Chapter Sixteen
Estate Planning

Contents

Introduction

ESTATE PLANNING IS PLANNING FOR DEATH. We're all a little squeamish about death, especially when we're the ones involved. This discomfort can lead to procrastination that might account for the fact that only about two out of every five Americans have a will.

The fact that so few Americans have a will is ironic. We spend our lives working hard to earn enough money and property to make the lives of our children and spouses, friends and business associates happier, wealthier, and more secure than our own. And, yet, most of us fail to do the one thing that's essential to make sure those we care about receive the fruits of our labor--we fail to plan for them because we fail to plan our estates.

Estate planning pays real dividends--in results achieved, in dollars saved, and, most importantly, in security and peace of mind. Moreover, estate planning doesn't have to be expensive, traumatic, or, even especially time-consuming. Estate planning often saves money by reducing taxes and the expenses of death. It saves time by speeding the process by which property passes from you, at your death, to your family, friends, or anyone else you want to have it. Finally, estate planning allows you to make the crucial decisions about the disposition of your property and the care of your family. In a very real sense, estate planning makes you the boss.

This chapter answers, in non-legal terms, commonly asked questions about estate planning. Keep in mind that the rules governing estate planning, wills, probate, and trusts are determined by state law, which means that the principles discussed in this chapter may not apply in your state. Similarly, the costs of estate planning vary depending on such factors as where you live, the nature of your estate, and your particular needs. As you begin the process of estate planning, consult one or more attorneys with experience in this area of the law. After a consultation, they can give you a good idea of the cost of ensuring that your estate is in order for today and tomorrow.

Q. What is an "estate?"
A. Almost everyone, single or married, has an estate. It consists of all your property, including for example:

- real estate, for example, a home;
- personal property such as cars and furniture;
- intangible property such as bank accounts, stocks and bonds, and pension and social security benefits, and the face value of your life insurance policies.

An estate plan is your direction for the distribution of all your property after you die.

Q. Isn't a will all I need?
A. Not necessarily. While a will often is the most important piece of an estate plan, it's not the only part. These days, it's common for a person to have a number of options, in addition to or in place of a will, for distributing property. Pensions, life insurance, joint ownership, and trusts can be used in lieu of a will to transfer property upon your death. As you plan your estate, you might want to consider these, or similar alternatives, to the traditional will.

Q. How can an estate plan distribute my property quickly?
A. You want your beneficiaries to receive promptly the property you've left them as part of your estate plan. Options include: gifts made before you die; insurance or pension benefits paid directly to them as the named beneficiaries; a living trust; using expedited will probate available in many states for smaller estates; and taking advantage of laws in certain states that provide partial payments to beneficiaries while the estate is in probate.

Estate planning can also minimize expenses by keeping the cost of transferring property to beneficiaries as low as possible. For example, choosing a competent executor for your estate and giving the executor the necessary authority to carry out your directives can save money and simplify the administration of your estate.

Q. Would an estate plan help if I become mentally or physically incapacitated?
A. Yes. During estate planning, many people also plan for possible mental or physical incapacity. This planning is especially important for a single person who may want to designate someone other than a relative to manage his or her property and affairs in the event of incapacity. A living will or a durable health-care power of attorney can enable you to pick someone to make decisions for you about medical treatment, including decisions about using or terminating life support systems.

You can select someone to direct your financial affairs in the event of your incapacity by executing a durable power of attorney for financial matters. This type of power of attorney gives a specific named individual access to your assets and the authority to manage those assets, to pay bills, and to take any other action needed to keep your financial house in order during your incapacity. See the chapter titled "Rights of Older Americans" for more information on living wills and similar legal documents designed for the purpose of providing health care in the event of incapacity.

Q. I have a business. Should I account for it in my estate plan?

A. Yes. An estate plan can make sure your business is not thrown into chaos upon your death or incapacity. You can provide for an orderly succession and continuation of its affairs by spelling out in your plan what will happen to your interest.

Q. Can I help a favorite cause through my estate planning?
A. Yes. Your estate plan can help support religious, educational, and other charitable causes, either during your lifetime or upon your death, while at the same time take advantage of tax laws designed to encourage private philanthropy.

Q. Can an estate plan help reduce taxes on my estate?
A. Yes. Every dollar your estate has to pay in estate taxes is a dollar that your beneficiaries won't receive. A good estate plan gives the maximum allowed by law to your beneficiaries and the minimum to the tax collector. This becomes especially important as your estate approaches the magic number of $1 million, the current level at which the federal estate tax becomes payable. This figure will rise by increments until the year 2009.

Q. Isn't an estate plan just for old people?
A. Emphatically not. One glance at the news demonstrates that far too many young and middle age people die suddenly or, what is even more likely, become mentally or physically incapacitated. An estate plan can be tailored to anticipate both of these contingencies.

Q. When should I plan my estate?
A. The time to plan for death or disability is when you're healthy. As a general rule, people make better decisions when they feel good and tend to make worse decisions when coping with mental or physical stress, strain, or illness. Moreover, a so-called deathbed will, or one made by someone whose mental competence is questionable, may invite a legal challenge.

It's also important not to procrastinate. Don't put off making your estate plan until your estate reaches a certain level or value. Even if you don't have as many assets now as you expect to have someday, it's easy to update the plan every few years as your assets increase and your life circumstances change. If you put in a few hours now learning the basics and setting up your plan, you'll know you're covered in case of an unexpected event.

Q. My spouse doesn't like to talk about finances or estate planning. What should I do?
A. You can't plan your estate if you don't know all the facts about your family's assets. Yet many people don't have basic information about their spouse's income--how much is earned, what benefits he or she is entitled to, what his or her assets and debts are, and where assets are invested.

You need to know this information when planning your estate. It's especially important to know who holds title to real estate and what is known as titled personal property, for example, automobiles, boats, and recreational vehicles. It is also important for you to know the beneficiaries of your spouse's insurance policies, pension plans, retirement accounts, and other similar assets.

Q. What can I do to minimize the costs of estate planning?
A. A lawyer or other professional often charges by the hour for the amount of work put into

the estate plan. Ask about fees at your first consultation and inquire about how much your total estate plan might cost. If your legal advisor charges by the hour, the more time you invest in locating relevant documents and putting your wishes in writing, the less preparatory work your advisor will have to do. This should go a long way toward reducing the final cost of your estate plan.

Sidebar: Information You Need to Plan Your Estate

For an individual with a sizable estate or for the person who wants to divide his or her estate among many people, it's helpful to know as much of the following information as possible. If you use a lawyer, you can save the lawyer's time and your money by having this information readily available.

- the names, addresses, and birth dates of all persons, whether or not related to you, you expect to name in your will;
- the name, address, and telephone number of the person(s) you expect to name as the executor of your will;
- if you have minor children, the names, addresses, and telephone numbers of possible guardians;
- amount and source of your principal income and other income such as interest and dividends;
- amount, source, and beneficiaries, if any, of your retirement benefits, including IRAs, pensions, Keogh accounts, government benefits, and profit-sharing plans;
- amount, source, and beneficiaries, if any, of other financial assets such as bank accounts, annuities, and loans due you;
- amount of your debts, including mortgages, installment loans, and business debts, if any;
- a list (with approximate values) of valuable property you own, including real estate, jewelry, furniture, collections, heirlooms and other assets;
- a list and description of jointly-owned property and the names of co-owners;
- any documents that might affect your estate plan, including prenuptial agreements, marriage certificates, divorce decrees, recent tax returns, existing wills and trust documents, property deeds, and so on;
- location of any safe deposit boxes and an inventory of the contents of each.

Working with a Lawyer

Q. Should I consult an attorney as I plan my estate?

A. If your estate is relatively small and your objectives straightforward, you might plan your estate mostly on your own, with the help of the ABA's Guide to Wills and Estates and other resource materials, using professional help largely for tasks like writing a will or trust. However, a caveat is in order. "How-to" guides can assist you as you start the estate-planning process. But in these matters, certainty, above all, is golden. So, before finalizing anything, consult with an experienced estate lawyer to make sure that your property goes exactly where you want it to; that your family is protected fully; and that you are assured of proper care in the case of incapacity. As a general rule, the larger your estate, the more important it is to consult an attorney.

Q. How do I find a lawyer to help me plan my estate?

A. The trust department of your local bank can give you the names of one or more attorneys experienced in estate planning. If you have a friend or relative who has executed a will recently, ask for the name of the attorney. Another source is your local bar association's referral program, which lists attorneys knowledgeable in estate practice.

Attorneys often offer an initial consultation without charge. At this get-acquainted session, you can ask about the attorney's experience in estate planning and get a firm idea of fees.

Be comfortable with the attorney you choose! A good estate attorney will have to ask questions about many private matters; it's important for you to be comfortable discussing these personal considerations. Frank and open communication with your attorney is important in ensuring that you get an estate plan that fits your needs.

Q. How does the process of estate planning work?

A. Don't just expect to pile some papers on your lawyer's desk and have a will or trust magically appear in a few weeks. Preparing these documents is seldom as simple as filling in blanks on a form. Most people will meet with their attorney several times, with more extensive estates requiring more consultations.

At the first meeting, be prepared to tell your lawyer about some rather intimate details of your life--how much money you have; how many more children you plan to have; which relatives, friends, or other associates you want to get more or less of your estate. Bring as many of the documents listed the accompanying sidebar (see below) as possible.

After talking with you, your attorney will explain the options the law provides for accomplishing your estate-planning goals. Based on your direction, your attorney can draft a will or trust or both, depending on your circumstances.

