must sign the will in your presence. The witnesses don't have to read the will itself, or know what's in it, but you must tell them it's your will that you're asking them to witness.

In some states a witness may not inherit anything that's included in the will, and in others people mentioned in the will may not serve as a witness. Sometimes the witnesses must appear in court when a will is filed for probate, but in many states witnesses can instead sign a document stating, or affirming, their participation at the time of the will's execution.

ESTATE PLANNING

You should sign only one copy of your will and file it with your attorney, at home, or in some other safe place that is easy to get at. Safe deposit boxes are not a good idea, since they are frequently sealed when the owner dies, making their contents inaccessible.

If your will can't be found, the court will presume it's been revoked. On the other hand, multiple signed copies of the will can cause delays, since, in most cases, all of them must be accounted for before the will can be probated. Unsigned copies, or photocopies, on the other hand, are fine and can be useful for reference.

last wil ənd tes´tə mənt
The sometimes elaborate and seemingly repetitive language of wills is, in part, a continuing struggle to avoid ambiguity. More often than not, legal battles over wills have been the direct result of imprecise or unclear language. The solution, over the years, has been to go on adding words to cover all the possible circumstances. That's why you use your "last **will** and **testament** to **give**, **devise**, **and bequeath** all the **rest**, **residue**, **and remainder** of your estate," using at least twice as many words as seem necessary to do the job.

WILL POWER

You can change your will as often as you want. There's no last word until you die, which means you can change every detail from one year to the next, and back again, as long as you're willing to foot the bill. When you make a new will, though, you should say specifically that you are revoking any prior will. If you have the old one, or copies of it, you should destroy them. That way, there will be no question about your intentions.

If you're making only minor changes, however, you can add a **codicil** to your will. Like the will itself, a codicil is a legal document that details your wishes. It must meet specific standards in order to be valid, including the requirement for witnesses.

DIVIDING YOUR ASSETS

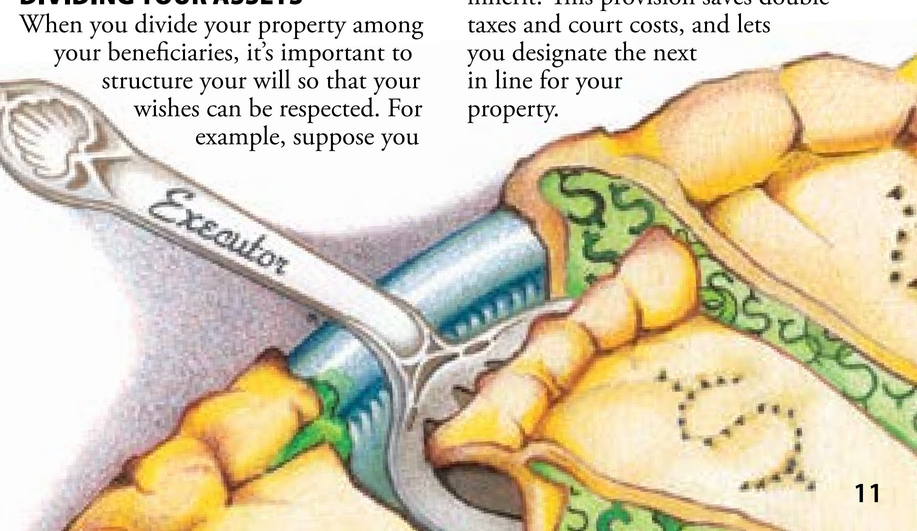
When you divide your property among your beneficiaries, it's important to structure your will so that your wishes can be respected. For example, suppose you leave stock to your son, but the stock has been sold? Or what if you leave one daughter $75,000 and everything else to another—and $75,000 is all that's left after your bills are paid?

To avoid the most common problems, experts suggest you leave all major bequests as a **percentage** of your total estate, instead of a dollar amount. You can also name contingent beneficiaries, if your first choices die before you do, can't be found, or don't want your money.

SIMULTANEOUS DEATH

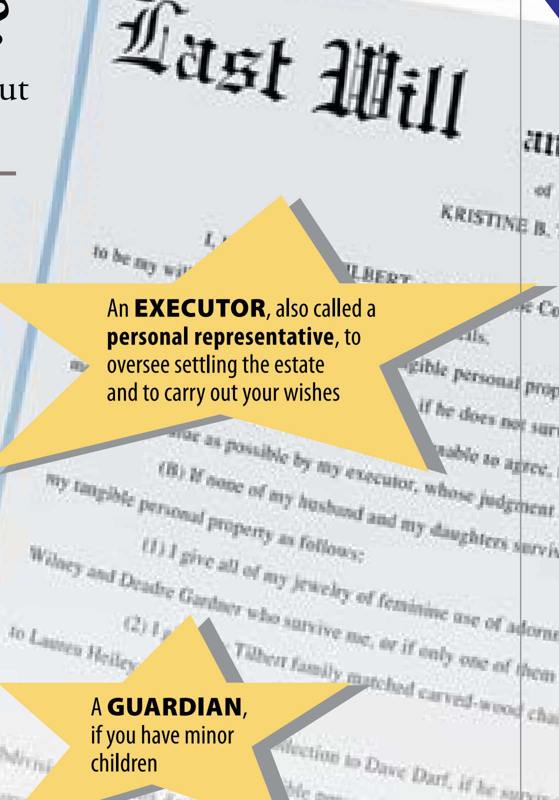
Many married people leave their entire estates to their surviving spouse, and to other beneficiaries if the spouse has died first. What that doesn't resolve, however, is what happens if the couple dies at the same time, or within a very short period of each other. To cover that possibility, you can include a **simultaneous death clause** in your will to pass your property directly to your surviving beneficiaries.

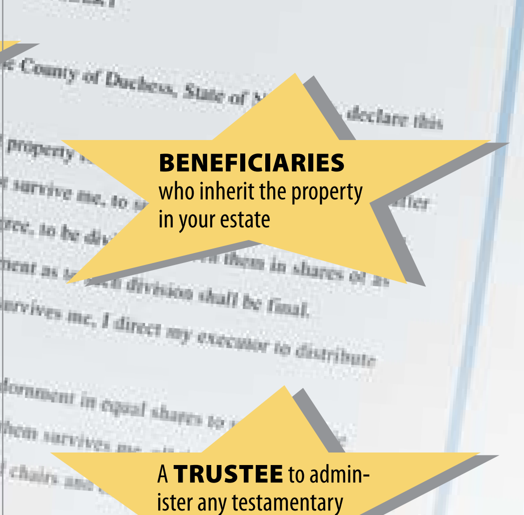
You can also require that any beneficiary survive you by a certain length of time—often 45 days—in order to inherit. This provision saves double taxes and court costs, and lets you designate the next in line for your property.



Who's in a Will?

You're the star of your will, but there's a big supporting cast.





Your will contains a list of names, starting with your own. The other people and organizations you mention either receive property when you die or have specific jobs to do. While almost anyone would be delighted to be on the receiving list, you ought to be sure that the people you're asking to carry out your wishes are willing and able to play their parts.

CHOOSING AN EXECUTOR

While beneficiaries don't need any special skills to qualify for inclusion in your will, executors do. The job of collecting your assets, paying your bills, and resolving legal and tax issues can be complicated and time consuming. That means you should ask the consent of the person you want to fill the executor's role. You should also name an alternative executor, should your first choice be unable or unwilling to do the job when the time comes. Otherwise the choice will be left to the probate court.

