

## estate planning



# a beginning

Since the founding of **Taft Stettinius & Hollister LLP**, clients have asked our lawyers for help in planning for the future. The questions have been simple enough: How do I conserve my property for those I love? How can I give assets to my loved ones during my lifetime? Taxes and regulations worry me; how can I make sure people and charities I care about receive what I intend to give?

I scarcely know  
where to begin,  
but love is  
always a safe place.

Letter from Emily Dickinson



As Taft lawyers have done from the beginning, we provide answers and guidance as you map your course.

We take into account your family situation and your property, including retirement assets, investments and life insurance. We prepare the legal instruments – wills, trusts and powers of attorney – that govern property management, both during life and after death.

While it can be sobering to realize that you must speak now to be certain your wishes will be honored, relief is often the stronger feeling. Our clients tell us they experience great peace of mind when they complete their planning.

### Why do I need a will?

Your will is your way to direct what happens with your property and your business affairs and, most importantly, it states your intentions for guardians for your minor children after your death.

If you die without a will, the descent and distribution laws of your state take over – and you may not like what they say. For example, if you die and leave children under age 18 (or 21 in some states), your state may require that a substantial portion of your estate pass to your children or to court-supervised accounts, rather than to your spouse to manage in your family's best interests.

#### In your estate plan, you make the decisions:

- You name guardians for minor children. This is the single biggest reason most people make a will and perhaps the biggest reason people avoid making a will. If you are unable to agree upon guardians now, we can help you resolve this critical issue. This is not a decision to avoid and leave to fate.
- You appoint a representative for your estate, called the *executor* or *personal representative*.
- You waive bond, which your estate's representative may be required to post if you do not have a will.
- You give your executor power to sell assets, such as a house, without the expense and delay of obtaining appraisals and court approvals.

### What is probate?

Probate is the process of obtaining probate court approval to pass property as your will dictates or, if you do not have a will, under your state's law of descent and distribution. This includes filing the will, appointing an executor, obtaining appraisals, making an inventory of assets and accounting for distributions from the estate.

A common misconception is that avoiding probate means avoiding estate taxes. Estate taxes are determined under tax law. Tax law is entirely separate from probate rules. It is possible to have a probate proceeding without owing any estate taxes. Likewise, it is possible to avoid probate entirely, even though your assets are subject to estate taxes.

Only assets titled in your name alone pass through probate. This means that much of your property may not pass through probate. For instance, any asset held jointly with right of survivorship passes outside probate to the surviving owners. Life insurance, IRAs and retirement plan assets pass outside probate according to your beneficiary designation.

## Do I need a trust?

A trust is a formal arrangement you make with a trusted person (the trustee) to convey property as you direct. This document can be one of two types: *living* (also called *inter vivos*) or *testamentary*.

If you create a trust during your lifetime by signing a trust document, it is a living trust.

Living trusts are in effect even if they have no property in them until your death – they are *unfunded*. If you title property in the name of your trust, then your trust is said to be *funded*. The assets in a funded living trust avoid probate because they pass to your beneficiaries under the terms of your trust, not under the terms of your will.

You create a testamentary trust through your will. Because wills do not take effect until death, these trusts do not exist until death. In many states, testamentary trusts are undesirable because they are subject to probate court jurisdiction.

For many people, living trusts play a very important role in their plan. Living trusts can:

- Reduce or defer estate taxes in some cases
- Manage funds for children or other beneficiaries until the ages you have chosen
- Permit planning for children from prior marriages
- Hold assets to avoid probate and provide privacy
- Allow management of your finances if you become incapacitated
- Provide asset protection from creditors and divorce
- Provide protection for children with disabilities
- Facilitate business succession

Trusts are not the *one-size-fits-all* forms that many people have been led to believe solve tax and probate problems. They are one part of a plan – often a crucial part – but they can be useless if you haven't carried out other parts of the plan, such as retitling assets and changing beneficiary designations on life insurance and retirement plans.

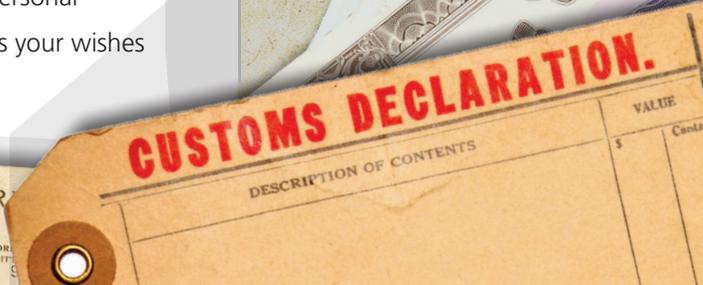


## Do I need a power of attorney for property and finances?

Yes. With a financial power of attorney, you authorize someone to manage your finances if you become incapacitated. With a medical power of attorney, you name someone to make health care decisions if you become incapacitated. Without these powers, your family's only alternative might be to incur the expense and heartache of guardianship. Then you become a ward and your guardian will be accountable to the probate court.

