

# Estate Planning: A Primer

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## Who Needs A Will?

Do you have any minor children or step-children? Do you care where your assets go at your death? Are you worth more than \$5,490,000? (Hints: Don't forget to include the proceeds of any life insurance if you own the policy or have the right to determine the beneficiary. Also include survivor distributions from your pension, profit-sharing, stock-bonus, or Keogh plans and your individual retirement accounts. And don't forget that your property must be

valued at its "fair market value" at the date of your death, which could be substantially higher than the purchase price or tax value.)

If the answer to any of these questions is yes, you probably need a Will.

## Are Special Provisions Required For Minor Children?

Someone under age 18 cannot receive property directly from an estate. Instead, a guardian must be appointed to hold the property for the minor. The time, trouble, and expense of a guardianship can be avoided by designating in a Will a trustee or custodian for any minor beneficiaries.

## Who Gets My Property if I Die Without A Will?

If you have no Will, the "intestate succession" laws of North Carolina determine who receives your assets. Often, the result is dramatically different from your wishes. For example, if you die without a Will, leaving a spouse and two children, your spouse receives only the first \$60,000 of your personal property and 1/3 of the balance of your property. Your remaining property would go to your children. If you have any step-children, they would not inherit from you.

## What Is the Estate Tax Rate?

The current federal estate tax rate for assets over \$5,490,000 is 40%.

North Carolina estate repealed its estate tax in 2013.

## Death Is Certainly Inevitable. Aren't Taxes?

Not necessarily. There are several ways to avoid or reduce federal and North Carolina death taxes. First, the unlimited marital deduction permits any property left to a spouse to pass free of death taxes. The property must be left either outright to the spouse or in a specially-designed trust for the spouse. However, if the spouse does not spend (or give away) the property, it will be taxed in his or her estate. Second, the unlimited charitable deduction allows any property left to a qualified charity to pass free of death taxes. Finally, each

person is allowed an "exclusion amount" which in 2017 will shelter up to \$5,490,000 from federal estate tax.

### **How Does the Exclusion Amount Work To My Benefit?**

Assume, for example, that you and your spouse own \$10,000,000 in assets. If either (1) everything is owned jointly with right of survivorship, or (2) you have survivor Wills by which everything is left to the surviving spouse, then under present law \$10,980,000 can be sheltered from federal estate taxes at the death of the second spouse to die. By virtue of the unlimited marital deduction, there will be no tax at the first death. The surviving spouse can then use both spouse's \$5,490,000 exclusion at his or her death under the concept of "portability."

### **Can I Reduce Taxes By Making Lifetime Gifts?**

If you anticipate an estate tax problem, you should consider making annual exclusion gifts during your lifetime. You may give up to \$14,000 per year to as many individuals as you like without federal or North Carolina gift tax. At the 40% marginal tax rate, every \$14,000 gift you make will reduce your estate tax liability by \$5,600. If married, you can give up to \$28,000 per year to each gift recipient if your spouse consents to the use of his or her annual exclusion.

More aggressive gifting programs may include the use of the exclusion amount during lifetime. Presently, you can transfer up to \$5,490,000 to your children during your lifetime without incurring any federal gift tax. Such a gift leverages your exclusion amount by removing the post-gift appreciation from your estate. A disadvantage is that gifted assets receive no step-up in basis, while the basis of assets held until death is increased. Generally speaking, assets with a low-cost basis are poor candidates for lifetime gifts unless the recipient will not want to sell the assets.

### **Who Should Own My Life Insurance Policies?**

Life insurance policies are prime candidates for lifetime gifts, both because they are assets not generally needed by the owner and because their values for gift tax purposes are significantly lower than their death tax values. Policies may be the subject of outright gifts to grown children, but more often they are conveyed to irrevocable trusts which are designed to be the owners and beneficiaries of the policies. Insurance proceeds thus may be available to buy assets from or loan money to your estate, providing liquidity without increasing your estate tax liability. Several types of trusts may be utilized for this purpose - the choices of which will depend on your family situation and the type of insurance product selected.

### **What If I Become Incapacitated?**

Executing the proper documents now will reduce some of the uncertainty should you become incapacitated in the future. A Durable Power of Attorney allows you to grant a trusted person or persons broad authority to act on your behalf if you become unable to manage your financial affairs. Similarly, a Health Care Power of Attorney allows you to grant authority to another to act on your behalf in making health care decisions including the withholding or withdrawal of life prolonging procedures. Finally, if you desire that your life not be prolonged by extraordinary measures should your medical condition become hopeless, it is important to memorialize that desire in an Advanced Directive for a Natural Death, otherwise known as a "Living Will."

### **Are There Other Planning Opportunities?**

Certain individuals may benefit from more sophisticated planning techniques, such as the use of Charitable Lead Trusts, Charitable Remainder Trusts, Personal Residence Trusts, Grantor Retained Annuity Trusts ("GRATS"), Grantor Retained Unitrusts ("GRUTS"), and so-called "Dynasty Trusts," to name a few. While these

more sophisticated techniques are not right for everyone, significant benefits may be realized in appropriate circumstances.

*For further information regarding the issues described above, please contact a member of the Trusts & Estates practice.*

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