

May 10, 2018 | Estate Planning, Tax, & Probate, Insights

Estate Planning Toolbox – Documents Effective at Death: Wills and Trusts

By: Rich May, Danielle Justo, Gerald V. May, Jr

What is a will?

WHAT DOES A WILL DO?

A will allows you to distribute your property.

A person who dies without a will is called "intestate." This means their assets pass automatically according to their state of residence's intestacy statutes. In contrast, a person with a will dies "testate" – meaning their property passes according to the will, not automatically by statute. An individual can use their will to leave property to anyone – a family member, a charity, even a stranger.

I'M MARRIED. WON'T ALL PROPERTY PASS TO MY SPOUSE AUTOMATICALLY WITHOUT A WILL?

In Massachusetts, a married person who dies intestate without surviving parents has all property pass to their spouse. But a married person who dies intestate with surviving parents has the majority of property pass to their spouse and the minority to their parents. Many married couples prefer that all property pass to their spouse, even if one or both parents survive them.

I'M SINGLE OR IN A LONG-TERM PARTNERSHIP. DO I NEED A WILL?

In Massachusetts, an unmarried person who dies intestate has property pass first to their children (if any), then to their surviving parents, then to surviving siblings. A client might prefer to name their non-marital partner instead of their parents. Or, a client might prefer to pass property to only one child or one sibling – if that person was in financial need or shared a particularly close relationship, instead of passing to their parents or sharing equally between siblings. Moreover, if an only child died without any surviving children or parents, the statute passes property to increasingly distant relatives. A client might prefer to provide for close friends or a favorite charity instead.



Related Services

Estate Planning, Tax & Probate

Related Attorneys

Danielle Justo

Gerald V. May, Jr

©2026 Rich May, P.C. All Rights Reserved

I'M NOT CONCERNED ABOUT MY ASSETS PASSING INTESTATE. CAN A WILL STILL HELP ME?

A will allows you to determine guardianship for any minor children.

Just like the law of your state of residence governs your property distribution without a will, intestacy statutes also govern guardianship of minor children. By estate planning, parents can select which set of in-laws, sibling, or friends they want to care for their children. This is part of the reason that estate planners often say "anyone with children should have a will."

OUR FAMILY IS BLENDED. HOW DO THE INTESTACY STATUTES IMPACT US WITHOUT PLANNING?

When married couples have step-children, the intestacy statutes become particularly complicated. In Massachusetts, the statute reduces but does not eliminate the surviving spouse's share. Planning allows clients to divide their wealth as they see fit. Many parents want to ensure a child from outside the current marriage is specifically provided for by using a will. Our estate planning attorneys can offer a variety of tools to divide assets according to your wishes.

IF I DIE WITH A WILL, WHAT HAPPENS NEXT?

A will allows you to name the personal representative of your estate. This person handles the administration of your estate at death – for example, dividing property according to your wishes. Many people name their spouse as personal representative and appoint an alternate in case their spouse pre-deceases or is incapacitated.

For most people, the personal representative is appointed in a legal process known as probate. While the probate process was once considered an expensive and intrusive nightmare, legislative changes have largely streamlined the process. Within probate, the will is publicly filed and assets are distributed according to its terms. If you are concerned about privacy, your will can pour into a trust at death and be distributed according to those private trust terms. Some people also choose to avoid probate altogether by titling their assets during life. For example, if you and your spouse own your home as joint tenants, your home passes to your spouse outside of the probate process. Our estate planners can guide you through preparing for probate.

What is a revocable trust?

WHAT DOES A REVOCABLE TRUST DO?

Trusts are a vehicle to manage assets. Typically, a trust separates interests in assets between management (by a "trustee") and use (by a "beneficiary"). Many clients are the trustee of their trust during life, with their spouse as co-trustee. This allows your spouse to manage your assets at your death. You may wish to appoint a successor trustee, for example an adult child, in case your spouse is incapacitated or pre-deceases you. You may also be concerned about your spouse or child's ability to effectively manage finances. In that case, you may appoint an independent trustee to offer oversight and accountability.

©2026 Rich May, P.C. All Rights Reserved

A TRUST SOUNDS COMPLICATED – IS IT?

A revocable trust is sometimes called a living trust because the client can change or revoke the trust at any time. The client can move assets in and out of trust at any time during life.

I DON'T WANT TO MOVE ASSETS INTO TRUST DURING MY LIFE. ARE THERE ANY BENEFITS TO AN UNFUNDED TRUST?

Yes. You do not have to move any assets into your trust during your life. However, planning offers three major benefits. First, a trust allows you to minimize the intrusion of probate into your private life. Second, by appointing a trustee, you can minimize potential disputes over your property. Finally, you may be concerned that your plans during life may no longer be relevant at your death. Appointing a trustee allows your surviving spouse or child to have some discretion while still respecting your wishes.

WHAT IS THE ESTATE TAX? HOW WILL IT IMPACT ME? CAN A TRUST HELP ME SAVE MONEY?

As you may have heard, by law enacted at the end of 2017, Congress dramatically limited the application of the "death tax." Beginning in 2018, estates are exempted from federal estate tax when they are under approximately $11.2 million per person or $22.4 million per married couple. Accordingly, the federal estate tax no longer applies to most people.

However, you may still be subject to state estate tax. In Massachusetts, estates are taxed when they exceed $1 million – a number which includes homes, cars, bank accounts, and even insurance policies. By using a trust structure, you can ensure that you have maximum flexibility to minimize Massachusetts estate tax liability.

Moreover, even when an estate is currently below the federal and state exemption amounts, there are benefits to planning in advance. The estate may grow over time through salary increases, real property purchases, or inheritance. Alternatively, the government can and does change the exemption amount. By planning, you can maximize tax benefits during life to leave the most to your beneficiaries at death.

We at Rich May, P.C. wish all of our clients a long and happy life! Anyone with questions on planning can contact Rich May attorneys Danielle Justo and Gerald V. May, Jr.

© 2018 by Rich May, P.C., Jennifer Lang. All rights reserved.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Danielle Justo and Gerald V. May, Jr.