A spouse, child, or close friend is frequently named executor, and can handle the task if he or she is comfortable managing legal and financial issues. It's an added advantage if he or she can work with a family lawyer. With complex estates, however, or wills which might provoke controversy, it's often best to name an executor with professional skills. One solution may be to name joint executors, such as a lawyer and a family member or friend.

CONFLICTS OF INTEREST

If you want your will to resolve—not create—controversy over your estate, you should consider potential conflicts of interest in naming your executor.

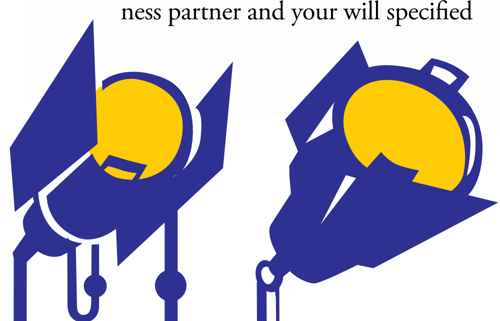
Problems arise most often when the executor's responsibility to act in the best interests of the beneficiaries competes with his or her own best interest. For example, if your executor was your business partner and your will specified that the business should buy out your share, how would the executor set the price? Would the goal be to add the most value to your estate or pay the lowest price the business could get away with?

Similarly, you might create bad feelings, or even spark a contest to your will, by naming one of your children as both executor and primary beneficiary of your estate. Though the conversation could be a painful one, many experts advise explaining the contents of your will to your family while you are able. That step could prevent conflict after you die.

PICKING A GUARDIAN

Children who are minors—those under 18 under the laws of most states and under 19 or 21 in the rest—need guardians if their parents die. A guardian has custody of the children and makes the decisions of daily life: Where the children live, go to school, receive medical care, and spend their vacations, are just a few of the issues. If you and your spouse each name a guardian—hopefully someone you agree on—in your will, your children should be provided for should something happen to both of you.

Your primary concern is likely to be naming a guardian who will raise your children as you would have yourself.



You choice might be a relative or a friend of yours, or even an older sibling of the children, who will provide a good home. Someone they are already comfortable with is probably a wise choice, though experts often advise against naming a grandparent because of the age factor.

Since raising children costs money, you should consider a potential guardian's financial situation as well as his or her personality before making a decision. Of course, if you leave a large estate or more than adequate life insurance, the issue might be how well the guardian will manage the money. While you can name a different person to hold the purse strings—as **guardian of the property** or trustee of a trust created by your will—such an arrangement can cause complications unless the two are able to work comfortably together.

YOUR WILL ISN'T THE LAW

In some cases the probate court may overrule your choice of guardian and name another person. Relatives can also contest your will to have the guardian you name replaced by someone else, often themselves. While there's no way to prevent either situation, the more logical your choice and the more direct you are with relatives who might potentially object, the greater the chance that your wishes will prevail.

The most difficult situations are often those that involve divorced parents, or parents who disagree about who should be named. The one thing you have reason to fear in such cases is that the legal battle will be long, expensive, and probably damaging to the children.

NO BONDS ATTACHED

You can specify in your will that your executor and the guardian of your minor children serve **without bond**.

Bonding is a form of insurance against fraud, designed to protect the estate against a dishonest executor. Your estate pays the bond premiums, which can be expensive, and the insurance company can slow down the process by requiring every property transfer or financial transaction to be countersigned. One thought: If you're uncertain enough about your appointee's honesty to require a bond, you'd probably be better off choosing someone else.

If you die intestate, you don't have the option of expressing your position on bonding, and it will be required.

SPOUSAL PROTECTION

Financial protection for a surviving spouse is built into state laws, usually by insuring his or her right to some part of your estate—both in cases where you leave no will and where your will is at odds with the law. Though currently your surviving spouse has a right to a share—usually a third to a half of all the assets in your estate—making sure a widow or widower isn't left out in the cold is not a new idea. In the past, a surviving widow had **dower** rights and a surviving widower had **curtesy** rights, providing life interest, or the right to use and collect income from any real estate owned by his or her spouse during the marriage.

ESTATE PLANNING

Beneficiaries

You have a free hand in naming beneficiaries and how they'll share your bequests.

Except for the requirement of providing for your spouse, if you have one, there are no rules about who your **beneficiary**, or **beneficiaries**, are. You can leave your property to family and friends, to organizations and institutions, even to your pets. By the same token, you can leave potential heirs little or nothing.

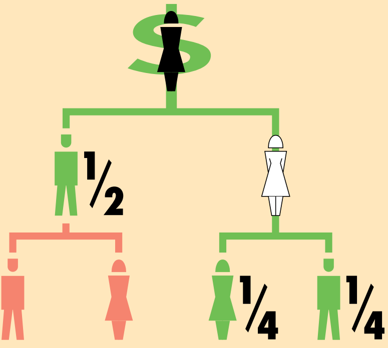
The only legacies that are turned down with any regularity are those in which property such as a house or a collection of something is given to a charitable organization without providing money for the property's upkeep. It's hard to imagine a Picasso would be rejected anywhere, but if you're making bequests that will end up costing the beneficiary money, you ought to get approval first.

NAMING YOUR BENEFICIARIES

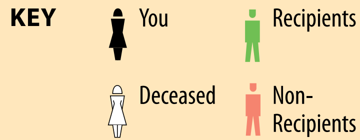
In naming your beneficiaries, you should be as specific as possible, especially in cases where identities might be confused. Presumably you have only one cousin named John. But if you leave him the bulk of your estate, you run fewer risks by identifying him more precisely. The same is true for colleges and universities, and for other institutions or organizations that may have similar names and may make a claim for your bequest by arguing that they have every reason to expect you to be generous. Conflicts not only create bad feelings. Any disputes that must be resolved in the courts cost money and time.

DISTRIBUTION PER STIRPES

If one child dies before you, that child's children split the share their parent would have received.

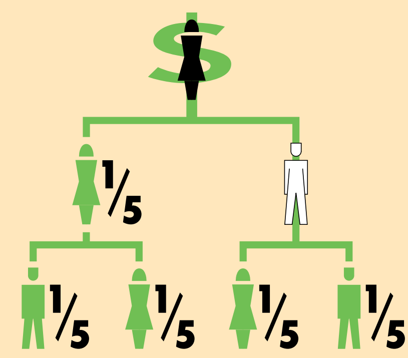


For example, if you left your entire estate equally to your two children, each of whom had two children, but one of your children died before you did, specifying the bequest as per stirpes or per capita could make a big difference to your surviving child.



DISTRIBUTION PER CAPITA

If one child dies before you, each surviving descendant may receive an equal share.



Under a per stirpes bequest, the living child would get half your estate and the two grandchildren whose parent had died would split the other half. Under a per capita bequest, however, one of two things could happen, based on the laws of your state and the way that your will is written.

Your surviving child may inherit everything, with nothing going to the children of your deceased child. Or, each of your surviving descendants may receive an equal share of your assets.

OUTLIVING YOUR BENEFICIARIES

If you live a long life, you have to consider the possibility that the beneficiaries you name in your will may no longer be around when you die. Do you want the money you've set aside for an old friend to go to her spouse if she dies before you do? If not, you can specify that your bequest is valid only if your friend survives you. If she doesn't, the money goes back into the general estate.

If the beneficiaries are your descendants, generally your children and grandchildren, known in the law as your **issue**, there is specific language you can use to designate the way your bequests will be made. If you leave an inheritance to your issue who survive you **per stirpes**, then your children's children divide the share their parent would have received. If you leave the inheritance **per capita**, then each surviving issue gets an equal share.

