How to ensure your assets will be distributed according to your wishes

Make Your Plan
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Key Insights

- You can use various estate planning methods to ensure your assets are distributed according to your wishes while also considering tax consequences and your heirs' needs.
- The first step is clarifying what you want your estate plan to accomplish.
- The main ways to control the disposition of your estate's assets include writing a will, selecting beneficiary designations, and creating a trust.

There's no doubt estate planning can be one of the most challenging aspects of financial planning. However, an estate plan can provide peace of mind as you determine how your assets will be distributed, who will inherit them, when your beneficiaries will receive them, and who will control distribution.

To make your wishes known, you can use various estate planning methods while considering tax consequences and your heirs' needs.

How are distributions made from an estate?

Certain legal directives dictate how assets are distributed from your estate. They include directives you lay out in your will, the selections you make with your beneficiary, how you hold title to property, and the language you use when you create a trust.

1. Write a will

A will is a legal document directing how your property is to be distributed upon your death. If you die without one, a court will have to distribute your assets according to the laws of your state. These laws—known as intestacy laws—divide all property among relatives according to a set formula and exclude friends and charities. Without a will, if you are married and have no children, many state laws require your spouse to share your property with your parents. Also, without a will in place, a nonmarital partner or stepchild could potentially receive no benefits. And if both you and your spouse die without a will,

the court would name a guardian for your minor children—typically selecting among family members.

With a will, you can dictate your desires. You can specify who will receive your assets, name a guardian for your minor children, and name a trustworthy executor who will be responsible for distributing your assets according to your plan upon your death. Moreover, your will can be used to establish trusts and name trustees to control the distribution and management of your money. Those trusts, which are known as testamentary trusts, can be used to accomplish specific goals, such as funding a child's education or caring for an elderly parent.

Assets distributed under a will are generally subject to probate, the court-supervised process that allows any creditors to present claims against your estate and ensures proper distribution of your assets to your heirs. In some states, probate can be costly and time-consuming. And because wills are a matter of public record, they can reveal details concerning your family and financial affairs to public inspection. Therefore, in addition to wills, many people rely on other vehicles to distribute some or all of their property.

2. Select beneficiary designations and property titles

Only certain assets are distributed according to your will: individually owned assets, your share of assets held as tenants in common, and assets for which your estate is the beneficiary. Other methods of distributing assets include other joint property ownership types and beneficiary designations. Certain types of assets can pass directly to the named beneficiaries without going through your will and the process of probate. These include life insurance death benefits, retirement accounts, payable-on-death bank accounts, and securities registered with transfer-on-death beneficiaries. Also, property owned jointly with another person—for example, a mutual fund owned jointly by a mother and son with the right of survivorship—passes automatically to the surviving joint owner. Keep in mind that these assets are still included in your taxable estate, even though they pass outside of a will. In 2024, the estate tax exemption per individual is $13.61 million. (Note that relatively few estates pay any tax.)

3. Create a trust

A trust is a legal entity for your assets in which one or more people (trustees) take title to property and hold it for the benefit

Estate planning for unmarried couples

Some couples face unique challenges when planning their estates as laws generally don't apply to all types of relationships. Pay particular attention to the following:

- **Titling of assets.** Consider establishing accounts or property titles as "joint tenants with right of survivorship." Or name each other as transfer-on-death (TOD) beneficiary of each partner's solely owned accounts.
- **Powers of attorney.** Medical and financial directives—including a health care power of attorney—can ensure that your partner has the authority and access you want him or her to have.
- **Beneficiary designations.** If you plan to leave your retirement account assets to your partner, be sure to name him or her as beneficiary on the account. If you neglect to do so, your partner will not automatically have legal standing to claim the assets. If named your beneficiary, your partner can invest the assets in an Inherited IRA. For a partner who isn't more than 10 years younger than you, required minimum distributions (RMDs) from that account will be based on his or her life expectancy. Therefore, some assets could potentially continue growing tax-deferred for decades. However, due to the SECURE Act passed in late 2019, a non-spouse beneficiary younger than that will generally need to empty the account within 10 calendar years after your death.

Remember, if you die without a will (intestate), state laws do not currently provide for distribution of any solely owned assets to your partner, friends, or favorite charities—only to members of your family. If that's not what you want, now is the time to act.