It's a good idea to ask your attorney to send you a draft of the will or trust document for your review. After examining the draft, ask for any clarification you might need and provide any necessary changes to effectuate your wishes. This information will assist your attorney in preparing the finalized will or trust document which, upon signing, will become legally effective to distribute your estate.

Wills

Q. Do I have to have a lawyer to write my will?

A. No. If your will meets the legal requirements established by the law of your state, it is valid, whether or not you wrote it with a lawyer's help. However, a lawyer can help ensure that your will is more than just valid. Your lawyer can make sure that the will does what you really want it to do. It is for this reason that more than 85 percent of Americans who have wills worked with a lawyer.

Q. Can't I just use one of the books or computer programs I've seen to write my will without a lawyer involved?

A. For small estates involving little money and other assets and in which everything is to go to few people, a well-done book or software program might enable you to make your will without hiring a lawyer. However, keep in mind that it's not always easy to determine whether a given book or kit is up-to-date and thorough, especially since the laws governing estates vary from state to state. Do-it-yourself books, some lawyers say, have caused more work for

them, and bills for estates, than they have avoided. In addition, filling in the blanks often takes a lot more thought and knowledge than it seems.

The consequences of a mistake--an invalid will or a contested will--make do-it-yourself will writing too risky for most estates. The complexities of many wills and the many tax considerations involved makes a lawyer's expertise important if not invaluable.

You most certainly should use a lawyer if you own a business, if you have a complicated family situation (for example, children from more than one marriage), or if you anticipate a challenge to the will. And, before deciding to write your own will, you might want to at least consult a lawyer. You might conclude that you can get the plan you want and the accompanying peace of mind at a price you can more than afford.

Q. If I use a lawyer, how much should I expect to pay?

A. Among other factors, it depends on the size and complexity of your estate, the average legal fees for estate planning in your area, and your lawyer's experience. You'll pay more if your estate exceeds $675,000 and you are interested in minimizing federal estate taxes and state inheritance taxes.

Many lawyers will see you for an initial consultation at no charge. By taking advantage of this opportunity, you'll be able to discuss fees based on the specifics of your financial situation and exactly how you wish to distribute your estate.

If you are among the 74 million Americans belonging to group legal service plans, usually through employers, unions, or membership groups such as the American Association of Retired Persons, you might be able to consult a lawyer for a smaller-than-normal fee. Group plans enable members to obtain a variety of legal services, including will preparation, at reduced cost.

Q. Why should I go to the trouble of writing a will?

A. A will lets you control what happens to your property.

If you have minor children, a will enables you to designate the best available person to care for them after your death. Through a will you can nominate a legal guardian for your children and name an executor to handle the distribution of your estate to your designated beneficiaries.

Sidebar: The Video Will

More and more people are preparing a "video will," which is a videocassette showing them reading the will aloud and, perhaps, explaining why certain gifts were made and others not made. The video recording might also show the execution of will. Should a disgruntled relative decide to challenge the will, the video can provide compelling proof that the testator, that is, the person making the will, really intended to make a will, was mentally competent to do so, and observed the formalities of execution. You should consult a lawyer before making such a video and find out whether your state's law permits a video will to substitute for, rather than supplement, a properly prepared written will.

Sidebar: Alternatives to Written Wills

The best rule to follow in creating a will is "put it in writing." By executing a written will, you

are ensuring that your intentions are clear and that you have a degree of certainty about the exact distribution of your estate upon your death.

As with all general rules, there are exceptions. Some states recognize oral wills or holographic wills--handwritten, unwitnessed wills--only under extremely limited circumstances.

A few states have statutory wills that are created by state law and allow people to fill in the blanks on a standard form. However, these form wills are designed for simple estates and provide little flexibility. They will not be useful if you have a large estate or if your wishes are complicated.

Also keep this caveat in mind--make sure your state treats as valid these alternatives to the traditional, time-tested written will and then make certain that you follow all the steps the law requires.

Q. What happens if I die without a will?

A. If you die without a will, your property still must be distributed. The probate court in your area will appoint someone (who may or may not be the person you would have wanted to comb through all your affairs) as the administrator of your estate who will be responsible for distributing your property in accordance with the law of your state.

The probate court will closely supervise the administrator's work and may require the administrator to post bond to ensure that your estate will not be charged with the costs of any errors made by the administrator. Of course, all this involvement may be much more expensive than administering an estate under a will--and these costs come out of your estate before it is distributed. Some of your property may have to be sold to pay these costs, instead of going to family or friends.

Q. Who gets my property if I die without a will?

A. By not leaving a valid will or trust, or by not transferring your property in some other way before death, you've left it to the law of your state to write your "will" for you. In the absence of a will, the law of your state has made certain judgments about who should receive a decedent's property. Those judgments may or may not bear any relationship to the judgments you would have made if you had prepared a will or executed a trust.

As a general rule, state law gives your property to the persons most closely related to you by blood, marriage, or adoption. As a result, your hard-earned money might end up with relatives who don't need it, while others, whether or not related to you, who might need be in greater need or who are more deserving, are passed over. In the unlikely event that you have no relatives or in the event that your relatives cannot be located after diligent efforts, your property will go to the state--a big reason to have a will or trust.

Q. Does a will cover all my property?

A. Probably not. It is easy to think that a will covers all of your property. But because property can be passed to others by gift, contract, joint tenancy, life insurance, or other methods, a will might best be viewed as just one of many ways of determining how and to whom your estate will be distributed at your death.

The various methods of distributing your estate are discussed in this chapter. In the meantime, keep in mind the kinds of property that a will may not cover and include them in your estate planning.

Q. Are there any special legal formalities required to make my will legally valid?
A. After you've drawn up your will, there remains one step: the formal legal procedure called "executing the will." This requires witnesses to your signing the will. In almost all states, the signature of at least two witnesses is required. In some states, a will is not deemed legally valid unless the witnesses appear in court and testify about witnessing the will. However, in a growing number of states, a will can be "self-proved"--that is, the will is accepted as valid and the witnesses will not be required to appear and testify if, at the time the will was executed, the witnesses' signatures were notarized and each witness submits an affidavit attesting to the fact that he or she witnessed the signing of the will.

Q. Who shouldn't be witnesses?
A. The witnesses should have no potential conflict of interest, that is, they should not be people who receive gifts under the will or who might benefit from your death. Thus, in some states, a will is invalid if witnessed by an beneficiary. In other states, a beneficiary can serve as a witness but, in doing so, might lose whatever property or interest you left to that person in your will.

Sidebar: The Essentials of a Valid Will
To be valid, your will doesn't have to conform to a specific formula. However, certain elements must be present and are set forth below:
1. You must be of legal age--18 in almost all states.
2. You must be mentally competent, which means that you know you are executing a will, know the general nature and extent of your property, and know your descendants and other relatives who would ordinarily be expected to share in your estate.
3. The will must have a substantive provision that disposes of property and it must indicate your intent to make the document your final word on what happens to your property.
4. With rare exceptions as, for example, when death is imminent, a will must be written.
5. You must sign the will unless illness, accident, or illiteracy prevents it. In these circumstances, you can designate someone to sign for you at your direction and in your presence.
6. In almost all states, your signature must be witnessed by at least two adults who understand that they are witnessing a will and are competent to testify in court. In most states, the witnesses should be disinterested, that is, not named in your will as receiving any part of your estate. As a general rule, the witnesses watch you sign the will. Each witness then signs the will in the presence of the other.

If your will doesn't meet these conditions, it might be disallowed by a court and your estate would then be distributed according to any prior will or, if there is no will, in accordance with state law.

Q. In my will, can I leave my property to anyone I wish?
A. In general, you can pick the people you want your property to go to and leave it to them in whatever proportions you want, but there are a few exceptions. For example, a surviving husband or wife may have the right to take a fixed share of the estate regardless of the will. Some states limit how much you can leave to a charity if you have a surviving spouse or children, or if you die soon after making the provision.

Some people try to make their influence felt beyond the grave by attaching bizarre or

excessive conditions to a gift made in the will. Most lawyers will advise you not to try this. Courts don't like such conditions, and you're inviting a will contest if you try to tie multiple, unreasonable conditions to a gift. For the most part, though, it's your call.

Q. Can I disinherit my spouse and children?
A. You usually can't disinherit your spouse. State laws generally entitle a spouse to take a portion of the other spouse's estate (except in community property states)--regardless of the other spouse's will or estate plan.

The situation with children is dramatically the opposite. Except for Louisiana, every state permits you to disinherit your children. However, to be effective, your intent to disinherit must be express, which usually means it has to be stated in writing.

Q. What share will my spouse receive under state law?
A. If a husband or wife dies with a will that makes no provision for the surviving spouse, or conveys to that person less than a certain percentage of the deceased spouse's assets, the surviving spouse can take a statutorily defined elective share of the estate. This means he or she can choose to accept the amount allowed by law, usually one third or one half of the estate.

The surviving spouse doesn't have to take an elective share of the estate--it's his or her choice. If he or she doesn't exercise the choice, the will stands and the property is distributed as stated in the will.

Elective share provisions are troubling to many people entering into second marriages, particularly late in life. There may be substantial concern that the surviving spouse of only a few years would be eligible to take up to one half of the deceased spouse's property, even though the latter wanted it to go to his or her own children. Recent revisions to the Uniform Probate Code provide a "sliding scale" for surviving spouses who take against the will. Under this approach, which a few states have adopted, the longer the marriage, the higher the elective share. If the marriage lasted only a few years, the percentage could be quite low, minimizing one source of worry for older couples.

