

# Key Estate Planning Considerations

Although Congressional action in the last few years has effectively eliminated federal estate and gift taxes for all but the wealthiest Americans, there is still a vital need to do estate planning.

Why? There are several key reasons: (1) to be sure that all of your wishes are followed after death; (2) to plan for *state* inheritance or estate taxes, if you live (or own property) in a state which levies such a tax; and (3) to plan in advance how to pay for any estate settlement costs. Federal estate tax law may have changed, but estate planning *still* matters.

## Transfer of Assets

A primary objective is to insure that your assets go to those you want to receive them.

Method	Description
Will	Considered a key element in any estate plan, a will is a legal document, prepared under state law, which names those who should receive your property. An “executor” is generally named in the will to carry out your wishes. After death, “probate” will be required, a process in which the property listed in the will is distributed to the named heirs under court supervision. Unfortunately, the probate process is frequently expensive and time-consuming, and generally makes the contents of a will a public record. If you die without a will (termed “intestate”), your property will be distributed according to state law, which may result in your assets being distributed in a manner <i>not</i> in accordance with your wishes.
Revocable Trust	Also known as a “living” trust, a revocable trust can be changed or revoked during the lifetime of the trust creator (the “grantor,” “settlor,” or “trustor”). Such a trust is often used as a will substitute, when the grantor transfers assets into the trust during life or at death through a “pour-over” will. A revocable trust can make settling a decedent’s estate easier and less expensive than probating a will and can also provide privacy not available in probate.
Irrevocable Trust	An irrevocable trust – as the name implies – cannot be changed once it is set up. These trusts are often used in estate planning for wealthy individuals. An irrevocable trust which holds life insurance can provide the funds needed to pay death taxes and other estate settlement expenses, while keeping the life insurance proceeds outside of the taxable estate.

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Joint Tenancy	Assets held in joint tenancy pass automatically at the time of death to the surviving joint owner, if living. In community property states, community property with right of survivorship has the same result. How ownership of an asset is “titled” can be important.
Beneficiary Designations	Some assets, such as life insurance policies, qualified retirement plans, and IRAs allow the owner to name a “beneficiary.” At death, the policy death benefit or title to the asset automatically passes to the named beneficiary or beneficiaries. In some states, “Transfer-on-Death,” (TOD) and “Pay-on-Death” (POD) allow certain types of property to automatically pass to named beneficiaries upon the death of the owner. Proper beneficiary designations are essential to make sure the assets pass according to your wishes.

### Planning for Estate Transfer Costs

If proper prior planning is not done, estate and inheritance taxes, legal fees, and other estate settlement expenses can significantly reduce the legacy passing to your intended heirs.

**Planning for estate settlement costs:** Making maximum use of non-probate transfer methods such as revocable trusts, joint tenancy, community property with right of survivorship, or named beneficiaries, can help limit estate settlement costs and avoid the delay of probate.

**Planning for estate taxes:**<sup>1</sup> If the dollar value of an estate is large enough to be subject to estate and/or inheritance taxes, these taxes can add appreciably to transfer costs. In 2018, an estate with a net value of \$11,180,000<sup>2</sup> or less is exempt from federal estate tax. This federal estate tax threshold is also known as the “applicable exclusion amount.” However, most states with an estate or inheritance tax have estate tax thresholds which are considerably lower. Thus, an estate which has no federal estate tax liability could easily be subject to state death taxes.

Under federal estate tax law there are a number of ways to shrink the taxable estate:

- **Lifetime gifts:** each individual has an annual gift tax exclusion, currently \$15,000<sup>2</sup> per person per year, generally allowing for tax-free gifts to others.

<sup>1</sup> The discussion here primarily concerns federal law; state or local law may differ.

<sup>2</sup> 2018 value. This amount is subject to adjustment for inflation in future years.

