HEFFERNAN FINANCIAL SERVICES

Because You're Different

The Essentials of Estate Planning



This information is not intended to be a substitute for specific individualized tax advice. We suggest that you discuss your specific tax issues with a qualified tax advisor.

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Handout 1
Key Rules to Remember

Estate Tax Exemption
In 2023, the estate tax exemption amount increased to $12.92 million with a top federal estate tax rate of 40%.

Gift Tax Exemptions
You can give up to $17,000 in gifts to as many people (or noncharitable institutions) as you like each year without filing a federal gift tax return ($34,000 if your spouse joins in the gift). This limit may be indexed to inflation.

For 2023, the same exemption threshold — $12,920,000 million for individuals and $25,840,000 million per couple — will apply to estate, gift, and generation-skipping taxes, thereby simplifying the gifting of assets during an individual's lifetime.

Leaving Assets to Your Spouse
Any assets or property transferred to a spouse are exempt from federal estate and gift taxes as long as the spouse is a U.S. citizen. In addition, upon the death of the first spouse, recent changes in tax laws allow the unused portion of his/her federal estate tax exclusion to pass to the surviving spouse. Consult an estate planning attorney to discuss a recommended course of action based on your individual situation.

Charitable Bequests
Property you give or leave to a tax-exempt charity is exempt from gift and estate taxes.

Education and Medical Benefits
Money paid directly to qualified organizations for someone's medical bills or tuition is exempt from gift and estate taxes. There are no limits to the amounts you can pay.

Year	Top Estate & Gift Tax Rate	Amount Exempt From Estate Tax
2023	40%	$12.92 million
2022	40%	$12.06 million
2021	40%	$11.70 million
2020	40%	$11.58 million
2019	40%	$11.40 million

States with an Estate Tax and/or Inheritance Tax: CT, DC, HI, IL, IA, KY, ME, MD, MA, MN, NE, NJ, NY, OR, PA, RI, VT, and WA

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Handout 2

Estate Planning Options to Help Avoid Probate

1. **Trusts** — Many trusts allow you to have a separate legal entity — the trust — own your property. While this has no legal consequence while you're alive, property can be easily transferred without probate at your death.

2. **Gifts** — Making gifts during your lifetime helps you avoid probate for a simple reason: If you don't own assets when you die, they don't have to go through probate. There are some exceptions to this, usually for gifts made within three years of death.

3. **Retirement Accounts** — Many retirement accounts, such as IRAs and 401(k) plans, allow you to avoid probate by naming beneficiaries to directly receive the assets upon your death.

4. **Joint Ownership** — There are different types of joint ownership. Often, when one owner dies, it's easy for the survivor to transfer the property into his or her name alone and avoid probate.

5. **Transfer on Death** — Many states allow you to register ownership of your stocks or brokerage accounts in beneficiary form. The beneficiary you name has no rights while you're alive, but he or she inherits the stock free of probate upon your death.

6. **Payable-on-Death Accounts** — Properly notify your bank of whom you want to inherit the money in your account. At your death the beneficiary can claim the money directly from the bank, bypassing probate.



Handout 3
Important Document Checklist

Below is a partial list of important documents and information that should be accessible to make the settlement of affairs easier:

- ❑ birth certificate
- ❑ marriage/divorce certificates
- ❑ pension records
- ❑ real estate deeds
- ❑ car titles and registrations
- ❑ cemetery deeds
- ❑ burial instructions
- ❑ military papers
- ❑ tax records for past three years
- ❑ Social Security number
- ❑ financial advisor information
- ❑ executor information
- ❑ checking, savings, brokerage, and mutual fund accounts
- ❑ debts
- ❑ insurance policies
- ❑ safety deposit box receipts

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Handout 4
Estate Planning Resources

Books

If you go to any well-stocked bookstore or your local library, you should find a selection of books about estate planning in general or specific topics such as wills and trusts. Some good selections include:

- *The American Bar Association Guide to Wills and Estates*, American Bar Association.
- *Plan Your Estate*, Denis Clifford.
- *Understanding Living Trusts,* Vicki Schumacher.

Publications

Many financial publications include coverage of estate planning issues. These include:

- *Trusts & Estates, www.wealthmanagement.com/trusts-estates*
- *Money, www.time.com/money*
- *Kiplinger's Personal Finance, www.kiplinger.com*

Websites

Several websites provide information about various aspects of estate planning. In particular, sites of estate planning professionals can be helpful. Some of these sites are:

- National Association of Estate Planners & Councils (NAEPC) www.naepc.org
- Nolo Press Self-Help Center: www.nolo.com
- Find Your Lawyer, Learn About the Law, Legal Forms: www.findlaw.com

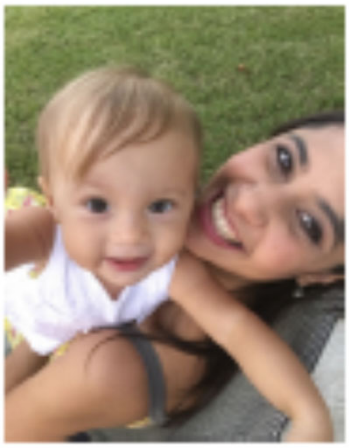
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Handout 5
Estate Planning Resources



Benefits of a will:

- *Distributes property according to your wishes*
- *Names an executor to settle your estate*
- *Names a guardian for minor children*

Key Estate Planning Documents You Need

There are five estate planning documents you may need, regardless of your age, health, or wealth:

1. Durable power of attorney
2. Advance medical directives
3. Will
4. Letter of instruction
5. Living trust

The last document, a living trust, isn't always necessary, but it's included here because it's a vital component of many estate plans.