Q. Is a surviving spouse protected by other laws?
A. Yes. Depending on the state, a surviving spouse may have the protection of homestead laws, exempt property laws, and family allowance laws. Typically, these protections are in addition to whatever the spouse receives under the will, the elective share that the spouse can choose to take under the will, or the statutory share that he or she receives if there is no will.

Homestead laws protect certain property from the deceased spouse's creditors. Typically, they permit the surviving spouse to shelter a certain value of the family home and some personal property from creditors. In some states, the homestead exemption protects a statutorily specified sum of money from creditors, rather than the deceased's real or personal property. As a general rule, the protection is temporary, extending to the lifetime of the surviving spouse or until any minor children reach legal adulthood. However, in a few states, homestead laws permanently shelter specified property from creditors of the deceased.

Exempt property laws give the surviving spouse certain specified property; provide protection from creditors; and protect against disinheritance.

Family allowance laws make probate less of a burden on family members. Under these laws, the family is entitled to a certain amount of money from the estate while the estate is being probated, regardless of the claims of creditors.

Sidebar: Kinds of Wills

Here's a brief glossary of terms used in the law for various kinds of wills:

- **Simple will**. A will that provides for the distribution of the entire estate to one or more persons or entities, known as beneficiaries, so that no part of the estate remains undistributed.
- **Testamentary-trust will**. A will that sets up one or more trusts into which designated portions of your estate are placed after you die.
- **Pour-over will**. A will that leaves your estate to a trust established before your death.
- **Holographic will**. A will that is unwitnessed and in the handwriting of the will maker. About twenty states recognize the validity of such wills.
- **Oral will (also called "noncupative will")**. A will that is spoken, not written down. A few states permit these.
- **Joint will**. Two wills--the wife's and the husband's--contained one document.
- **Living will**. Not really a will at all--since it has force while you are still alive and doesn't dispose of property. A living will is often executed at the same time you make your true will. It tells doctors and hospitals whether you wish life support in the event you are terminally ill or, as a result of accident or illness, cannot be restored to consciousness. (A power-of-appointment for health or a durable health care power of attorney can be used to address this concern.)

Q. What is an "independent executor"?

A. About a dozen states permit the appointment of an independent executor, who, after appraising the estate's assets and filing an inventory of assets with the probate court, is free to administer the estate without intervention from the court. This saves time and money. However, a court could become involved in the event someone challenges the independent executor's administration of the estate.

The independent executor has the power to do just about anything necessary to administer the estate. He or she can sue and be sued, settle claims made by others against your estate, deny or pay claims made by others against your estate, pay debts, taxes and administration expenses, run a business if part of the estate, and distribute the assets of your estate to your beneficiaries as spelled out in your will. In some states, the independent executor can sell your property without first securing a court order to do so.

Q. Whom should I make the executor of my will?

A. There's no consensus about who makes the best executor. It all depends on your individual circumstances.

One approach is to appoint someone with no potential conflict of interest--that is, someone who doesn't stand to gain from the will. Under this approach, you can minimize the likelihood of a will contest from a disgruntled beneficiary who might be tempted to accuse the executor of taking undue advantage of his or her role to the detriment of others named in the will. On the other hand, if you believe that there is little possibility of will contest, you could

choose a beneficiary as executor. Since an executor who is a beneficiary usually waives the executor's fee to which he or she entitled, your estate will save money.

For most people whose assets amount to less than half a million dollars a good choice is your spouse or the person who will be the main beneficiary of your will. This person will naturally be interested in making sure the probate process goes efficiently and with minimal expense. For larger estates and those that involve running a business, it may be advisable to use the estate-planning department of your bank, your accountant, or your attorney.

Whomever you choose as executor, be sure to provide in your will for a successor executor in case the first named executor dies or is unable or unwilling to perform. Without a back up executor, the probate court will have to appoint someone, and that person may not be to your liking.

One final caution--don't name someone as your executor unless you have spoken to the person and he or she agrees. This will ensure that your estate will be administered by the person of your choice, not the court's.

Q. Can I appoint more than one executor?

A. Yes, naming co-executors is popular with small business owners who name a spouse or relative to oversee the personal side of matters and a second person with business expertise to oversee the management of the business.

Naming co-executors may be a good idea if the main beneficiary lives in different state and is unable to make the trips necessary to handle the many details involved in administering an estate. While this person could be a co-executor, another co-executor living in the same state could be named to handle the day-to-day administration. Finally, don't forget to name one or more successor executors so that, if one of co-executor dies or declines the position, someone else of your choice will be available.

Q. Is there anyone whom I shouldn't appoint as executor?

A. As a general rule, the executor can't be a minor, a convicted felon, or a non-U.S. citizen. In addition, while all states allow an out-of-state resident to act as executor, some require that the nonresident executor be a primary beneficiary or close relative. Some states require that a nonresident executor obtain a bond or engage a resident to act as the nonresident executor's representative. For these reasons and because handling an estate can take months and require a lot of travel to your state of residence, it's a good idea to pick at least one executor who is a legal resident of the state in which your estate will be administered.

Q. How much does an executor charge for his services?

A. If the executor is a beneficiary, for example, a family member, he or she may choose to forego the statutory executor's fee, but you can expect any executor who is not a beneficiary, such as a bank or lawyer, to charge a fee. Fees vary by state and are usually set as a percentage of the estate's value. For small and mid-sized estates--estates under $200,000 for example--expect a fee of one to four percent of the total estate. Although these fees usually are regulated by probate courts and state law, nonbeneficiary executors generally charge the maximum fee even if the estate requires less work than the complicated estates the statutory fee structure contemplates.

Q. Where should I keep my will?

A. Keep it in a safe place, such as your lawyer's office, a fireproof safe at home, or a safe deposit box. If you do keep your will in a safe deposit box, make sure to provide that the executor can take possession of the will when you die. Also, keep in mind that some jurisdictions require a decedent's safe deposit box to be sealed immediately after death until certain legal requirements have been satisfied.

Q. What other estate documents should I keep with the will?
A. You should also keep a record of other estate planning documents with your will, such as trust documents, IRA's, insurance policies, income savings plans such as 401(k) plans, stocks and bonds, and retirement plans.

Trusts

Q. What is a trust?
A. A trust is a legal instrument used to hold and manage real property and tangible or intangible personal property, for example, antiques (tangible personal property) or the right to royalty payments (intangible personal property). Putting property in trust transfers it from your personal ownership to the ownership of a legal entity called a "trust" which holds the property for your benefit or the benefit of anyone else you might name. Upon transfer, the law looks at these assets as if they were owned by the trust. Many trusts are set up in wills, and take effect upon death. Others can be established while you are still alive (see below and next section).

Q. What is a living trust?
A. A living trust is simply a trust established while you are still alive. It can serve as a partial substitute for a will. Therefore, upon the death of the person creating the trust, its property is distributed as specified in the trust document to beneficiaries also specified in the document.

There are three parties to a living trust:

- the creator of the trust (also referred as the grantor, settlor, or donor);
- the trustee (the person who holds and manages the property for the benefit of the creator or other beneficiaries); and
- one or more beneficiaries (the person or persons named to receive the benefits of the trust).

Q. Why do people use trusts?
A. The reasons vary. Parents, for example, might use a trust to manage their assets for the benefit of their minor children in the event the parents die before the children reach the age of legal adulthood. The trustee can decide how best to carry out the parents' wishes that the money be used for education, support, and health care.

A trust is a good idea for anyone whose intended beneficiary is unable to manage money and other assets prudently. A trust established for such a beneficiary is sometimes known as a "spendthrift trust"

For someone who is unable to manage his or her estate because of mental or physical incapacity, a trust is an effective way to avoid the expense and undesirable aspects of court-appointed guardian.

Sidebar: Things a Trust Can Do for You

A trust is an important estate-planning tool. The flexibility of trusts makes them useful for many different people with all kinds of needs. In addition, trusts can do a number of things wills can't do such as:

- manage assets efficiently if you should die while your beneficiaries are minors;
- protect your privacy (unlike a will, trusts are confidential);
- depending on how they're written and on state law, protect your assets by avoiding creditors and reducing taxes;
- manage property for you while you're alive; provide a way to care for you if you should become disabled; avoid probate; and speed transfer of your assets to beneficiaries after your death.

Q. Can you change a trust after you set one up?
A. It depends. A trust can be revocable--that is, subject to change or termination; or irrevocable--that is, difficult to change or terminate.

A revocable trust gives the creator great flexibility but no tax advantages. An irrevocable trust is the other side of the coin--less flexibility but considerable tax benefits. For example, an irrevocable trust can minimize federal and state taxes. In addition, an irrevocable trust may protect trust property from the creditors of the trust creator. However, an irrevocable trust often doesn't avoid taxes entirely. Because it can be difficult to balance the costs and benefits of an irrevocable trust, it's wise to consult with an estate-planning attorney before you proceed.

Q. Should I consider setting up a trust?
A. It depends on the size of your estate and what you want to do with it. For example, if you are primarily interested in protecting yourself in the event you become unable to manage your estate, a revocable living trust is a good option. It can avoid the expense and delay of a court hearing on your mental or physical condition and the appointment of a legal guardian to oversee you and your estate in the event you are declared legally incompetent. If you want to provide for minor children, grandchildren, or a disabled relative, a trust might be appropriate. Before making a decision, consult an estate-planning lawyer.