## What is a living will?

A living will is a document that allows you to express your wishes about whether you want extraordinary measures taken, including artificial feeding, if you are beyond recovery and unable to make decisions for yourself. We can advise you on the nuances of these very personal choices and ensure that you express your wishes clearly.





## What is the federal estate tax?

The federal estate tax is generally imposed on all property in which you have an interest at the time of your death, including your house, bank and brokerage accounts, life insurance, IRAs and family businesses.

You can pass an unlimited amount of property to your spouse free of tax. However, that property will be taxed on your spouse's death if it has not been consumed, subject to any estate tax exclusion that might be available.

Each person can pass the federal estate tax *exclusion amount* to non-spouse beneficiaries free of federal estate tax. That amount is currently \$11.58 million per person.

Each person can also make *annual exclusion gifts* to any other person each year with a value of \$15,000 (or more, depending on inflation) without using any federal estate tax exclusion.

**Changes in the estate tax laws can occur rapidly on the federal and state level. It is essential that you seek advice on your specific situation. Changes in the law may affect your plan.**

**Good planning can reduce or, in some cases, eliminate the federal estate tax.**

## Asset Protection

Many people are concerned that property they leave to their family will be vulnerable to claims from creditors, including divorcing spouses. Litigation, financial distress, failure of insurance coverage and other unexpected events can trigger claims. We can help you evaluate your estate's vulnerability to such claims, whether against you or against the future beneficiaries of your estate.

Many clients are surprised to learn that some asset protection can be put in place with straightforward estate planning. Many trusts that we establish for families have built-in protections in the form of "spendthrift" clauses and broad standards governing when and how beneficiaries can receive assets from the trust.

Likewise, life insurance and retirement plans can provide substantial creditor protection under federal and state law. Another basic technique that provides asset protection – while meeting estate tax savings goals – is carefully managed gifting of assets to family members or trusts for their benefit.

The risk of claims from creditors, or in divorce, is very real. We can explore these issues with you, and in many situations you can achieve tax savings and asset protection with the same technique.

### What are some ways to reduce estate tax?

A credit shelter trust (also called an *A-B trust* or a *family trust*) takes advantage of each spouse's federal estate tax exclusion amount, enabling a couple to pass *both* of their exclusion amounts to children or other beneficiaries free of the tax. Another way to allow a couple to take advantage of each spouse's exclusion amount arises after the first spouse's death. The deceased spouse's estate may file a federal estate tax return which elects "portability" of the deceased spouse's unused exclusion amount for use by the surviving spouse.

The federal gift tax is imposed on gifts you make during your lifetime above the current lifetime federal estate tax exclusion amount. However, you can make gifts within the *annual* gift tax exclusion amount (\$15,000 in 2018, but indexed to inflation) free of the gift tax and without using your *lifetime* exclusion. You can also make *unlimited* payments for tuition or certain medical expenses if you pay the school or provider directly.

Irrevocable life insurance trusts (ILITs) remove life insurance policies from your estate while making the proceeds available for a spouse and children at your death.

Qualified personal residence trusts (QPRTs), grantor retained annuity trusts (GRATs) and family limited partnerships (FLPs) enable you to pass an asset, such as a residence or stock in a family business, to your heirs at a value frozen on the day you transfer it. The appreciation escapes estate taxation.

### What are some options for charitable giving?

Charitable giving can benefit the causes you believe in with no estate tax on amounts you leave to qualifying charities. You can even benefit your family and your favorite charities by establishing a charitable remainder trust (CRT), which makes payments to family members for a period of time and the remainder to charities you designate, or a charitable lead trust (CLT), which provides payments to a charity for a period of time and the remainder to your family.

Foundations – private ones as well as funds established with community foundations – can enable your children to do their own charitable giving through those funds during their lifetimes.



## How does the estate planning process work with Taft?

The most difficult part of estate planning may be recognizing the need to do it. After that, things get easier.

We will ask you to complete a confidential questionnaire that includes family and asset information. You can either send the information back to us or bring it to our first meeting, where we will discuss your priorities and design a plan.

## Drafts and finished documents

We will draft your documents and send them to you for review. Once we have discussed any changes, we will put the documents into final form and meet with you to execute them. If you wish, we will also assist you in completing the other parts of your plan, such as IRA and life insurance beneficiary designations and asset titling. We will make the process as smooth and flexible as possible for you.

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**Taft/**  
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