Durable Power of Attorney

A durable power of attorney (DPOA) can help protect your property in the event you become physically unable or mentally incompetent to handle financial matters. If no one is ready to look after your financial affairs when you can't, your property may be wasted, abused, or lost.

A DPOA allows you to authorize someone else to act on your behalf, so he or she can do things like pay everyday expenses, collect benefits, watch over your investments, and file taxes.

There are two types of DPOAs: (1) an immediate DPOA, which is effective immediately (this may be appropriate, for example, if you face a serious operation or illness), and (2) a springing DPOA, which is not effective unless you have become incapacitated.
Caution: A springing DPOA is not permitted in some states, so you'll want to check with an attorney.

Advance Medical Directives

Advance medical directives let others know what medical treatment you would want, or allows someone to make medical decisions for you, in the event you can't express your wishes yourself. If you don't have an advance medical directive, medical care providers must prolong your life using artificial means, if necessary. With today's technology, physicians can sustain you for days and weeks (if not months or even years).

There are three types of advance medical directives. Each state allows only a certain type (or types). You may find that one, two, or all three types are necessary to carry out all of your wishes for medical treatment. (Just make sure all documents are consistent.)

First, a living will allows you to approve or decline certain types of medical care, even if you will die as a result of that choice. In most states, living wills take effect only under certain circumstances, such as terminal injury or illness. Generally, one can be used only to decline medical treatment that "serves only to postpone the moment of death." In those states that do not allow living wills, you may still want to have one to serve as evidence of your wishes.



Handout 5
Estate Planning Resources



Other benefits of a living trust:

- *Gives someone the power to manage your property if you should become incapacitated*
- *Lets a professional manage your property for you*
- *May circumvent state laws that limit your ability to give to charity, or force you to leave a certain percentage of your property to your spouse*

Key Estate Planning Documents You Need

Second, a durable power of attorney for health care (known as a health-care proxy in some states) allows you to appoint a representative to make medical decisions for you. You decide how much power your representative will or won't have.

Finally, a Do Not Resuscitate order (DNR) is a doctor's order that tells medical personnel not to perform CPR if you go into cardiac arrest. There are two types of DNRs. One is effective only while you are hospitalized. The other is used while you are outside the hospital.

Will

A will is often said to be the cornerstone of any estate plan. The main purpose of a will is to disburse property to heirs after your death. If you don't leave a will, disbursements will be made according to state law, which might not be what you would want.

There are two other equally important aspects of a will:

1. You can name the person (executor) who will manage and settle your estate. If you do not name someone, the court will appoint an administrator, who might not be someone you would choose.

2. You can name a legal guardian for minor children or dependents with special needs. If you don't appoint a guardian, the state will appoint one for you.

Keep in mind that a will is a legal document, and the courts are very reluctant to overturn any provisions within it. Therefore, it's crucial that your will be well written and articulated, and properly executed under your state's laws. It's also important to keep your will up-to-date.

Letter of Instruction

A letter of instruction (also called a testamentary letter or side letter) is an informal, nonlegal document that generally accompanies your will and is used to express your personal thoughts and directions regarding what is in the will (or about other things, such as your burial wishes or where to locate other documents). This can be the most helpful document you leave for your family members and your executor.

Unlike your will, a letter of instruction remains private. Therefore, it is an opportunity to say the things you would rather not make public.

A letter of instruction is not a substitute for a will. Any directions you include in the letter are only suggestions and are not binding. The people to whom you address the letter may follow or disregard any instructions.

Living Trust

A living trust (also known as a revocable or inter vivos trust) is a separate legal entity you create to own property, such as your home or investments. The trust is called a living trust because it's meant to function while you're alive. You control the property in the trust, and, whenever you wish, you can change the trust terms, transfer property in and out of the trust, or end the trust altogether.



Handout 5
Estate Planning Resources

Key Estate Planning Documents You Need

Not everyone needs a living trust, but it can be used to accomplish various purposes. The primary function is typically to avoid probate. This is possible because property in a living trust is not included in the probate estate.

Depending on your situation and your state's laws, the probate process can be simple, easy, and inexpensive, or it can be relatively complex, resulting in delay and expense. This may be the case, for instance, if you own property in more than one state or in a foreign country, or have heirs that live overseas.

Further, probate takes time, and your property generally won't be distributed until the process is completed. A small family allowance is sometimes paid, but it may be insufficient to provide for a family's ongoing needs. Transferring property through a living trust provides for a quicker, almost immediate transfer of property to those who need it.

Probate can also interfere with the management of property like a closely held business or stock portfolio. Although your executor is responsible for managing the property until probate is completed, he or she may not have the expertise or authority to make significant management decisions, and the property may lose value. Transferring the property with a living trust can result in a smoother transition in management.

Finally, avoiding probate may be desirable if you're concerned about privacy. Probated documents (e.g., will, inventory) become a matter of public record. Generally, a trust document does not.

Caution: Although a living trust transfers property like a will, you should still also have a will because the trust will be unable to accomplish certain things that only a will can, such as naming an executor or a guardian for minor children.

Tip: There are other ways to avoid the probate process besides creating a living trust, such as titling property jointly.

Caution: Living trusts do not generally minimize estate taxes or protect property from future creditors or ex-spouses.