Q. I can see the advantages of a trust, particularly a revocable living trust. What are some disadvantages?
A. Besides preparing the trust document itself, you will have to transfer all of the assets specified in the trust document into the trust. This can require executing deeds or bills of sale, submitting tax forms, retitling assets, and other registration procedures.

You have to be sure to keep transactions involving your trust separate from those involving property owned in your name. After creating the trust, each time you buy, inherit or otherwise acquire an asset that you don't want subject to probate, you have to remember to buy it in the name of the trust or transfer it into the trust after purchase.

Cost is also a factor. While a lawyer isn't required for setting up a revocable living trust, it's usually a good idea to work with one. Also, a trust generally costs more than a will to prepare. In addition, there may be an annual management fee, particularly if the trustee is a bank or trust company. (However, if all of your property is in trust so that there is no estate to probate at your death, these higher initial costs may be offset by costs that would have gone to probate.)

There are other problems too. Depending on the state the property is located in, putting your home in a revocable trust might jeopardize a homestead exemption, might require a transfer fee, or might cause your property to be reassessed for property tax purposes. Moreover, this type of trust will not reduce estate taxes.

In some states, a revocable living trust, unlike a will, is not automatically revoked or amended on divorce. If you don't amend the trust, your ex-spouse could end up being the beneficiary.

Conflicts can arise between trustees and beneficiaries. For example, beneficiaries often prefer riskier, higher-income investments than trustees, who have a duty to preserve the original assets of the trust as well as the duty to invest the assets prudently. Conflict of this sort is especially likely to occur if the trust is designed for the benefit of more than one generation.

Conflicts also might arise among different classes of beneficiaries. For example, your child may be the current beneficiary, with your grandchildren becoming beneficiaries after your child dies. In this situation, your child and grandchildren may have conflicting interests in the trust. As the creator of the trust, you can minimize any conflict by clearly stating in the trust document whose interests are paramount.

Sidebar: Kinds of Trust

- **Self-declaration of trust** provides support for the owner during his or her lifetime. Like a will, it also contains provisions for disposing of the trust property at the owner's death.
- **Support trust** directs the trustee to spend only as much income and principal as may be needed for the education, health care, and general support of the beneficiary.
- **Discretionary trust** permits the trustee to distribute income and principal among various beneficiaries as he or she sees fit.
- **Charitable trust** supports a charitable purpose. Often these trusts will make an annual gift to a worthy cause of your choosing.
- **Spendthrift trust** benefits individuals whom the grantor believes can't or won't be able to manage their own affairs--like an extravagant relative. It may also be useful for beneficiaries who need protection from creditors.
- **Insurance trust** is a device used to avoid or, at least, minimize federal and state estate taxes. Here, trust assets are used to buy a life insurance policy whose proceeds benefit the creator's beneficiaries.
- **Totten trust** is not really a trust at all. It is one or more joint bank accounts that pass to a named beneficiary immediately upon the owner's death.
- **Medicaid trust** is a trust that helps you qualify for federal Medicaid benefits. This device is mostly used when family members are concerned with paying the costs of nursing home care.

Q. Whom should I pick as trustee?

A. A trustee's duties can continue for generations and, in many cases, require expertise in collecting estate assets, investing money, paying bills, filing periodic accountings, and managing money for beneficiaries.

The biggest decision to make in designating a trustee is whether to use a family member, a professional trustee, or both. Many trust creators choose a family member as a trustee. A family member usually won't charge a fee and, generally, has a personal stake in the trust's success. If the family member is competent to handle the financial matters involved, has the

time and interest to do so, and if you're not afraid of family conflicts, naming a family member as trustee may be a good move, particularly for a small or medium sized estate.

A professional trustee such as a bank will charge a management fee . In some cases, it can be substantial. Professional trustees also have been criticized for being impersonal in their dealings with beneficiaries who require, or at least desire, more personal attention. On the other hand, a professional trustee is immortal, unlikely to take sides in family conflicts, and commands the kind of investment and money-management expertise that a lay trustee may not possess. Particularly if you have a large estate, give serious consideration to a professional trustee.

Q. Can I name more than one trustee?

A. Yes. Many trust creators name co-trustees. For example, when a married couple decides to establish a trust, the spouse creating the trust often names himself or herself as one co-trustee and the spouse as the second co-trustee. As a further protection, the creator will name a successor trustee who would manage the trust in the event the one or both of the co-trustees dies or resigns their trustee duties.

Sidebar: Some Responsibilities of the Successor Trustee

If you have become the successor trustee because of the death of the original trustee:

- obtain a copy of the deceased trustee's death certificate as well a copy of the trust creator's death certificate if the creator has died;
- tell the trust creator's family that you are the successor trustee;
- make sure each trust beneficiary has a copy of the trust document;
- inform all financial institutions holding trust assets that you are the new trustee;
- collect and pay all taxes and other debts;
- monitor all income;
- make sure there is an accurate inventory of all trust property;
- ensure that the trust property has been or will be distributed to beneficiaries;
- prepare and file all appropriate tax returns;
- prepare a final accounting and distribute to all beneficiaries;

If you become a successor trustee because the creator of the trust, who was also the trustee, has become incapacitated:

- obtain a medical opinion confirming the creator/ trustee's incapacity;
- inform the family of the trust creator that you are his or her successor trustee;
- provide each beneficiary with a copy of the trust document;
- inform all financial institutions holding trust property that you are the successor trustee;
- pay all taxes and debts;
- monitor all income.

Q. How do I choose a lawyer to help me set up a trust?

A. First, make sure the lawyer you select has expertise in trust and estate law in your state and is willing to work with you to tailor the trust to your particular needs; otherwise the primary benefit of a trust--its flexibility--might be lost. A knowledgeable lawyer will provide you with the financial expertise necessary to ensure that the trust property is preserved and, where possible, is invested wisely to ensure that the assets placed in trust actually grow in value.

Second, because trusts have tax consequences and are scrutinized closely by the IRS,

choose a lawyer who understands the interplay between various types of trusts and their tax obligations.

Q. When does a trust come to an end?
A. Except for charitable trusts, a trust ends upon a date specified in the trust document or upon the occurrence of a particular event stated in the document. For example, in a trust to benefit children, the date of termination usually is the date the youngest child reaches a stated age.

Q. What if I set up a trust and then move to another state? Which law applies?
A. The trust document usually contains a clause specifying which state's law applies. As a general law, the law of the state of your residence at the time you created the trust is the applicable law and remains so if even if you later move to another state. However, it's probably a wise idea to check with a lawyer familiar with the statutes of your new state of residence to see if the trust should be revised to account for differences in the law between the two states.

Sidebar: You Might Benefit from a Living Trust If...

1. Your estate has substantial property or assets that are difficult or costly to dispose by a will.
2. You don't want the task of managing your property (say you rent out a number of condos). A revocable living trust allows you to give those duties to your trustee while you receive the income, minus the trustee's fee, if any.
3. You want your estate administered by a someone who doesn't live in your state. A living trust might be better than a will because the trustee probably won't have to meet the residency requirements some state laws impose upon executors.
4. You have property in another state. Many lawyers recommend setting up a revocable living trust to hold the title to that property. This helps you avoid time-consuming, complicated, "ancillary probate" procedures.

Sidebar: You May Not Benefit from a Revocable Living Trust if...

1. Your probate system has simple and easy procedures for administering estates your size.
2. You're young and healthy and don't have a lot of money. A will can usually take care of the immediate needs of a young family. You can think about a trust when you have children and your assets have grown.
3. You are not rich but you have enough assets that re-registering them all would cost more than it's worth. For example, you might own a number of parcels of property, none particularly valuable, but all of the property would require retitling if placed into a trust.

Q. Who can advise me about setting up a revocable living trust?
A. Your attorney is the obvious choice, but not the only one. Most banks provide trust services, for example establishing the trust and managing the trust assets. Of course, the bank's management charges can add up and could exceed the cost of probating your estate. In addition, the bank may insist on managing the trust, which means that you won't be in control. Be sure to weigh these factors before deciding to use a bank as your trustee.

For people with more assets or people who don't want the uncertainty and work of writing and funding their own trust, it's definitely wise to work with an attorney. It's especially good to have an attorney's assistance in determining which assets to put into the trust and which to dispose of through a will.

Q. I just received a call from someone purporting to sell living trusts. Should I buy one?

A. No. A number of dubious companies, playing on people's fears of probate and suspicions about lawyers, have taken to selling living-trust kits door to door, by mail, or through seminars. Often, they deliberately exaggerate the costs and difficulties of the probate process, even though probate procedures and fees in many states, especially for simple estates, are increasingly more manageable and less costly. Authorities in several states have filed consumer fraud suits against these promoters for misrepresenting themselves and deceiving consumers.

Most lawyers and financial advisers urge you to avoid such pitches, whether they're made in unsolicited telephone calls, through the mail, or in seminars. The products seldom live up to their touts and often cost $2,500 or more--far above what you'd typically pay to get a good personalized trust prepared by a lawyer. Because revocable living trusts should be crafted to fit your particular situation, it's next to impossible to find a prepackaged one that will suit your needs as well as one prepared by your lawyer

Sidebar: What a Revocable Living Trust Won't Do

A revocable living trust is a very important estate-planning tool. But it can't do everything. Here's a summary of what it can't do.