MULTIPLE FAMILIES

If you've been married more than once and have children from different marriages, it's important to spell out your wishes in your will. For example, if both partners in a current marriage have children of their own, they may want to leave the bulk of their own estates ultimately to their own children. If that's not clear in each partner's will, however, there could be some legitimately unhappy children.

KEEPING UP-TO-DATE

It's important to check your will on a regular schedule—every few years, for example—to be sure it still contains the provisions you want. If there's a major change in your financial circumstances or your family structure, you should revise your will immediately. A new spouse or a new child, for example, must be taken into account. Otherwise, some sections of the outdated document, and maybe the whole thing, can be thrown out and the estate settled as if you had died intestate.

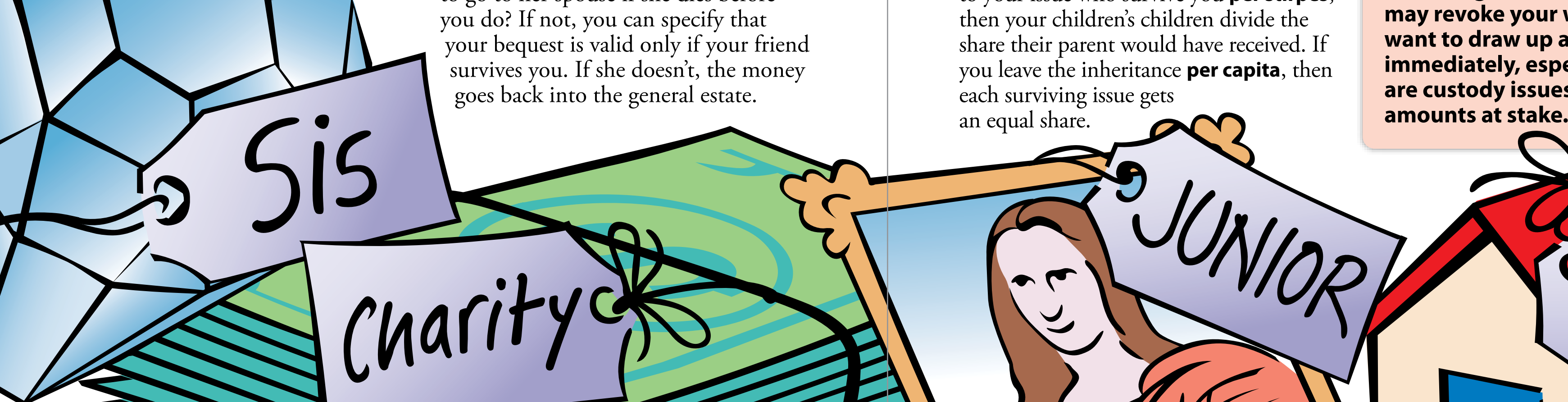
SPECIAL SITUATIONS

If you're not married, but want to leave your estate to a long-time companion, it's especially important that you have a will that makes your bequest clear. Inheritance laws don't usually recognize common-law marriages or any nonmarital relationships, however permanent they are. That's true even in states where you can register as domestic partners or qualify for benefits like health insurance coverage for your domestic partner.

You can simplify the situation by avoiding the probate process, either by owning property jointly, or by naming your partner as beneficiary on retirement plans and insurance policies. Those assets become your partner's directly. And, you can consider creating a trust naming your partner as beneficiary. Trusts are more difficult to contest than wills, something that may be important if your family is not happy about your domestic situation.

IT'S ALL OVER

A marriage or a divorce decree may revoke your will, so you'll want to draw up a new will immediately, especially if there are custody issues or large amounts at stake.



Acting as Executor

People often get a double look at this role—acting the part and choosing the actor.

Since every will needs an executor, you may end up serving in that role as well as choosing someone to play it for you. Most people name a family member or close friend as executor or co-executor with a lawyer or other professional even when the estate is fairly complex.

Cost is one factor: It is usually cheaper to pay a lawyer an hourly rate to handle legal and other complex jobs than to act as sole executor. The personal touch is another. It's often easier for beneficiaries to relate to someone they know—though it may not always be easier on the executor if the will has unpopular or unexpected provisions to administer.

TESTATOR NAMES AN EXECUTOR

WHO CAN SERVE?

Almost anyone can serve as an executor, as long as you're not a minor or a convicted felon. Some states require that you be a US citizen. In addition, some states also require that you be a state resident to serve as executor unless you're a close relative. But, in others, noncitizens can serve, and even nonresident noncitizens, if they serve as co-executor with a resident.

As part of the probate process, the court will confirm the person or persons you name as executor and issue **letters testamentary**. These letters give the executor the right to assemble your assets and administer your estate.

PROVIDING INFORMATION

A will does not ordinarily provide lists of bank and brokerage accounts, the location of your safe deposit box and its key, the details of your life insurance policies and pension plans, an inventory of valuable property, or business deals and outstanding debts. But you should provide them for your executor in a letter of instruction.

It's often true, too, that the knowledge you've accumulated—about how to liquidate a stamp collection or whether to pay off a mortgage, for example—may be as important to your beneficiaries as the material goods you leave them. While it may seem morbid to provide that information, it's a wise move.

MAKE IT JOINT

If you're single, it's smart, as part of your estate plan, to have a joint owner on your primary checking account. At your death the joint owner, perhaps a family member or the executor, will have access to the account to pay bills that are due, avoiding the probate process.

PAYING FOR THE JOB

Executors are entitled to a fee for doing the job—usually between 2% and 5% of the value of the estate—that is paid out of the estate's assets. Some people accept the payment, and others don't. The decision is theirs, and is often based on the nature of their relationship with you and the complexity of the job.

Professional executors almost always take the fee, so one way to save money is to appoint a family member, who probably won't take a fee, and have that person hire a lawyer to handle the more complex questions.

One case in which a family member who is also a beneficiary might take a fee for serving as executor is when estate taxes are due. The tax on the executor's added income may be less than the estate tax, and since the fees also reduce the estate, that might save some tax as well.

Executor

EXECUTOR

As executor you have legal and financial responsibilities that begin as soon as the **testator**—the maker of the will—dies. They involve you directly with the probate court. The process can take a few weeks, but can run a year or longer. At each step, you have to report your progress to the court. Specifically, you must:

- Present the will to the appropriate court to be probated
- Notify the people named as beneficiaries in the will
- Notify Social Security, pension administrators, insurance companies, and financial institutions
- Claim benefits payable to the estate
- Take control of the financial assets of the estate, evaluate and manage them, and collect outstanding debts
- Compute the value of the estate
- Arrange for appraisal of property not transferred by the will before it's sold or distributed at your discretion
- Pay outstanding bills, income taxes, inheritance taxes, and possibly estate taxes
- Distribute assets to beneficiaries

EXECUTOR SETTLES THE ESTATE

THE FINAL TAX BILL

As executor of an estate, one of your jobs is to be sure that all taxes are paid—a potentially mind-numbing responsibility. Here's what's due:

- **$ Potential federal estate and gift taxes**
- **$ State estate or inheritance taxes, which may be paid by the estate or by beneficiaries**
- **$ State gift taxes (in some states)**
- **$ Generation-skipping taxes on transfers of more than $13.99 million in 2025 that name grandchildren or great-grandchildren as primary beneficiaries**
- **$ Income taxes on the earnings of the estate's assets**

GET IN LINE

The law establishes the order in which an estate's assets are paid. Court fees, funeral expenses, and other costs of administering the estate—including executor's fees—come first, followed by taxes, medical expenses, debts, and rent or wages owed by the person who made the will. Then the other claims—including the legacies—are paid, from the most specific to the most general, or **residuary**, legacies. In general, bequests to spouses take precedence over bequests to other people.

