

ESTATE PLANNING HIGHLIGHTS A GUIDE FOR CLIENTS

General Information you should consider in planning:

1. If you have no will or living trust, at death your estate will pass to your surviving spouse and children in equal shares. Your “estate” is all money, real property and personal property which you own in your name alone and your interest as a tenant in common with others.
2. If you own property jointly with someone else as “joint tenants with rights of survivorship”, then your interest in that property will automatically pass to the survivor at your death. Your joint interest will not pass according to the terms of your will or trust. If you own property with others not as “joint tenants with rights of survivorship”, then you are a “tenant in common” with them and your proportionate share of the property will pass under the terms of your will.
3. Life insurance policies, retirement plans, annuities, etc. will pass to the person(s) designated as beneficiary of those benefits, not under the terms of your will or trust.
4. If you leave real property which is mortgaged to someone in your will or trust, the property will generally pass to them with the mortgage debt attached to it. If you wish to leave real property free and clear of the mortgage debt, you may include a provision in your will or trust that the mortgage is to be paid from other assets of your estate.
5. Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of an estate tax return. A filing is required if the gross estate of the decedent, increased by the decedent’s adjusted taxable gifts and specific gift tax exemption, is valued at more than the filing threshold for the year of the decedent’s death. Federal estate tax will be assessed on a net taxable estate in excess of a certain limit, called the “applicable exclusion amount” in effect on the date of death (\$12,920,000 in 2023, \$13,610,000 in 2024, and \$13,990,000 in 2025. The “net taxable estate” is the gross estate value, less mortgage debts, probate costs, charitable bequests and the value of all property left to a surviving spouse. A person’s “gross estate” will consist of the value of all real and personal property, investments and money accounts owned solely by that person, plus the value of that person’s proportionate share of property owned jointly with another, plus the face value of all life insurance policies insuring that person’s life if he/she owns the policy (that is, has the right to cancel or change the beneficiary), even though the death proceeds may be payable to another as the designated beneficiary.
6. A will does not affect assets until death, and a will can be revoked or amended at any time prior to death. A will must be probated in court in order to transfer the estate in accordance with its terms.
7. A popular alternative to a will is the revocable living trust. The trust document contains similar provisions to a will, but it becomes effective immediately after it is signed. The person setting up the trust is called the grantor, and is also the beneficiary of the trust during

his/her lifetime. The grantor appoints a person or financial institution to serve as trustee, and the trustee is instructed in the trust document to manage the trust assets and make payments from the trust in accordance with the desires of the beneficiary. The grantor/beneficiary then transfers substantially all of his/her assets to the trustee to manage. At the grantor/beneficiary's death, the trustee will either continue to hold assets for, or will distribute the trust assets to, the persons named as the remainder beneficiaries ("heirs") in the trust document. A revocable living trust affects the assets immediately upon their transfer to the trust, and no probate is required to permit the trust to continue after the grantor's death and to permit the trustee to transfer ownership of assets to the remainder beneficiaries. **[Note:** Transfers of property to or from a revocable living trust within five years prior to application for Medicaid assistance for nursing home care may adversely affect eligibility for such assistance, and transferring a residence into such a trust will cause the otherwise exempt residence to be considered a financial asset for Medicaid eligibility purposes.]

8. If a person leaves his/her surviving spouse less property than the spouse would have received without a will, the surviving spouse can renounce the will's provisions and receive an equal share with any surviving children. A will or living trust can provide that children or other relatives will receive any amount or no amount of the estate.
9. For parents of young children, an important function of a will or trust is the designation of the person(s) who will serve as the children's guardian after the parents' deaths. Guardianships terminate when the child reaches the age of adulthood or becomes married and/or self-supporting.
10. A will can also establish a trust for an heir, and the money or assets for that heir can be transferred to the designated trustee to be managed and disbursed as instructed in the will. The testator (person making the will) can thereby direct the management and payout of the trust assets to the beneficiary after the testator's death.
11. A will must name an executor, who is the person responsible for filing the will for probate.
12. A testator may designate in the will that certain items of personal property shall pass to certain named individuals. These are called "specific bequests".
13. Execution of a will or living trust is the best way to determine how your property will be distributed. However, it cannot address important issues regarding health care decisions. You should discuss the functions of a Durable Power of Attorney and a Health Care Directive ("Living Will") with your attorney.