1. Won't help you avoid taxes. A revocable living trust doesn't save any income or estate taxes that couldn't also be saved by a properly prepared will. Trust property is still counted as part of your estate for the purposes of federal and state income and estate taxes. Your successor trustee still has to pay income taxes generated by trust property and owed at your death. (Your executor would have to pay such taxes out of your estate if the property was controlled by a will instead of a trust.) And if the estate is large enough to trigger federal or state estate or inheritance taxes, your trustee will be required to file the appropriate tax returns. These and other duties can make the cost of administering an estate distributed by a revocable living trust almost as high as traditional estate administration, at least in some states.
2. Won't make a will unnecessary. You still need a will to take care of assets not included in the trust. If you have minor children, you probably need a will to suggest or nominate a guardian for them. While only a court can appoint a guardian, courts strive to implement your wishes in this regard if you have stated them.
3. Won't affect nonprobate assets. Like a will, a revocable living trust won't control the disposition of jointly owned property, life insurance, pension benefits or retirement plans payable to a beneficiary, and other nonprobate property.
4. Won't protect your assets from creditors. Creditors can attach the assets of a revocable living trust. In fact, since the assets you put in a living trust don't have to be probated, they could lose the protection of the statute of limitations, which means that your creditors have longer to get at them.
5. Won't necessarily protect your assets from disgruntled relatives. While it is harder to challenge a living trust than a will, a relative can still bring suit to challenge the trust on grounds of fraud, undue influence, or duress.

6. Won't entirely eliminate delays. A living trust might well lessen the time it takes to distribute your assets after you die, but it won't completely eliminate delays. Many state laws impose a waiting period for creditors to file claims against estates of people with living trusts. The trustee still has to collect any debts owed to your estate after you die, prepare tax returns, pay bills, and distribute assets, just as would the executor of a will. All this takes time.

Q. How do I set up a revocable living trust?
A. Requirements for setting up a revocable living trust vary with each state. In general, you execute a document saying that you're creating a trust to hold property for your benefit and that of any other designated beneficiary. Some trust declarations list the major assets (home, investments) that you're putting into trust; others refer to another document (a "schedule") in which you list the exact property that will be in the trust. In either case, you can add and subtract property whenever you want. You will have to change the ownership registration on all property put into the trust--deeds, brokerage accounts, stocks or bonds, bank accounts, etc.--from your own name to the name of the trust (for example, The John A. Smith Trust). If you make yourself the trustee, you will have to remember to sign yourself in trust transactions as "John A. Smith, Trustee," instead of using only your name.

Q. How can I reduce the costs of a revocable living trust?
A. By doing some preparation, you can minimize the time the lawyer spends on setting up the trust and reduce your legal costs. As in making a will, ask your lawyer what documents are important. After collecting the necessary records, deeds, bank statements etc., make a list of your assets and where you want them to go when you die.

Q. Once I put my property in a revocable living trust, can I still manage it or sell it?
A. Yes. In a revocable living trust, you can retain the right to manage the trust property. This right includes the right to sell any of the property you placed into the trust.

Q. Does a revocable living trust save taxes?
A. No. When you put property in a revocable living trust, the trust becomes its owner, which is why you must transfer title to the property from your own name to that of the trust. But you retain the right to use and enjoy the property and, because you do, under the tax law the property in the trust belongs to you for tax purposes. Thus, if the trust receives income from the assets, you must report the income from the trust on your individual income tax return.

Q. What happens to the property in the trust when I die?
A. When you die, your trustee distributes the property according to the terms of the trust.

Q. How can a revocable living trust help if I become disabled?
A. You would set up a revocable living trust, fund it adequately (or give someone in whom you have confidence power of attorney to fund it in the event of your incapacity), and name one or more reliable trustees to manage your property contained in the trust should you become ill. This avoids the delay and red tape of expensive, court-ordered guardianship. And, at the same time, the trustee can take over any duties you had of providing for other family members. For more, see the chapter, "The Rights of Older Americans".

Q. Once the trust is set up, do I have to do anything else?
A. Setting up the trust is actually the easy part. The harder part is putting something in it--what's called funding the trust. This includes not just depositing money in the trust account, but also transferring title of assets to the name of the trust.

Q. How do I transfer titles to the trust?
A. Take a copy of the trust agreement to your bank, stockbroker, mortgage and title insurance companies, and anyone else who controls title to your assets and then request a transfer of ownership from your name to that of the trust. Make sure to keep a record of these transfers; it will make your successor trustee's job much easier.

Q. What should I leave out?
A. The special tax treatment given Individual Retirement Accounts (IRAs) might encourage you to leave them in your name. The fees your state charges to transfer title of a mortgage or other property could make the cost of transfer prohibitive. You might want to hold off on transferring your home to the trust until the mortgage is paid off or one spouse dies. Some people worry about taking the family home out of the husband and wife's names in joint tenancy and putting it into a living trust in the name of one of the spouses. In such cases, a lawyer may suggest putting the living trust in both your names, for example, "The James and Ima Hogg Trust," with both spouses as co-trustees, instead of just one name.

If the trust is in one name only and the other spouse is not a co-trustee or successor trustee, many lawyers recommend leaving some property, for example, a sizable bank account, outside the trust. If you use a bank account, it should be in the names of both spouses so that, if one should die, the other will have access to the funds. A word of caution is in order, however. The law in some states will freeze such accounts for a specified period of time after the death of the co-signator. Consult your attorney to get the specifics.

Finally, keeping a few assets out of the living trust can help protect against creditors' claims down the line. When your estate contains some property and goes through probate, it triggers the running of the statute of limitations on claims against your entire estate. Creditors are put on notice that you have died and, once the statutory period expires, the estate is safe from most creditor's claims.

The important point: be sure to go through each of your assets with your lawyer to determine whether it's wise to transfer that asset to the trust.

Q. If I set up a revocable living trust, do I still need a will?
A. In order to avoid probate, some people use a revocable living trust instead of a will to transfer property upon their death. However, a trust alone can't accomplish many of the most important goals of estate planning. For example, you may require a will to name a personal guardian for your children, even if you have a trust. And, even with a revocable living trust, you'll need a will to dispose of property that you didn't put into the trust.

Probate is also no longer the costly, time-consuming demon it used to be. So preparing at least a auxiliary will is recommended for just about everyone.

Other Estate Planning Assets and Tools

Q. My wife and I own our house in joint tenancy. Can't I use joint tenancy to pass

property without having to draw up a will?
A. Yes. Joint tenancy is a form of co-ownership. If you and your wife buy a house or car in both your names and as joint tenants, each of you is considered a joint tenant and has co-ownership. When one of the co-owners dies, joint ownership usually gives the other co-owners instant access to the jointly held property.

Q. What's the difference between joint tenancy and tenancy in common?
A. In joint tenancy, you and your spouse, or other co-owner, own the property, for example, a home. Joint tenancy means, among other things, that each owner must agree on such issues as whether to sell the home.

In tenancy in common, on the other hand, each owner owns an equal share of the property. In some states a tenant in common may sell his or her share of the property without the consent of the other owners. Keep in mind, however, that few buyers are interested in purchasing what amounts to part of a home. In tenancy in common, different partners can own unequal shares of the property.

If you own an asset in joint tenancy with anyone and you die, ownership of that asset passes to the other joint tenant automatically. In a tenancy in common, your share passes as provided in your will or trust, with possible consequences of probate, estate taxes, and so on.

Sidebar: Ten Times You Don't Want to Use a Joint Tenancy
1. When you don't want to lose control. By giving someone co-ownership, you give him or her co-control. If you made your son co-owner of the house, you couldn't sell or mortgage it unless he agrees.
2. When the co-owner's creditors might come after the money. If creditors come after your co-owner, they may be able to get part of the house or bank account held in joint tenancy.
3. When you can't be sure of your co-owner. You and your co-owner could have a falling out and he or she could take all the money out of the bank account.
4. When you're using co-ownership to substitute for a will. Often, parents with several children will put one child's name on an account, assuming he or she will divide the money equally among the other children. But this method provides no control over the money. The surviving joint tenant can do with it what he or she pleases.
5. When it might cause confusion after your death. Unplanned ownership of property often leads to unwanted results--especially for people unable to manage assets.
6. When it won't speed the transfer of assets. Some states automatically freeze jointly owned accounts upon the death of one of the owners until the tax authorities can examine it. As a result, the surviving partner can't count on getting to the money immediately.
7. When it compromises tax planning. Careful planning to minimize the taxes on an estate can be completely thwarted by an inadvertently created joint tenancy that passes property outright to the surviving tenant.
8. When you're in a shaky marriage. Your individual property may become marital property once it's transferred into joint tenancy.
9. When one of the joint tenants could become incompetent. If this happens, part of the property may go into a conservatorship, making it cumbersome at best if the other joint tenant wants to sell some or all of the jointly held property.
10. When you don't want to transfer assets all at once. Joint tenancies deprive you of the flexibility of a will or trust in which you can use gifts and asset shifts to minimize taxes or pay

out money over time to beneficiaries, instead of giving it to them all at once.

f you have an estate below the federal estate tax level--currently $675,000--it might be all right to use joint tenancy--but you should check with a lawyer. Most of the advantages of joint tenancy can be achieved using a revocable living trust.

Q. Is there another way to give money to minor children besides a will or trust?
A. Yes. The most common way is through the Uniform Gift to Minors Act or Uniform Transfers to Minors Act, which are straightforward enough that you may be able to make a gift without consulting a lawyer. These statutes allow you to open an account in a child's name and deposit money or property in it. If the child is over age 13, the income is taxed at his or her tax rate, which, almost certainly, will be lower than yours. For younger children, the government taxes income from the account at your tax rate. However, if you name yourself as custodian and die while the child is a minor, the property will be included in your estate for tax purposes.