A Matter of Trust

Once you create a trust, it takes on a life of its own.

Like a will, a **trust** is a written document that transfers property. But while a will is a statement of what you want to happen to your possessions after you die, a trust is a multipurpose tool that you can establish at any time to:

- **Manage your property**
- **Distribute assets to your beneficiaries**
- **Avoid probate**
- **Save on taxes**

Since no single trust can accomplish everything you may want to achieve, you can establish different trusts to serve different functions or benefit different people or organizations. It's also true that restrictions on the trusts vary. To reduce your taxes, for example, you have to put your property into a permanent and unchangeable trust. But you can create a revocable living trust to manage assets that can be changed if you wish.

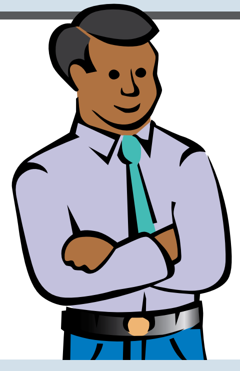
MONEY MATTERS

Creating a trust isn't cheap. There's a legal fee—sometimes substantial—for establishing it, and a fee when you transfer ownership of the property to the trustee. The trustee is also entitled to a fee for following your wishes, filing tax returns, and overseeing the investments. For these reasons, trusts have limited value if you're talking about property worth less than $50,000 to $75,000. Some bank trust departments, for example, set a minimum figure—usually in that range—before they'll talk to you about a trust.

HOW TRUST WORK

The Donor

- **Set up the trust**
- **Names the beneficiaries**
- **Names the trustees**
- **Transfers property to the trust**



The Beneficiaries

- **Receive the benefits of the trust, according to its terms**

The Trust

- **Earns income**
- **Pays taxes**
- **Distributes benefits**

The Trustees

- **Control the property in the trust**
- **Manage the trust's investments**
- **Oversee payments**

THREE TYPES OF TRUSTS

Though there are many different types of trusts, each designed to achieve a certain goal, all trusts are created in one of three ways.

Testamentary
A testamentary trust is created by your will, funded by your estate, and administered by a trustee named in your will. Its primary goals are saving estate taxes and appointing someone to manage the assets included in the trust.

Living, or inter vivos
A living, or inter vivos, trust is set up while you're alive. You can serve as the trustee yourself—though you usually name someone to succeed you when you die or if you're unable to serve. Its primary goals are asset management and transferring property outside the probate process. There may or may not be tax advantages.

Pour-over
A pour-over trust is created while you are alive, but funded after you die. Its primary purpose is to receive one-time payouts like life insurance or pension benefits or the residue of your estate—that is, any property you haven't transferred specifically to someone by gift, trust, or will. There may or may not be tax advantages.

TRUST ALTERNATIVES

If you want some of the advantages but not the expense of a trust, you can title your bank accounts as payable on death(POD) and your brokerage accounts as transfer on death (TOD). At your death, the money goes directly to your designee, outside the probate process. It's similar to naming beneficiaries of employee benefit plans.

One limitation, of course, is that you can't control what your beneficiary does with the money once it becomes his or hers, the way you often can with a trust agreement. And, though you avoid probate, the amount in these trusts is part of your estate and may be subject to estate tax.

A FIDUCIARY RELATIONSHIP

If you have fiduciary responsibility, your part of the bargain is to act in the best interests of the beneficiary or beneficiaries. In a trust, it's the trustee who is the fiduciary, acting on behalf of the beneficiary.

BENEFITS OF CREATING TRUSTS

- **Taking advantage of the federal gift tax exemption to transfer assets tax free**
- **Providing income to one person during his or her lifetime and, eventually, what is left to others**
- **Protecting assets rather than leaving them outright to heirs**
- **Using professional investment management**
- **Transferring assets outside the probate process**

CREATING A TRUST

As the person creating a trust—known as a **settlor**, **donor** or **grantor**—you decide the terms of the trust, name the beneficiaries, decide which property will be included, and choose the trustee, or trustees, who will control it. You can also specify how the trust's assets will be paid to your beneficiaries and how long the trust will last.

You specify what happens to the property you transfer to a trust by establishing the ground rules for how the assets will end up in your beneficiaries' hands. For example, you can set up a trust so that all the property goes directly to one person when you die. Or the terms of the trust might say that assets should be used for major investments like houses or business opportunities, or to pay for college tuitions.

All that information is contained in the trust document, which should be drawn up by an experienced trusts-and-estates attorney. You don't want to run the risk of writing your own. Since the main purpose of creating a trust in the first place is to accomplish a specific goal, it must be structured to satisfy federal and state requirements. That's why working with a professional who specializes in this area is so important.

Revocable Living Trusts

What's alive, in a living trust, is the person who creates it.

When you create a living trust, you must decide if it is **revocable** or **irrevocable**. If the trust is revocable, you can modify it as you wish: You can change the beneficiaries, replace the trustee, or end the trust altogether. If the trust is irrevocable, you can make no changes to its terms.

With either type of living trust you can transfer property to your beneficiaries outside the probate process, a plus for estate planning. But otherwise the two types of trusts are quite different. You choose the one that best accomplishes what you want the trust to do.

A REVOCABLE CHOICE

With a revocable trust, you can transfer as much property as you want to the trust—everything you own, for example—without owing gift tax. That's because its value will be included in your estate. When you die, the property in the trust can go directly to your beneficiary, or beneficiaries, if that's the way you set the trust up. Or, if you prefer, the trustee can continue to manage and distribute the property in the way you specify in the trust agreement.

Avoiding probate is especially valuable when you are leaving property to minors or when you own real estate in more than one state. In those cases, going through probate can add time and expense. When property is left to minors, for example, the probate court can require continuing monitoring of the assets. And for each state where you have property, you add another probate court for your executor to deal with. If the property is passed by trust, none of that happens.

A living trust can also strengthen your intended beneficiary's claim to disputed property, since it is harder to contest a trust than a will. And since living trusts are not public information, as probate documents are, you can usually count on privacy in your bequests.

BENEFITING YOURSELF

While the primary reason for setting up a trust is usually to benefit others, living trusts can provide advantages to the people who set them up.

While it's not a pleasant thought, people are sometimes unable to handle their affairs because of accident, illness, or age. If you've established a living trust, your trustee can protect you and your property from those who might take advantage of you, and at the same time manage your investments and pay your taxes on the trust's earnings.

Unlike someone with durable power of attorney, who can act for you only while you're alive, the trustee of a living trust can continue to manage the property in the trust after you die and for as long as the agreement remains in force. And you can simplify the process of transferring authority to your trustee by agreeing that your doctors—not the courts—can decide when you're no longer competent to act for yourself.

THREE'S A CROWD

The terms of a revocable trust permit its participants to play multiple roles.

	Donor	Beneficiary	Trustee
The donor and the beneficiary can be the same person.	●	●	○
The donor and the trustee can be the same person.	●	○	●
The trustee and the beneficiary can be the same person.	○	●	●
In some states, one person can't take all three parts. But in others, it's perfectly legal.	●	●	●

TRUST LIMITS

Revocable living trusts do have some limitations. Though they transfer the bulk of your property directly, they don't eliminate the need for a will to cover the balance of your estate after you die. And in some states your creditors may have longer to press their claims against trust property than against probate property.

But, most importantly, revocable trusts make no pretense of being tax shelters. They don't reduce the income tax you owe during your lifetime, or any estate or inheritance taxes that may be due after you die. The logic is that since you control the trust, it exists for your benefit and is therefore subject to tax.