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- **Marital deduction:** spouses who are both U.S. citizens can gift any amount to each other, generally with no estate or gift tax consequences. The survivor's now larger estate could face a greater estate tax problem when he or she later dies.
- **Charitable giving:** gifts to charities, during life or at death, reduce the estate size.
- **Bypass trust:** A type of trust known as a "bypass" trust allows the first-to-die of a married couple to set aside a portion of his or her assets. In years before 2011, such trusts were used in an effort not to "waste" the first-to-die's applicable exclusion amount. With the applicable exclusion amount currently set at a very high level, plus the introduction in 2011 of the "Deceased Spousal Unused Exclusion" (see below), for *federal estate tax* purposes at least, the bypass trust is less useful than before. When planning for *state death taxes*, however, often with much lower taxability thresholds, the bypass trust remains a useful estate planning tool.<sup>1</sup>
- **Deceased spouse unused exclusion (DSUE):** Beginning in 2011, a change in federal estate tax law provided that any portion of the applicable exclusion amount that remained unused at the death of a spouse could be held over and made available for use by the surviving spouse, in addition to the surviving spouse's own applicable exclusion amount. This "portability" opened up new planning opportunities that did not exist under prior law.

**Paying estate settlement costs:** While careful planning can help reduce estate settlement expenses, the planning process also needs to consider how to pay for the costs that do remain. There may be a need for funds to sustain the family until the estate is settled, to pay off debt or otherwise provide for the surviving spouse or children. An estate will often need to sell assets to raise the needed cash. While some assets are relatively liquid, others may take months or even years to be sold. Working with your investment advisor, you may need to rearrange some of your assets to provide increased liquidity to your estate. If there are currently not enough liquid assets in the estate, consider life insurance as a way to provide the needed funds.

### Caring for Survivors

Your survivors – a spouse, minor children, or a disabled child of any age – must also be considered in the estate plan.

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<sup>1</sup> There may also be other, *non-tax* reasons, for including a bypass trust in an estate plan.



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**A guardian for dependents:** In case both parents are deceased, a guardian (and one or more alternates) should be named to care for minor children or other dependents.

**Asset management:** Professional asset management may be necessary to insure that financial resources are not squandered.

### Who Makes Medical Decisions When I Cannot?

Modern medicine can now keep someone “alive” in situations that formerly would have resulted in death. Those who do not wish to have their lives artificially prolonged by such techniques must plan ahead and put their wishes in writing:

**“Living Will”:** Also known as a “Directive to Physicians”, this document provides guidance as to the type of medical treatment to be provided or withheld and the general circumstances under which the directive applies.

**Durable power of attorney for health care:** Many states have laws allowing a person to appoint someone to make health care decisions for them if they become unable to do so for themselves.

**Durable power of attorney for financial affairs:** Allows another individual to act on your behalf with regard to financial matters in the event of incapacity.

### Outside the Legal Framework

Most of the documents involved in an estate plan are legal in nature and should be prepared by an attorney. However, not all documents involved in an estate plan are legal ones:

**Letter of Instructions:** A “Letter of Instructions” is an informal document that can include information such as your wishes regarding disposition of your remains, contact information for key advisors and family members, the location of important documents, the description and location of assets, user names and passwords for online accounts, or notes on family history. It is used to provide, in a private manner, direction and guidance to your family or executor in settling your estate.

**Ethical Will:** While a legal will or a trust is used to distribute assets, an “Ethical Will” serves to transfer values and beliefs. It is a very personal expression of the writer’s life and values as

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well as the people, events, and experiences that influenced that life. In a very real sense, an ethical will is a spiritual legacy to future generations.

### Seek Professional Guidance

Although an estate plan can be as simple as a set of hand-written instructions, there are a number of situations where legal guidance is considered vital:

**To create a will or trust:** An experienced attorney, familiar with local law, can prepare the legal documents required to meet the needs of your individual situation.

**Estate taxes:** If your estate is large enough to be subject to estate tax, your attorney can suggest ways to lighten the tax burden.

**Squabbling heirs:** Planning may be needed to minimize potential conflicts between your heirs or beneficiaries. Such disputes can occur when siblings don't get along or there are children from more than one marriage.

**Property elsewhere:** If you own property in more than one state or country, there may be a need for an ancillary probate. Living trusts are often used to transfer these assets and avoid the additional probate.

In addition to your attorney, your estate planning "team" will likely include experts from other disciplines such as income tax, life insurance, trust administration, charitable giving, and investment management. The professional guidance provided by such advisors is a key part of creating and implementing a successful estate plan.

### Periodic Review

Because tax law and personal lives are never static, don't just put your estate plan in a drawer and forget about it. Many financial professionals recommend a periodic estate plan review.