Q. How can I use life insurance in my estate plan?
A. Life insurance is often a very good estate planning tool, because you pay relatively little up front, and your beneficiaries get much more when you die. When you name beneficiaries other than your estate, the money passes to them directly, without probate.

Life insurance is often used to pay the immediate costs of death (funeral or hospital expenses), set up a fund to support your family so they won't have to return to work while still under stress from your death, replace your lost income, pay for children's education, and so on.

You can use life insurance to distribute assets among children from different marriages. And, if your estate is large enough, you can set up an irrevocable trust for your children that's funded with the life insurance policy. You pay the premiums but the trust actually owns the policy. When you die, your children receive the benefits from the trust, while your spouse gets the rest of your estate.

Q. How do retirement benefits affect my estate plan?
A. Many of us are entitled to retirement benefits from an employer. Typically, a retirement plan will pay benefits to beneficiaries if you die before reaching retirement age. After retirement, you can usually pick an option that will continue payments to a beneficiary after your death. In most cases, the law requires that some portion of these retirement benefits be paid to your spouse.

IRAs (Individual Retirement Accounts) provide a ready means of cash when one spouse dies. If your spouse is named as the beneficiary, the proceeds will immediately become his or her property when you die. Like retirement benefits (and unlike assets inherited via a will), they will pass to the named beneficiary without having to go through probate. Check with a lawyer to see how such plans can be best coordinated with your estate plan.

Q. Do prenuptial agreements play a role in estate planning?
A. Any couple in a situation where one partner has a lot more money or property than the other or where one partner is substantially older than the other, should consider entering into a prenuptial agreement as part of their estate planning.

Older people with grown children from another marriage may want their property to go

to their own children after they die, rather than to the new spouse and his or her children. A prenuptial agreement can accomplish this purpose. See the "Family Law" chapter for more information about prenuptial agreements.

Q. I live in a community property state. How does this affect my estate plan?
A. The laws of Puerto Rico and ten states—Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin--provide that most property earned during the marriage by either spouse is held equally by husband and wife as community property--that is, as property belonging to both spouses. (The major exceptions are property acquired during the marriage by inheritance or gift.) In a community property state, when one spouse dies, his or her half of the property passes either by will or operation of law; the other half of the property belongs to the surviving spouse.

If you live in a community property state, you can only dispose of your half of the community property via a will or trust. If you and your spouse have the same estate planning objectives, it's no problem. But if you don't, living in a community property state could make it more difficult to meet your estate-planning goals.

Q. I live in a separate property state but own property in a community property state. Which law applies?
A. If the property is real estate, state laws may treat it as community property for estate planning purposes. Thus, if you live in Arkansas (a separate property state) but own land in Texas (a community property state), an Arkansas court probating your will would treat the Texas property just as Texas would--as community property. But not every state would extend the same courtesy.

This separate/community property division can get pretty complicated--and this is only one example of how state laws differ. If you own property in more than one state, consult an estate-planning lawyer who is conversant with the estate laws of each different state.

Q. Should I give some of my property away before I die?
A. Making gifts during your lifetime can be a good idea, especially if you have a large estate. They can help you avoid high estate and inheritance taxes. In some states, they might enable you to reduce a relatively small estate to one that is small enough to avoid formal probate procedures. Another advantage of giving property away before you die is that you get to see the recipient's appreciation for your generosity.

But watch out for a few pitfalls. These gifts will be subject to gift taxes if they're larger than the amount provided by law. Current law allows you to give up to $10,000 per person per year ($20,000, if a couple makes the gift) before the gift tax applies. You can make gifts to any number of people, whether or not related to you. You can also make gifts to trusts but keep in mind that not all trust gifts qualify for this exclusion.

You need to put in your will a statement that any gifts you have given before you died are not to be considered advances. Without such a clear statement of intent, the probate courts in some states may subtract the amount of the gift from the amount you left in the will.

Changing Your Mind

Q. Once I've planned my estate, do I have to worry about it again?

A. Yes. Life doesn't stand still. After you've crafted your initial estate plan, your circumstances are likely to change--you may have more children, acquire more assets, have a falling out with your spouse, other relatives, or friends you've named as beneficiaries. These and other life changes will occasion a change in your estate plan.

It's a good idea to review your will or trust document along with your inventory of assets and list of beneficiaries every three or four years to make sure your past decisions continue to meet your current needs. Think of estate planning not as a one-time transaction, but as a process that works best if periodically reviewed.

Sidebar: Do I Need to Update my Estate Plan? A Checklist.

Ask yourself if any of these changes have occurred in your life since you last read over your will or trust document.
Have you married or been divorced?
Have beneficiaries died or has your relationship with any of them changed substantially?
Has the executor of your will or trustee of your trust died?
Has the mental or physical condition of any beneficiaries, executor, or trustee changed substantially?
Have you had children or have children gone to college or moved out of, or into, your home?
Have you moved to another state?
Have you bought, sold, or mortgaged a business or real estate?
Have you acquired major assets (car, home, bank account)?
Have your business or financial circumstances changed significantly (estate size, pension, salary, ownership)?
Has the law changed in your state (or has the federal tax law changed) in a way that might affect your tax and estate planning?

Q. How do I change my will after it has been executed?
A. You can change, add to or even revoke your will any time before your death as long as you are physically and mentally competent to make the change. An amendment to a will is called a codicil.

You can't simply cross out old provisions in your will and scribble in new ones if you want the changes to be effective. You have to formally execute a codicil, using the same procedures as were used when you executed the will itself. The codicil should be dated and kept with the will. It's a good idea to check with your lawyer before signing a codicil or revoking your will.

Q. When should I update my will?
A. You may need to modify your present will by executing a codicil or preparing an entirely new will to account for major changes in your life or in your financial situation--for example, the purchase of a new house, divorce or remarriage, moving to another state, big jump (or decline) in income, birth of children, death of relatives, etc. In fact, it's a good idea to periodically review your will and update it as necessary.

Q. When and how should I revoke my will entirely?
A. Sometimes, when you have a major life change, such as a divorce, remarriage, winning the

lottery, having more children, getting the last child out of the house, it's a good idea to rewrite your will from scratch rather than making a lot of small changes through codicils. You can do this by executing a formal statement of revocation and executing a new will that revokes the old one.

If you write a new will, be sure to include the date it's signed and executed and put in a sentence that states that the new will revokes all previous wills. Otherwise, a court might rule that the new will only revokes the old one where the two conflict.

Q. What happens if I fail to keep my will up to date?

A. Some life changes may be accommodated by the law, regardless of what your will says. For example, if you have a new child, and don't explicitly say you don't want him or her to inherit anything, the law will give the child his or her legal share of your estate. Likewise a new spouse.

If you come into property that is not accounted for by the will, it becomes part of your "residuary estate"--that is, it will pass to the person or institution who gets everything not specifically identified in the will.

It's best to modify your will periodically to account for such life changes or "after-acquired assets." If you don't, you run the risk of paying higher taxes, giving property to people you don't want to have it, or creating confusion (and possibly probate delays or even litigation) among your grieving relatives after you're gone.

Other estate-planning documents you should take care to keep up-to-date include IRAs, insurance policies, income savings plans such as 401(k) plans, government savings bonds (if payable to another person), and retirement plans. You should keep a record of these documents with your will and update them as needed when you update your will.

Q. What if I set up a revocable living trust, then change my mind about it?

A. You modify a trust through a procedure called an amendment. You should amend your trust when you want to change or add beneficiaries, take assets from the trust, or change trustees. You amend a trust by adding a new page for every change, specifying the new additions. To avoid a legal challenge from a disgruntled nonbeneficiary, you should not detach a page from the trust document, retype it to include the new information, and put it back in its original place.

You don't have to write a formal amendment to the trust to add property to it, because a properly drafted trust will contain language giving you the right to include property acquired after the trust is drafted. Just make sure the new property is titled as being owned by the trust and list it on the schedule of assets in the trust. You do have to amend the trust if the newly acquired property is going to a different beneficiary than the one already named in the trust or if the trust has more than one beneficiary listed.

You should revoke, not amend, your trust when making major changes. You revoke a trust by destroying all copies of it or writing "revoked" on each page and signing them. When you create a new trust to replace a revoked one, give the new trust a different name, usually one containing the date the new document was executed.

Sidebar: Are Your Affairs in Order?

Here are some questions to ask yourself to see if you've really done everything you can to

prepare for your death.

- Where are your bank accounts?
- Where is the deed to your home and other real estate records?
- Who is your lawyer? Your broker? Your executor? Your accountant?
- What credit cards do you have? What are their numbers?
- Where is your will? Who drew it up?
- What insurance do you have? Where is the documentation?
- What other funds will be paid to your family after your death?
- Do you have a retirement account such as an IRA, or a pension fund? Where are the relevant documents?
- Where is your safe deposit box?
- Where are your other valuables stored?
- What stocks, securities, bonds, annuities, etc. do you own? Where are relevant documents?
- Have you provided for the guardianship of your minor children?
- What funeral arrangements have you made? Where are they written down?

Special Considerations

Q. I own a vacation house in a state other than the one where I have my primary residence. Which law applies to property in different states?
A. The laws of the state where your primary home is located determines what happens to your personal property--car, stocks, cash.

Distribution of any other real property is governed by the laws of the state in which the property is located. If you do own homes or real property in different states, it's a good idea to make sure that the provisions of your estate planning documents comply with the laws of the appropriate states.