ACTING AS TRUSTEE

As trustee, your primary job is to administer the trust in the best interest of the beneficiaries and in keeping with the wishes of the grantor. A specific problem arises if those two goals are in conflict, or if the best interests of one beneficiary are at odds with the best interests of another—say the person receiving the income from a trust and the person named to ultimately receive the principal.

As a trustee, your responsibilities are to:

- Manage trust assets to grow and produce income, which may require close supervision and ongoing decisions about what to buy and sell, and certainly means keeping accurate records
- Request a trust tax ID number and insure that trust taxes are paid
- Distribute assets following the terms of the trust, recognizing that the more discretion the trust provides about the payout terms, the more responsibility you have
- Oversee the final distribution of assets to the beneficiaries, if you're still serving as trustee when the trust ends

If you become trustee of a revocable trust because the person who set it up is no longer capable of making decisions, you may also, as a practical matter, be acting as guardian or conservator, handling living and healthcare arrangements as well as finances.

A LONG HISTORY

From their beginnings in England in the 12th century, property trusts have been used to protect ownership rights—including some the courts didn't recognize. For example, when a married woman couldn't own property in her own name, she could benefit from a trust established by her family.

Irrevocable Living Trusts

Irrevocable trusts are written in stone—or its modern equivalent.

Once property is put into an irrevocable trust, it's there for good. The same is true of beneficiaries. You can't add one, or take one away. And the only way to change a trustee is for that person to agree to resign or to die. So why would anyone agree to such an inflexible arrangement? The answer, in short, is tax savings.

Irrevocable trusts can provide significant tax savings because the property you transfer to the trust is no longer yours. The trust itself—not you—pays income taxes on what the assets earn. When you die, the trust property is not part of your estate and is not subject to estate taxes. What's more, through the terms of the trust, you can exert continuing control over the way that your property is distributed to your heirs.

GIVING UP CONTROL

To reduce your estate for tax purposes, though, the assets you give away or put in trust must belong permanently and unconditionally to the recipient. From the government's point of view, you no longer control the property if someone else has the legal right to decide what to do with it, or if it's part of a trust that you can't change your mind about.

TAXING ISSUES

One of the disadvantages of transferring property to an irrevocable trust is that most of a trust's earnings are taxed at the highest individual income tax rate. For many people, this could mean that trust income is being taxed at a higher rate than they're paying as an individual—an unkind irony.

One way a trust can reduce its income tax is by distributing the earnings to the beneficiaries, so the money is spread around to be taxed at lower rates. But that solution may be at odds with your other goals for the trust, such as asset growth to provide greater income in the future, or limiting the current disposable income of your beneficiaries.

The solution is to have the beneficiaries pay tax on the distributions and agree to allow the assets to remain in the trust, where they can continue to compound.

The Squeeze on Trusts

The tax brackets for trust income are much narrower than the brackets for individual income.

TAXABLE TRUST INCOME	TAX BRACKETS*
$0 to $3,150	10% on amounts over $0
$3,150 to $11,450	24% on amounts over $3,150
$11,450 to $15,650	35% on amounts over $11,450
Above $15,650	37% on amounts over $15,650

*For 2025

ESTATE PLANNING

TRUSTS AND TAXES

When you set up a trust and transfer assets to it, you have to consider the tax consequences. You can give the trust up to $13.99 million in 2025 without owing federal gift taxes. But if you transfer more than that, the tax will be due, at the same rates as your estate would owe if you died with a taxable estate, at the maximum rate of 40%.

Some states have gift taxes, too, and impose them on smaller gifts than the federal government does. So the trust might owe state taxes, but not federal taxes. Often the biggest benefit from setting up an irrevocable trust is that any appreciation of the trust's assets after the date of the gift doesn't increase the value of your estate.

PLANNING AHEAD

Despite the shrinking income tax savings and the potential drawback of parting with your property while you're still alive, an irrevocable living trust is an ideal way to pass property to your heirs. That's because the one change you can make to an irrevocable trust is to add assets to it. If you make annual tax-exempt gifts, you're reducing your estate while protecting the property until you think your beneficiary is wise enough to use the assets in ways you would approve. But you must be certain the trust is set up with **Crummey** power to meet tax-exempt requirements.

One smart idea may be to put assets that you expect to increase in value, or cash to buy those assets, into a trust. For example, you can put stock valued at $10,000 into a trust called a **qualified minor's trust** you set up for your child. You're within the annual tax-free gift limit. And when the trust terminates and the property becomes hers outright, it will be worth whatever the current value of the stock is—presumably but not necessarily more than its original price. By using the trust, you've not only saved gift taxes on the current gift, but also on the **appreciated value** of the stock. You've also reduced income and estate taxes because the property no longer belongs to you.

A CRUMMEY CHOICE

You can add up to the annual gift exclusion in cash or other assets to an irrevocable trust every year without owing gift tax thanks to D. Clifford Crummey, who won a court case against the IRS in 1968. The only conditions are that the beneficiary must have the right to withdraw the gift within a fixed time period and has to be notified of that right. You choose the time at which the trust will end, and the assets become the beneficiary's property. Until that date, you can act as trustee or appoint someone else to the job.

SKIP LIGHTLY

If you create a trust to benefit your grandchildren, or anyone two or more generations younger than you are, it's known as a **generation-skipping trust**.

As long as the assets in the trust are $13.99 million or less in 2025 (or double if a married couple each create a trust) the transfer is exempt from the **generation-skipping tax (GST)**. If the assets are more, they're taxed using a complex formula based on the maximum federal estate tax rate, on top of whatever estate or gift taxes are due. When Congress revised the laws governing estate taxes in 2012 the amount vulnerable to the generation-skipping tax and the tax rate were made consistent with the limits and rates on estates.

If you establish a trust to pay for your grandchild's—or any child's—college expenses, the annual amount counts as income to the child's parents in some states. The logic is that it's the parents' responsibility to provide for their children's education.

SPENDTHRIFT CLAUSES

If you're creating a trust because you're nervous about a beneficiary's ability to handle money, most states let you put on the brakes with a safety device known as a **spendthrift clause**. That way, borrowing against principal and any future income is limited, and the funds are protected from creditors—at least until the money is actually paid. So even if you can't control the spending speed, you can limit the refueling rate.

Testamentary Taxsavers

Creating a trust in your will lets you do good to others and well by your estate.

A testamentary trust protects your assets while providing for your beneficiaries. Unlike a living trust, where you transfer your property while you're still alive, a testamentary trust is created by your will after you die. You choose the beneficiaries and set the terms that the trustee follows in paying out the assets. You also determine how long the trust will last and who gets what's left.

THE ESTATE ADVANTAGE

If your estate is valued at less than the amount you can leave tax free, or if you give away most of your property before you die, you may decide that there's no need to establish a testamentary trust.

There are several advantages to using a trust, however. One is that you can establish how the assets are to be paid out. And if you select a trustee who is good with money, the assets should continue to grow and produce even more income.

Finally, you can structure a **bypass trust** so that someone—usually your spouse—benefits from the trust during his or her lifetime while the principal is set aside for your other beneficiaries. Your spouse or other designee gets the income from the trust, and can be given the power to withdraw up to 5% of the assets, or $5,000 a year, whichever is greater.

If this first beneficiary doesn't need the money, it can be left to grow undisturbed. And if the trust's value has doubled or tripled by the time your spouse dies, there's still no estate tax due because the value of the trust, for tax purposes, was set at the time you died.

BETTER LATE...