Reference this checklist when you meet with your financial advisor or estate attorney:

- [ ] Last will and testament
- [ ] Updated beneficiary designations
- [ ] Proper titling of your property
- [ ] Life insurance policy
- [ ] Trusts, living or testamentary

of one or more designated beneficiaries—which can be an individual and/or an institution, such as a charity. Trusts can be designed to deal with specific situations or to exercise special control over the distribution and management of your assets and avoid probate. In some, but not all, cases, trusts can help reduce estate taxes. You can also use a trust to create a charitable organization, fund a scholarship, or support a business. Trusts fall into two broad categories: revocable and irrevocable. A revocable trust can be changed or rescinded during your lifetime. Terms of an irrevocable trust generally cannot be altered once created.

Revocable living trust

A revocable living trust enables you to maintain full control over your assets in the trust during your lifetime—usually by naming yourself as trustee and someone you have confidence in as successor trustee in the event of your death or incapacity. The trust is revocable, meaning you can amend it or cancel it at any time. When you die, the assets included in the trust will avoid probate and can be distributed privately (in most states) by your successor trustee, according to the terms of the trust. Assets in a living trust are included in your taxable estate, although the trust can incorporate tax-saving mechanisms. Because you retain control over the trust, its earnings, gains, and losses are reported on your personal income tax return.

A living trust can be combined with an abbreviated will called a pour-over will. This covers assets not already in the trust by allowing the executor of your estate to "pour over" those assets into your trust after your death. Assets added to a trust under a pour-over will do not avoid probate. However, this still affords increased privacy, since trust agreements in most states don't have to be filed with a court.

Consider potential estate taxes

It is important to periodically estimate the size of your taxable estate to determine whether there will be a potential estate tax liability. Start by adding up your assets to compare the estate's value with the estate tax exemption amount. Remember, your taxable estate includes all your assets with few exceptions. Once you total the value of your share of your home and investments, retirement accounts, pension benefits, and life insurance proceeds, your estate might be worth more than you thought. Federal and/or state estate taxes may be due when you die if the amount exceeds the current exemption amount (although no taxes are due on transfers to charities or to spouses who are U.S. citizens). If you exceed the limit, several strategies—including the use of some additional trusts described below—can reduce or even eliminate the taxes owed on your estate.

Bypass trust

A bypass trust, popular among married couples in the past, was often used to minimize estate taxes by taking full advantage of federal estate tax exemptions. While changes to tax law

Estate planning for blended families

Blending families through marriage can be complex—and that complexity extends into the process of estate planning. If you are part of a blended family, carefully consider the following elements of your estate plan:

- A prenuptial or postnuptial agreement determines which assets are marital property and which are not. This agreement may serve as one important way to preserve your rights to your own assets, as well as the rights of your heirs—children and/or chosen charities—upon your death.
- Beneficiary designations and account titling are critical for those who marry again. Generally, these take precedence over terms stated in wills.
- A qualified terminable interest property (QTIP) trust can provide income for a surviving spouse and ensure that any assets remaining in the trust ultimately pass to your children, who may be from a previous marriage.

have created alternatives to this technique for federal estate taxes, a bypass trust could be very useful in some states. The arrangement is also commonly referred to as an A-B trust or credit shelter trust. Employing this type of trust has implications for income taxes, control over the assets, and protection from creditors, so you should discuss the advantages and disadvantages with an estate attorney.

Irrevocable life insurance trust

An irrevocable life insurance trust enables life insurance proceeds to pass directly to your beneficiaries without estate taxes, if specific requirements are met. Often, this trust is established by contributing cash amounts below the annual gift tax exclusion level ($18,000 per individual in 2024). That cash is used by the trustee to purchase life insurance. The death benefits are kept out of your taxable estate because the IRS deems that you do not have control over the policy. It's important to note, however, that the IRS imposes strict requirements for trusts to secure this favorable tax treatment, such as preventing you from acting as the trustee or changing the terms of the trust. Keep in mind: If you transfer an existing policy into a trust and die within three years, the face value of the policy will be included in your taxable estate.

How long it will take to distribute money from an estate

Another factor to consider in estate planning is whether your heirs will have enough income in the years immediately following your death. If you're worried that the distribution may not provide cash or other liquid assets quickly enough to cover potential life events or costs, life insurance may be a good solution. Instead of having to sell valuable estate assets or liquidate retirement plans prematurely, the death benefits from life insurance can provide for your heirs' immediate financial needs.

Customize your estate plan for your needs

Estate planning can involve many complex decisions and possible strategies. Once you know what you want your estate plan to accomplish—who will inherit your assets and when they will receive them—you can develop a strategy and implement your plan. Whether it's as simple as a will or as complex as setting up a family trust while you are still alive, proper drafting of documents is essential. You should consult with your financial advisor and a knowledgeable estate planning attorney. If you've been meaning to review your estate plan, don't wait. The effort and time you spend today will save you and your heirs time and money tomorrow.

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