Q. My life partner and I aren't married. Are there any special estate-planning strategies about which we should be aware?
A. It's especially important to write a will or trust if you're involved in an unmarried relationship, because a will or trust lets you leave your property to anyone or any organization you wish. A will or trust also lets you name an executor or trustee for your estate to supervise distribution of your assets. If you want your partner to inherit a good share of your property, naming your partner or someone sympathetic to the relationship as executor or trustee can help to ensure that your wishes are carried out.

Furthermore, if you want your partner to receive the proceeds from a life insurance policy, IRA, bank accounts, and so on, you need to name your partner as the beneficiary in each of those documents separately. The advantage of using beneficiary designations and other nonprobate arrangements (such as holding property in joint tenancy with your partner) is that the transfers will take place automatically on your death; no disgruntled relatives can hold up your desires as they can in a will contest.

Q. How do gay or unmarried couples keep control over funeral arrangements?
A. Funeral arrangements can be an especially sensitive subject for an unmarried couple. Since tradition and the law often gives the deceased's blood or legal relatives--not an unmarried

partner--the right to control funeral arrangements, many non-marital partners have been infuriated to find out at the funeral that no mention was made of the relationship or of the fact that the deceased had a life partner.

To prevent this, put into writing your funeral instructions and name your partner as the person responsible for carrying out those instructions. You might mention these instructions in your will as well, although you should remember that sometimes a funeral is over before the will is read. Still, the mention of your wishes in a will and a signed statement of funeral instructions should go a long way toward convincing funeral directors of your partner's authority in the event of a dispute between the partner and other family members.

Sometimes unmarried people create co-habitation agreements to cover the rights and responsibilities of each partner. These agreements cover such contingencies as each partner's disability and division of property in case the relationship ends. They are often coordinated with wills and trusts. You'll want a lawyer who's experienced in nonspousal domestic partnerships to help you write yours.

A word of caution is in order, however. In many states, co-habitation, regardless of the sex of the parties, is thought to be against sound public policy. In these states, the courts will not enforce co-habitation agreements.

Q. My marriage is on the rocks. How does divorce affect my estate plan?

A. Depending on your state's law, a divorce may revoke your will in its entirety or those provisions of your will that favored your former spouse. Either way, be sure to revise your will or write a new one when you get divorced, changing the provisions that relate to your former spouse and his or her family. Be sure to modify other related documents such as living wills, survivorships, and insurance policies.

Trusts may need to be specifically amended, and names of trustees changed if they were members of your ex-spouse's family. Settlement negotiations at the time of the divorce should include all these issues. Retirement benefits subject to ERISA (see the chapter "Law in the Workplace" and the chapter "The Rights of Older Americans") especially need to be looked into. Since ERISA rules preempt state law, the designation of your now ex-spouse as beneficiary will have to be changed.

Q. I'm divorced and considering remarrying. How will this affect my estate plan?

A. If you're one member of an older couple in which both you and your spouse have children from a previous marriage, you might want to arrange things so your own money goes to your own children and your spouse's money goes to his or her children.

The versatility of a revocable living trust makes it a useful instrument for allocating assets among different families. You can set up a separate trust for the children of different marriages, or even for each family member.

Some families are using Qualified Terminable Interest Property Trusts to address the special concerns of stepfamilies. This type of trust allows you to do several things: 1) leave your property in trust for your spouse during your spouse's lifetime; 2) give the trust property to someone else after your spouse's death; and 3) reduce estate inheritance taxes. Talk to your lawyer about the details of such a trust.

Sidebar: Your Final Instructions

Your final instructions should list:

- disposition of your body--buried, cremated, donated to science;
- provision for donating certain specified organs for transplants;
- funeral arrangements--information about any funeral plan you've bought or account you've set up to pay burial expenses; location of cemetery and burial plot; choice of funeral director and services, etc.;
- name of any charity or cause to which you wish contributions sent in your name;
- location of your will and the identity and telephone number of the executor and your lawyer;
- location of any trust document and the identity of any co-trustee or successor trustee;
- location of your safe deposit box, the key to it, and any important records not located in it, such as birth certificates; marriage, divorce, and prenuptial documents; military discharge records and your service number; important business, insurance and financial records; and pension and benefit agreements;
- inventory of assets including documents of debts owed and loans outstanding, credit card information, post office box and key, information on any investments, household contents, bank accounts, list of expected death benefits, etc.;
- important information: names, addresses, dates and places of birth for you and your spouse, family members and other heirs, and ex-spouses, if any; social security numbers for you and your spouse and dependent children along with the location of social security cards; policy numbers and telephone numbers and addresses of insurance companies and agencies that control your death benefits (employer, union, Veterans Affairs office, etc.);
- information you want in your obituary.

Death and Taxes

Q. I'm not rich. Do I have to worry about federal estate taxes?

A. Under current law, your estate isn't liable for federal estate taxation unless it exceeds $1 million. For married couples the threshold is $2 million. These figures will go up, in increments until 2009.

In deciding what your estate is worth, the IRS generally uses the fair market value of property you own at your death, not what you originally paid for it. In many cases especially if you've owned your home, stocks, or other assets for many years, the appreciation in value of large assets could put you over the limit. For appraisal purposes, the government uses the face value of all insurance policies in your name, including most group policies from work or professional organizations.

Assets subject to tax at death may include the family home, the family farm, life insurance, household furnishings, benefits under employee benefit plans, and other items that produce no lifetime income. In short, you may be richer than you think. If your estate is likely to exceed the $1 million threshold, however, good estate planning can sharply reduce the amount of money that goes to the government instead of to your beneficiaries.

Q. What should I do if I may be liable for the estate tax?

A. Although the federal estate tax misses most people, those it hits, it hits hard. At the moment, the rate begins at 37 percent and may go as high as 55 percent. So if you are in jeopardy of exceeding the threshold, see your lawyer for some tax- planning advice.

Warning: Tax laws change frequently. Be sure to review your estate plan periodically.

Q. What about state death taxes?
A. Some states charge an additional estate tax similar to tax imposed by the federal government; other states impose an inheritance tax. (Inheritance taxes are charged to beneficiaries; estate taxes are charged to the deceased person's estate.)

What is taxed and at what rate depends on state law, not only of the state in which you live but also the state where the property is located. Unless your state has an inheritance tax, your beneficiaries don't pay tax when they receive money or other property from your estate. But they will have to pay income tax on any earnings after they invest the bequest. In addition, death itself may produce numerous tax consequences, including taxes on insurance (if paid to the estate) and employee benefits.

Q. What if I receive a bequest and don't want it?
A. Because of taxes or other reasons, those named as beneficiaries in a will or trust document may not want the property left to them. For example, if you go bankrupt and then your father dies, your creditors may be entitled to first shot at the property he left to you. You might want to give up the this property so that it will go, for example, to your sister instead of to your creditors. Or you may receive property that is subject to liens and mortgages greater than its market value, so it is a burden you would rather not have.

Most states permit beneficiaries to disclaim (that is, refuse) an inheritance or benefit. The Internal Revenue Code describes how a beneficiary may disclaim an interest in an estate for estate-tax purposes. See a knowledgeable tax lawyer if you intend to disclaim any gift.

Probate

Q. What is probate?
A. Probate is the court-supervised legal procedure that determines the validity of your will. Probate affects some, but not all of your assets. Non-probate assets include things like a life insurance policy paid directly to a beneficiary.

The term probate is also used in the larger sense of administering your estate. In this sense, probate means the process by which assets are gathered, applied to pay debts, taxes, and expenses of administration, and distributed to those designated as beneficiaries in the will.

Sidebar: What Happens in Probate?

- Your will is filed with the probate court and its validity determined.
- All property, debts and claims of the estate are inventoried and appraised.
- All valid claims of the estate are collected.
- The remainder of the estate is distributed to beneficiaries according to the will.

Q. I've heard that probate is expensive, time-consuming, and bureaucratic. True?
A. Probate used to be all that and more. But times have changed and so has the probate process in most states. Today, it is seldom as costly and time-consuming as in the past.

Q. How much does probate cost?

A. The expenses of probate (which can include court and appraiser fees) depend on the state where you live and the size of your estate. According to the American Association of Retired Persons (AARP), the typical cost of probate runs $1,500. But this is a very rough estimate. If there are complications--for example, an invalid will or a will contest--all bets are off.

Good estate planning can minimize expenses by passing most of your property through a living trust or by joint tenantship or some other means that avoids probate, so that very little property is left to be distributed through your will. The smaller the size of the probate estate, the lower the costs, especially if it is small enough to qualify for expedited processing.

Most states have adopted alternatives to the probate procedures for families with no real property or with assets of, say, $50,000 or less. These procedures can help save the court fees, attorney's fees, and executor fees that have given probate its nasty reputation.

Q. What if my estate doesn't qualify for such simplified probate?
A. If your estate is relatively small or uncomplicated and your will is well drafted, your spouse or other executor may not need a lawyer to help with the probate process. If things get more complex, the need for a lawyer becomes greater. The more complex the probate process, the more hours the lawyer will have to put in--and the more it will cost.

Q. How long does probate take? How does my family survive before my estate is freed up?
A. The average estate completes the probate process in six to nine months, depending on the state's probate laws. The reformed probate procedures in many states now make it possible for your survivors to obtain funds to live on while your estate is being probated.

Q. Should I plan my estate to try to avoid probate?
A. For people with substantial assets, probate can be expensive and time-consuming, tying up money and property that could go directly to your beneficiaries. Probate is also a public process. For these reasons, probate avoidance may be an element of an estate plan. But for families of moderate means, it may be more trouble to avoid probate than to go through it.