Beneficiaries can sometimes do estate planning after your death by disclaiming, or renouncing, your bequest. Your spouse, for example, could disclaim the right to inherit a share of your estate to take advantage of your estate tax exemption, allowing your children to inherit directly.

SAVING TAXES

A testamentary trust can limit the taxes on the estate of a married couple by allowing each partner to take advantage of the federal estate tax exemption. Trusts that are set up to take advantage of this tax-saving feature are variously known as **family, bypass, credit shelter**, or **exemption equivalent** trusts.

Remember, though, the only property that can be put into a testamentary trust is property you own outright. Some legal experts advise, therefore, that couples with substantial accumulated wealth split some of their jointly held assets. That way, each of you is able to fund a testamentary trust to take full advantage of the tax credit. In splitting joint assets, however, it may be wiser to divide investment assets—like stocks or bonds—rather than give up joint ownership of your home.

With a Will Only

You can leave an estate worth up to the exempt amount free of federal tax to anyone you choose. If you're married, and leave your entire estate to your spouse tax free, it becomes part of his or her estate.

SPOUSE 1

LEAVE ESTATE TO SPOUSE

$

Your spouse can leave an estate equal to the exempt amount tax free.

If your estate is worth less than the exempt amount, an option called portability allows your surviving spouse to add the difference to the amount he or she can leave tax free.

SPOUSE 2

LEAVE COMBINED ESTATE TO BENEFICIARIES

$

BENEFICIARIES

ESTATE OWES TAX ON AMOUNT OVER EXEMPT AMOUNT

With a Testamentary Trust

SPOUSE

LEAVE ASSETS IN TESTAMENTARY TRUST

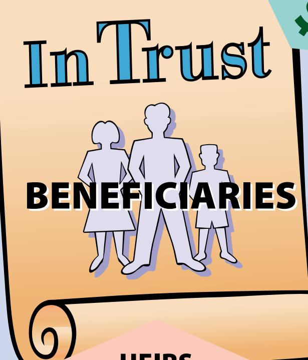
$

However, if you've created a testamentary trust funded with up to the exempt amount of your assets, that is not part of your spouse's estate. It goes to your beneficiaries free of estate tax.

SPOUSE

LEAVE ASSETS IN TESTAMENTARY TRUST

$



Then, when your spouse dies, the value of his or her trust goes to the beneficiaries tax free. Since there's no way to be sure which spouse will die first, the wills of both spouses should provide for a testamentary trust.

HEIRS GET ASSETS IN BOTH TRUSTS FREE OF ESTATE TAX

A SPRINKLING TRUST

If you establish a trust with a number of beneficiaries—your children or grandchildren for instance—you can give your trustee sprinkling powers. That way, if one beneficiary needs more income than the others, or if an uneven distribution would save on taxes, the trustee can sprinkle the benefits around rather than following a stricter formula.

MARITAL TRUST

If you leave your entire estate to your spouse, you might want to establish a **marital trust** to oversee the estate's management or the way it's distributed after your spouse's death. As long as your spouse has the right to the income from your estate for life, the marital deduction will still apply, and no estate tax will be due.

Since the remaining value of the marital trust is added to your spouse's estate when he or she dies, that estate may have to pay taxes if it's larger than the exempt amount. But a trust can have both immediate and long-term benefits if your spouse is inexperienced or uneasy about managing money, or if you're concerned about who will ultimately benefit from your estate.

One kind of marital trust gives your spouse the right to distribute the property you leave in trust as he or she chooses. In legal language, that's known as a **general power of appointment**. The chief benefit of such a trust, from your perspective, is the financial management your trustee will provide.

With a **qualified terminable interest property trust, or QTIP**, you choose the ultimate beneficiaries who will receive the income or principal of the trust after your spouse's death. If you want to ensure that your assets will go to your children from a previous marriage, for example, this type of trust lets you do it.

Gifts

From a tax perspective, there's more to giving gifts than meets the eye.

If the key to minimizing estate taxes is to reduce your estate, then giving gifts will get the job done. Before you start spreading money around, though, it pays to consider the benefits and the limitations of generosity.

You can give anyone you choose a tax-free gift of cash or other property valued at up to the annual tax-exempt limit each year, for as many years as you like. That's $19,000 for 2025, and will be increased in $1,000 increments in future years, indexed to increases in inflation.

While such gifts aren't tax deductible, you pay no tax when the gift is made and neither does the recipient. If your spouse joins in the gift, together you can give each person up to twice the limit each year, with each of you considered to have given half.

You can also make gifts larger than the $19,000 annual exemption without owing gift tax until your cumulative taxable lifetime gifts exceed the current exempt amount. When you hit that mark, you owe tax at the same rate as the top estate tax rate.

Even if tax is not due, you have to report gifts valued at $25,000 or more to the IRS on Form 709 when you file your income tax return.

The amount you can give in gifts and the size of the estate you can leave tax free are linked. In effect, that means that in 2025, for example, you can split the $13.99 million total exempt amount you're allowed between lifetime gifts and a tax-free estate in any proportion you like. Or you could have the entire exemption applied either to gifts or to your estate.

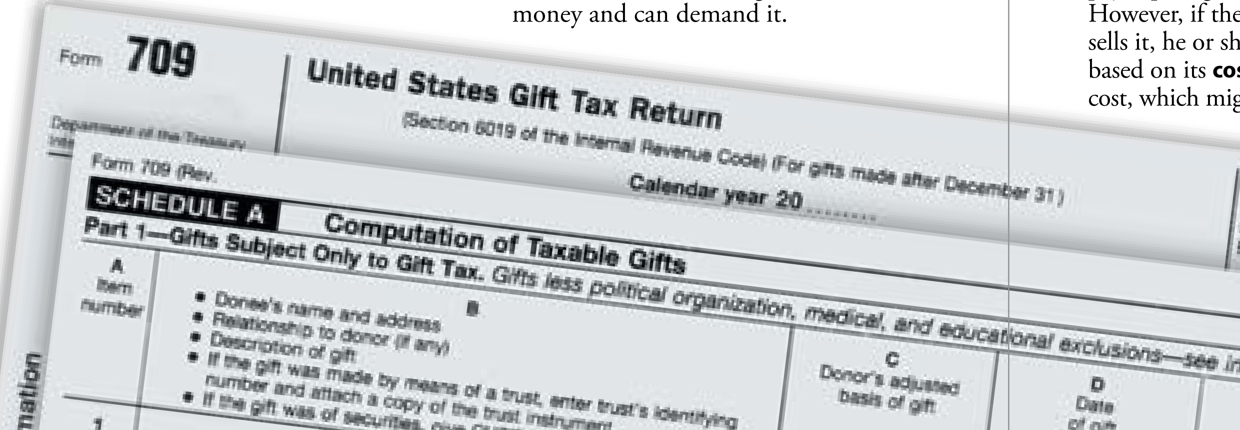
GIFTS TO MINORS

If you want to make gifts to children but not just give them the cash, you can set up custodial accounts using either the **Uniform Gifts to Minors Act (UGMA)** or the **Uniform Transfer to Minors Act (UTMA)**, to protect the accumulating assets. There's no charge for setting up or administering the account, and you can build it regularly without owing gift taxes as long as you add no more than the exempt amount each year. That's a combined total, though, of all gifts to the same person, including those under UGMA or UTMA.

One advantage of UTMAs is that you can include assets that don't produce regular earnings, like real estate and paintings, in addition to cash and securities, such as stocks and bonds.

THEY CAN TAKE IT WITH THEM

If you can live with the idea that the child will take control of the assets in a UGMA or UTMA account at age 18, 19, 21, or 25, depending on state law, it's a simple way to pass along your assets. While you're not required to liquidate the account and hand over cash to the child on the date of majority, bear in mind that on that date the child has the right to the money and can demand it.



Form 709

United States Gift Tax Return

(Section 6019 of the Internal Revenue Code) (For gifts made after December 31)

Calendar year 20 ....

OMB No. 1545-0020
Expires 5-31

Form 709 (Rev.

Page 2

SCHEDULE A Computation of Taxable Gifts

Part 1—Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions—see instructions

A Item number	B	C Donor's adjusted basis of gift	D Date of gift	E Value at date of gift
	• Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was made by means of a trust, enter trust's identifying number and attach a copy of the trust instrument • If the gift was of securities, give CUSIP number			
1				

SPECIAL CONSIDERATION

There are some other things to think about with UGMAs and UTMAs that might influence the way you make your gifts:

1. Any assets a young person has in his or her own name can reduce college financial aid. That's because a student is expected to contribute a greater percentage of savings to pay college costs than a parent is.

2. If you name yourself the custodian of the account and you die while the child is still a minor, the value of the account is included in your estate—completely defeating the purpose for which it was established. You can get around this problem by naming another adult as custodian.

3. Since students under 24 and others under 19 pay tax on earnings at their parents' rate, you might give growth rather than income investments to minimize the tax bite.

GIFTS TO OTHERS

The annual tax-exempt limit applies to gifts you make to people of all ages, not just minors. For gift tax purposes, the value of the gift is its value at the time it is given—not what it was when you acquired it. If the item is worth more when you give it than it's been worth in the past, you don't have to pay capital gains on the increased value. However, if the person receiving the gift sells it, he or she will owe capital gains based on its **cost basis**, or your original cost, which might result in a sizable tax bill.

SPECIAL GIFTS

If you want to pay for someone's educational expenses, you can make a direct payment to the college or university equal to the cost of tuition. The understanding is that the student's bill will be considered paid. You can't pay for room and board this way, but tuition is usually the bulk of the cost in any case. The same option exists for paying hospital bills. The process is known as a **qualified transfer**, and there don't seem to be any restrictions on qualifying. Plus, these payments do not limit your right to give up to the exempt amount per year to the beneficiary of the transfer as a tax-exempt gift.

TAX-FREE GIFTS

If your spouse is a US citizen, you may give him or her as much as you want, as often as you want, without owing gift taxes. But the picture changes when your spouse is the citizen of another country. Then, there's an annual limit on tax-exempt gifts and, without special planning involving the use of a **qualified domestic trust (QDOT)**, there's no **marital deduction**. That is, you can't leave your spouse your entire estate outright free of federal tax.

Tax-exempt gifts to charities are limited to a percentage of your adjusted gross income. Check with your tax adviser or the IRS for the rules that apply to various kinds of gifts and various recipients.

And More Gifts

It's cool-headed, not hard-hearted, to think about what your gifts will cost you and your estate.

When you're considering making a gift, you probably ought to consider the tax consequences of the way you give it. For example, if the choice is between giving property you own, or selling the property and making a cash gift, the size of the gift makes a big difference.

And if the choice is between making a gift or leaving the same property as a legacy in your will, you need to think about **cost basis**, the value assigned to the property that the recipient gets. It could have a major tax impact if he or she sells the property.

MAKING THE MOST OF A DEAL

When you make a charitable gift, you can take a tax deduction for the value of the property. In most cases, it makes the most sense to contribute appreciated assets—those that have increased in value since you bought them—because you can deduct the current value and avoid capital gains on the increase in value.

for example

Purchase shares of stocks costing	$ 10,000
Value of shares at time of gift	$ 40,000

GIVE THE STOCK Vs. **SELL THE STOCK AND GIVE THE CASH**

GIVE THE STOCK

YOU
- Take deduction based on current value ($40,000)
- Owe no capital gains tax

THE CHARITY
- Gets benefit of full value of your donation ($40,000)

SELL THE STOCK AND GIVE THE CASH

YOU
- Pay capital gains tax on profit:

  $ 30,000
  x .15*
  = $ 4,500 Tax

- Take deduction on only $35,500 gift

THE CHARITY
- Receives only $35,500 instead of $40,000

* Tax at 15% long-term capital gains rate.

GIFTS TO TRUSTS

Money you put into a trust is considered a gift in some circumstances, but not others. In general, the difference hinges on whether or not the trust is revocable or irrevocable, and who the beneficiary is.

Revocable trusts don't result in gift taxes because the transfer of property is considered incomplete. That's because you can change your mind about what's in the trust and who benefits.

But if the trust is irrevocable, gift taxes apply if the beneficiary is anyone but yourself or your spouse. In fact, if you're the beneficiary of an irrevocable trust during your lifetime, the property you put into the trust is considered a gift to your surviving beneficiaries. You figure the value based on US Treasury department tables that are included with the rules on gift taxes.

Give It or Leave It

If you're undecided whether to make gifts now or leave property as a legacy in your will, you can balance a variety of pluses and minuses for each option.

GIFTS

Advantages	Disadvantages
• If you spread gifts over the years you can provide generously for your beneficiaries and reduce your estate at the same time. • Your gift may be worth more to the beneficiary since it's not subject to estate and inheritance taxes. • You can help meet financial needs when they occur.	• Once a gift is given, you don't have access to it even if you need it. • You can't control how gifts are used. • Recipient may end up owing capital gains tax if he or she sells the gift, but the silver lining is that capital gains taxes are generally lower than estate taxes.

LEGACIES BY WILL

Advantages	Disadvantages
• You keep your assets as long as you need them. • You can change your mind about items left in your will until the last minute. • The recipient's cost basis of the asset—the starting point for figuring capital gains—is currently the value at the date of your death. That could save taxes if the assets were sold.	• Wills can be contested. • Federal estate taxes may reduce the size of your legacy. • State inheritance taxes may be due. • The step-up in cost basis may be eliminated when tax laws are revised, and higher capital gains taxes on sale of inherited assets may be due.

A NEW PERSPECTIVE

Since the likelihood of your owing federal estate taxes is relatively small, you may want to give increased estate planning attention to managing potential taxes on your investment earnings and capital gains and to reducing possible state estate taxes.

FAMILY LIMITED PARTNERSHIPS

Another approach to using gifts to pass valuable property to your children and grandchildren has been to create a **family limited partnership**. The parents, or senior family members, serve as general partners and maintain control over the assets in the partnership, usually real estate or a family business. The junior members of the family are limited partners, with no current authority but a growing share of the partnership assets.

Each year, each general partner can give each limited partner a share in the assets as a tax-free gift. And they're allowed to transfer the assets at a discount to face value. For example, the value of a gift could be closer to $19,500 than the $19,000 limit. The discount is legitimate if there's a valid business purpose for the partnership.

It is always possible that these partnerships may not continue to be an estate planning option. However, they have survived a number of earlier attempts to eliminate them.

STEPPING IT UP

The value of assets someone inherits is established by what's known as a step-up in basis, or what each asset was worth at your death. If he or she sells immediately, there would be little if any capital gain to be taxed.

IRA Beneficiaries

You can stretch out the life of your retirement assets.

When you accumulate assets in an **individual retirement account (IRA)** or roll over your 401(k) or other retirement savings plan into an IRA, you can pass the account value directly to a **beneficiary** at your death.

You don't have to mention the IRA in your will or include it in a trust. All you need to do is designate the beneficiary you want to inherit the IRA on a form provided by institution offering the IRA or a substitute form that the institution will accept.