Even more than other aspects of estate planning, the details of probate vary by state. So you'll have to ask a lawyer if probate avoidance should be your principal estate-planning goal.

Sidebar: Property That Avoids Probate

- Property in a trust
- Property that is jointly held (but NOT community property)
- Death benefits from insurance policies, the government, and employers and other benefits controlled by a designation of beneficiary
- Gifts made before your death
- Individual Retirement Accounts
- Money in a pay-on-death accounts

Q. Who is involved in the probate process?
A. The main players are the probate court and your personal representative. The probate court's involvement varies depending on what kind of probate procedure exists in your jurisdiction. There are various degrees of court supervision required in different areas.

If you have a will, the personal representative is called your executor--the person you

appointed in you will to administer your estate. The executor named in the will is in charge of this process, and probate provides an orderly method for administration of the estate. If you don't have a will, the court will appoint someone to handle these tasks, usually at more expense to your estate than if you had appointed an executor and given him or her the necessary powers to settle the estate.

Q. Is a lawyer necessary for probate?
A. It depends largely on what state you live in and the size of your estate. Even though probate laws have become simpler in most states, the process can be complex and time-consuming. As a result, it may be more expensive for a non-lawyer to negotiate than it is for an experienced estate lawyer.

Some states even prohibit executors from handling probate without a lawyer's assistance. On the other hand, a few states have simplified probate procedures so much that it is often possible for a non-lawyer to probate a small estate.

There is good news if you're in one of the categories of people who can profit from probate avoidance techniques like a revocable living trust or other non-probate transfers of property, such as joint tenancy or life insurance. Even though in these cases you still need a will to dispose of residual property (most of your assets will be distributed in other ways), the cost and time to probate such a simple will is minimal, even with a lawyer's assistance.

Q. What can my family do to reduce the costs of probating my estate?
A. For most estates, you can appoint a non-lawyer as executor (usually a family member) to do most of the work such as gathering information and records. The executor files the required forms, figures and pays the taxes, and distributes the estate assets. If the executor has any questions, he or she can consult an experienced estate lawyer.

Q. What does it mean when a will is contested?
A. Human nature being what it is, some people who don't receive what they consider a fair share from a dead relative's will may want to challenge, that is, contest, the will.

Chief among the grounds for a will contest is that the will was not properly executed; the testator lacked "testamentary capacity" (the ability to make a will--for example, he was senile when he left his estate to the named beneficiary); undue influence (the evil sister hypnotized her dying brother into leaving her the whole estate); fraud (the evil brother retyped a page of the will to give himself the Porsche collection); or mistake (you will your million dollar summer home to "my cousin John" and it turns out you have three cousins named John).

Q. How can I plan to avoid a will contest?
A. There's an old saying that you never really know someone until a will is read. However, if your will conforms to legal requirements, a challenge is unlikely to be successful. It's also another reason to consult with an experienced estate-planning lawyer and to update your will periodically.

There are other concrete steps you can take to reduce the chances of a will contest. One is called a "no-contest" clause, which in some states allows you to disinherit a beneficiary who unsuccessfully contests the will. Of course, be aware that any heir can always challenge a trust or will by claiming that the person who executed the document did not have the legal capacity or did so as a result of fraud or undue influence. But if you exercise care and obtain

good legal advice, these challenges will be defeated and your intentions will be carried out.

Where to Get More Information

Your banker, lawyer, financial planner, and even some accounting firms offer advice on estate planning. Many self-help books, tapes, kits and software also attempt to help you understand estate planning or even do it yourself. These are available in at many law libraries and at most general libraries and bookstores.

Several public interest organizations will provide help or referrals for people who want to plan their estate. Your local or state bar association is a good place to start. The American Association of Retired Persons is another. Also, the probate courts in many states provide forms and sometimes information to the public about how to write and file the documents necessary to estate planning; call yours and see what it has to offer.

For help with living wills and health-care advance directives, you might contact one of the "death with dignity" groups. See below and the chapter for older Americans for more on this.

FINDING LEGAL HELP

Here are some specific resources to help you find assistance in planning your estate.

- *Finding Legal Help: An Older Person's Guide* is an excellent 20-page guide produced by Legal Counsel for the Elderly, a program of the American Association of Retired Persons. Send $2.00 to Legal Counsel for the Elderly, P. O. Box 96474, Washington, DC, 20090-6474. Telephone, 202-434-2170. Their address on the world wide web is www.aarp.org
- Sites on the world wide web that enable you to find more information and sometimes even the names of lawyers in your area (in addition to those listed here) include www.seniorlaw.com and www.netplanning.com
- The American Bar Association's Section of Real Property, Probate and Trust Law offers a free directory of members who serve on its committees. Many practice estate planning, estate and trust administration, and disability planning. The directory of members gives you the names of thousands of attorneys, and committee memberships help highlight their interests and expertise. Write the Section at American Bar Association, 750 N. Lake Shore Drive, mail stop 7.1, Chicago, IL 60611, or call 312-988-5590. You can also find out more information about the Section in the ABA's home page on the world wide web at www.abanet.org/rppt/
- The American College of Trust & Estate Counsel offers a membership listing of lawyers by state whose practices concentrate in estate planning. To obtain a listing for your state, write to ACTEC at 3415 S. Sepulveda Blvd., Suite 330, Los Angeles, CA 90034. Telephone, 310-398-1888; fax, 310-572-7280.Their home page on the world wide web is www.actec.org
- National Association of Estate Planners & Councils can provide a listing of attorneys certified in estate planning through experience, education, and examination. (However, be aware that many estate planning specialists have not sought certification and so are not listed.) Call or write the association at 270 South Bryn Mawr Ave., P. O. Box 46, Bryn

Mawr, PA 19010-2196. Telephone, 610-526-1389; fax, 610-526-1224; home page, www.naepc.org

- The National Academy of Elder Law Attorneys (NAELA) publishes a directory of elder law attorney members, including those certified in elder law by the National Elder Law Foundation. (The specialty is new, and many lawyers qualified in elder law have not sought certification.) NAELA also provides consumer publications for older persons and their families. NAELA is at 1604 N. Country Club, Tucson, AZ 85716. Telephone, 520-881-4005; fax, 520-325-7925; home page on the world wide web www.naela.org
- Your local area agency on aging should be able to inform you about the availability of free or reduced-fee legal assistance available to persons over sixty in your community. Look in your local government listings under "aging" or call the National Eldercare Locator at 1-800-677-1116 to find the agency on aging nearest you. You can also search the database of the National Eldercare Locator online through their web site at www.ageinfo.org/elderloc
- Local bar associations often operate lawyer referral services. Find a list of them at http://www.abanet.org/referral/home.html.
- State bar associations can provide information regarding lawyer discipline and complaint procedures should you have a serious complaint about your attorney. You can find a list of disciplinary agencies at http://www.abanet.org/cpr/disciplinary.html
- Some states, including California, Florida, New Mexico, North Carolina, South Carolina and Texas, certify lawyers in specialty areas such as estate planning. See below. The website of the ABA's committee on specialization may have further information: http://www.abanet.org/specialization/home.html

- **State Bar of Arizona Board of Legal Specialization and MCLE**

Lisa Ricchiuti-Casas, Administrator
111 W. Monroe, Suite 1800
Phoenix, Arizona 85003-1742
Phone: 602/340-7327
Internet: http://www.azbar.org/FindingLawyer/bls.asp

- **State Bar of California Office of Certification***

Phyllis J. Culp, Director
180 Howard Street
San Francisco, California 94105
Phone: 415/538-2118
Internet: http://www.calbar.org/lgl-spec.htm

- **Florida Bar Board of Legal Specialization and Education**

Dawna G. Bicknell, Executive Director
650 Appalachee Parkway
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Internet: http://www.flabar.org

- **Louisiana Board of Legal Specialization**

Catherine S. Zulli, Executive Director
601 St. Charles Avenue

New Orleans, Louisiana 70130
Phone: 504/566-1600
Internet: www.lsba.org/html/lawyer_specialization.html

- **New Mexico Board of Legal Specialization**

Ingrid Mulvey, Administrator - Court Regulated Programs
P.O. Box 25883
Albuquerque, New Mexico 87125
Phone: 505/797-6056
Internet: www.nmbar.org/statebar/courtregprograms/legspecrules.htm

- **North Carolina Board of Legal Specialization**

Alice Neece Moseley, Executive Director
P.O. Box 25908
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Phone: 919/828-4620

- **South Carolina Supreme Court Commission on CLE and Specialization**
  Harold L. Miller, Executive Director

P.O. Box 2138
Columbia, South Carolina 29202
Phone: 803/799-5578
Internet: www.commcle.org

- **Texas Board of Legal Specialization**

Gary W. McNeil, Executive Director
400 W. 15th Street, Suite 1540
Austin, Texas 78711
Phone: 512/463-1454 or 800-204-222 ext. 1454
Internet: www.tbls.org

Living Wills and Other Advance Directives

Find out about your state's law by contacting Choice in Dying, 1-800-989-WILL (9455), website www.choices.org. (The organization is evolving into a new organization concerned more broadly with excellent end-of-life care. You can learn about Partnership for Caring by accessing www.partnershipforcaring.org.) If your state doesn't specify a particular form for a living will, Choice in Dying can send you a living will declaration that will keep you from being hooked up to resuscitation machine. It must be signed by two witnesses, who cannot be your relatives, heirs, or doctor.