You can name either a person or a tax-exempt charitable institution as your beneficiary. Or, if you prefer, you can name several people or several institutions as beneficiaries of the same IRA.

DISTRIBUTION RULES

One major difference between a traditional IRA and other inheritable assets is that an IRA has **required minimum distribution (RMD)** rules. These rules apply not only to you as the account owner but also to your beneficiaries.

While a beneficiary has the right to take the full value of the account at any time—just as you can—there are almost always advantages to stretching the inheritance as long as legally possible by taking annual withdrawals that satisfy the required minimum. That's because the longer an account accumulates tax deferred, the larger it can potentially grow. Of course, growth isn't guaranteed and the account could lose as well as gain value.

Also keep in mind that, because IRA income is taxed at the recipient's regular rate, smaller withdrawals over a ten-year period have the potential to reduce the total tax bill.

THE SPOUSE HAS IT

There are good financial reasons to name your spouse as your IRA beneficiary. A spouse has greater flexibility than other beneficiaries in deciding when to begin taking distributions. Your spouse also has the option to **retitle** the IRA in his or her own name, name new beneficiaries, and make additional contributions.

Another advantage is that if your spouse is more than ten years younger that you, he or she can use the joint life expectancy table rather than the single life table in calculating minimum required distributions. Both are found in IRS Publication 590-B. Using joint life expectancy reduces the amount of annual withdrawal and therefore extends the IRA's life.

TIMING MATTERS

If you're younger than 73 when you die, a beneficiary who is not your spouse must start taking withdrawals by December 31 of the following year, in compliance with the 10-year rule.

If you're 73 or older and have begun taking your required distributions before you die, your non-spouse beneficiary must usually withdraw all of the assets by the end of the tenth year following the year of your death. There are exceptions for minor children, disabled people, and beneficiaries less than ten years younger than you.

The **insufficient withdrawal** penalty does apply, resulting in a 50% excise tax of the amount your beneficiary should have taken in any year a withdrawal wasn't made.

FAMILY AND FRIENDS

Even if you are married, there may be good reasons to name people other than your spouse as beneficiaries. For example, your spouse may already be provided for, and the beneficiary you name may be able to withdraw from your account for an extended period of up to ten years in most cases.

It's also a good idea to name **contingent**, or back-up, beneficiaries. That way, if your primary beneficiary dies before you do, there's someone else to inherit. And, in some cases, your primary beneficiary may **disclaim**, or refuse the IRA, so that it can be passed to a beneficiary with a greater financial need. The one catch is that the person who disclaims can't choose who will get the money. The back-up beneficiary must have already been named.

EMPLOYER PLANS

You must also choose primary and contingent beneficiaries for your 401(k) or similar plan. You may find that you must name your spouse as primary beneficiary unless he or she agrees, in writing, to your selecting someone else.

ROTH IRAS

If your IRA is a Roth, distributions to your beneficiaries are required but they're tax free, with one exception. If you die within five years of opening your account, any earnings distributed before the end of five-year period beginning January 1 of the year you made your first contribution will be taxable.

But since the IRS considers that you—or your beneficiary—withdraw all your Roth contributions before taking any earnings, your beneficiary should be able to avoid taxable distributions.

MAKING CONTRIBUTIONS

You may also want to consider making qualified charitable distributions (QCDs) with IRA assets. A QCD is a direct payment of up to $100,000 from your own or an inherited IRA to a qualified charity or a number of different charities.

The amount you gift reduces or eliminates the RMD you must take for the year of the transfer and also reduces the balance of the IRA. That means that future RMDs are likely to be smaller.

The contribution must be made by the same deadline that applies to the annual RMD, usually December 31.

A WORD OF CAUTION

Some IRA trustee agreements give you less leeway with beneficiary designations and provide your beneficiaries fewer withdrawal alternatives than the IRS allows. One example is requiring that the account be liquidated within five years after the year you die. It's something you and your legal adviser will want to review and address while you are able.

Beneficiary is the person or institution you name in your will to inherit the assets in your IRAs, employer sponsored retirement plans, annuities, and life insurance policies. You may name multiple beneficiaries for each account.

Codicil is a legal document that can be appended to a will to change some of its terms. Like a will, a codicil must be correctly executed to be valid.

Contingent beneficiary is the person or institution you name to inherit your assets if the primary beneficiary is no longer alive or declines to accept them.

Cost basis is the original price of an asset, usually the purchase price plus sales charges, which you use to calculate capital gains and capital losses. If you receive an asset as a gift, your cost basis is the same as the giver's. If you inherit assets, your cost basis is the asset's value on the date the person who left it to you died, or the date on which his or her estate was valued. This new valuation is known as a step-up in basis.

Donor is the person who establishes a trust. A donor may also be known as a grantor or settlor.

Exemption is an amount not subject to tax. There are two gift tax exemptions, one that applies annually per recipient and one that's a lifetime total, plus an estate tax exemption. The combined lifetime exemption is $13.99 million in 2025.

Executor is the person you name in your will to oversee settling your estate and distributing your assets. An executor may also be called a personal representative.

Guardian is the person you name to take responsibility for your children if you should die while they are minors. The same person may also be responsible for managing your children's assets, or you may name another person to fill this role. A guardian may also be appointed to handle the affairs of adults who are unable to manage on their own.

Intestate means to die without a valid will.

Irrevocable trust is a trust that can't be ended or modified in any significant way. Assets you grant to an irrevocable trust are no longer part of your estate or included in your estate's value.

Living trust, also called an inter vivos trust, is a trust you establish while you are alive. It may be either revocable or irrevocable.

Living will is a document that describes the kind of medical treatment you want, or don't want, to receive if you're terminally ill or in a vegetative state.

Power of attorney confers on the person you name the legal right to act on your behalf for the specific matters you designate but not for those matters you exclude in granting the power. A durable power of attorney remains in effect if you become incompetent, and a springing power of attorney takes effect only at the point you are unable to act for yourself. You can revoke a general or durable power at any time.

Probate is the process by which your will is declared valid and your executor is authorized to settle your estate, which includes distributing your assets according to the terms of your will.

Required minimum distribution (RMD) is the smallest amount you must withdraw from your tax-deferred employer plans and traditional IRAs each year after you turn 73. There are exceptions for employer-plan participants who continue to work past 73.

Revocable trust is a trust that can be ended or amended at any time. The assets in a revocable trust remain in your estate and are included in its value. Revocable trusts are designed for asset management but not tax savings.

Step-up in basis occurs when someone inherits as asset through your will or is a joint owner with survivorship rights. The cost basis of the asset is adjusted, or stepped up, to its value on the day you die or the day your estate is valued.

Tax-exempt gift is a gift on which neither you nor the recipient owes federal gift taxes. You can make as many annual tax-exempt gifts to as many people as you like. The cap increases from time to time. The value of gifts above that amount accumulates during your lifetime. No tax is due until the total exceeds the combined exempt amount for gifts and estates.

Testamentary trust is a trust established in your will. You can use such a trust to reduce potential estate taxes and to maintain control over the way your assets are distributed.

Trustee is a person who has title to property in a trust and manages it for the benefit of the trust's beneficiary.

Will is a legal document you use to indicate how you want your assets distributed after your death.

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GUIDE TO ESTATE PLANNING describes what your estate is and explores ways to share your wealth with the family, friends, and institutions you choose. The guide explains how you can use wills, trusts, gifts, and beneficiary designations to distribute your assets and examines strategies for minimizing estate and income taxes.

- **BENEFICIARIES**
- **TRUSTS**
- **EXECUTORS**
- **WILLS**
- **GIFTS**
- **INHERITED IRAs**

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