Gift & Estate Planning

Estate Planning Basics: Wills and Trusts

Stewarding the Giver **and** The Gift℠

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ESTATE PLANNING – WILLS AND TRUSTS

I. Why Do You Need an Estate Plan? …………………………………………………… 1

II. What Issues Need to Be Addressed? ……..………………………………………… 4

III. What Is a Will? ………………………………………………………………….. 9

IV. What Is a Revocable Living Trust? ……………………………………………... 10

V. Will vs. Trust? …………………………………………………………………… 11

VI. Naming Focus on the Family in Your Will …………………………………….. 12

The purpose of this brochure is to provide general information on basic estate planning issues, opportunities and strategies. By no means is this intended to replace individual professional advice from an attorney or an accountant concerning how best to design your estate plan. It is our hope this brochure will prepare you to think about these matters prayerfully and intelligently so that your estate planning will be an act of wise and faithful stewardship. May God bless you in your efforts to honor Him in providing for those loved ones and charitable causes He has placed upon your heart.

- Focus on the Family
  Gift & Estate Planning

I. Why Do You Need an Estate Plan?

A. Finishing the Race

Can you imagine attending an Olympic track and field event and watching as the first runner on the U.S. relay team drops the baton as he completes his segment of the race - without placing it securely in the next runner's hand? It seems ludicrous that someone who has put years into training for this event would be so careless. Unfortunately, this is what millions of Americans are doing each day by not having an estate plan in place for the careful and intentional transition of their earthly wealth. They spend years accumulating and protecting their wealth – only to carelessly "drop the baton" at the finish line.

People sometimes harbor the thought, "After I'm gone, I don't care what happens to my possessions. So, why should I go through the cost and hassle of estate planning?" As Christians, we have a different perspective, for the Bible teaches us that ***all*** we have is the Lord's: our relationships, our material possessions, our opportunities. We are not the owners of what we possess, but merely the stewards – caring for and using these blessings for God's glory and purposes in our world.

As stewards of the Lord's blessings in our lives, we are accountable for the decisions and choices we make. Our race is not complete until the baton is securely placed into the next runner's hand in accordance with God's will. Let us not fight the good fight and press on toward the goal only to drop the baton at our earthly finish line!

Have you ever been asked, "What will matter most to you five minutes before you die?" While an intriguing question for establishing our earthly priorities, what about asking the question, "What will matter most to you five minutes after you die?" Are we living this life with a perspective centered on the things most important for our *eternal* well being? If asked by our Lord how we provided for our loved ones, His Kingdom, and the intentional transition of His blessings entrusted to us, will we be able to say we prayerfully and responsibly sought and carried out His will on these matters?

Are we ownership-minded in our caretaker role (i.e. these assets are here to serve me – so what do I care and what does it matter after I'm gone?), or are we stewardship-minded in our caretaking role so that all good things entrusted to us in our days here on earth are carefully placed into the next hands our Lord has intended? Consider estate planning as the act of a grateful steward honoring the Provider of all good things and caring for the people and passions He has placed in our lives and on our hearts.

It is our hope this booklet will guide you through the basics of estate planning – the why, what, and how questions that everyone needs to address no matter the size of one's estate. We believe five minutes after we die, the Lord won't be asking what we accumulated during our lifetimes, but will instead be asking how we used it to care for His people and glorify His name. That is the essence of stewardship-minded estate planning.

B. The Failure to Plan

If estate planning is so important, why do a majority of Americans have no Will or Trust? Many find any discussion related to disability or death depressing, complicated and confusing. "I'll do it later." "I don't have enough property to worry about." "I don't have the time or money to meet with an attorney." Let's face it – estate planning is just not high on the important "To Do" list of our busy, everyday lives.

Then again, neither is a regular dental cleaning or physical exam. Yet, you make time for these because you understand they are important for your health. You know if you don't do these things you may have undetected problems with cavities, gum disease, cholesterol, high blood pressure, etc. So, what happens when we fail to prepare (or update) our estate plan? Although you won't be here to witness the problems resulting from your failure to plan, those you care about are the ones who bear the burden. You see, without a plan your family is left to rely on state law to settle your affairs, which often leads to unintended outcomes.

Without an estate plan, state law determines who receives your property upon your death. States vary in their distribution pattern (called "intestate succession") among surviving family members. The key concept to understand is that by not planning your estate you have delegated your stewardship responsibility to an impersonal court system, which will distribute your assets without consideration of the unique cares and concerns surrounding your situation.

C. The Probate Process

In order to prevent fighting over the property one owns when one passes away, each state has its own laws for assuring the orderly appointment of a new rightful owner for the deceased person's property. In the United States, this is handled through your county court and is known as the "probate process." Probate is essentially the legal process for establishing the new owner of your property and assuring your creditors have an opportunity to be paid. Generally, the probate process includes the following tasks:

- Filing the deceased person's Last Will & Testament on public record;
- Preparing and filing a complete list of all probate assets and their estimated value;
- Preparing and filing a complete list of all known creditors and the amounts owed;
- Paying all creditors (including taxing authorities);
- Retitling all assets to the new owner's name; and
- Preparing and filing a complete accounting of all receipts and distributions made to and from the estate between the time of the individual's death and the final distribution of assets to the deceased person's heirs.

The probate process can be tedious and costly due to filing fees, appraisals, attorney's fees and accountant's fees. Advanced effort to have your affairs in order can greatly reduce the time, stress and cost your loved ones may incur as a result of administering your estate.

Remember your last do-it-yourself assembly project? If you had to merely look at all the pieces in the box and guess your way through the process, it would have been a great deal more complicated and difficult. However, following a detailed, thorough instruction manual greatly simplifies and expedites the process. The same is true with settling someone's estate with, or without, a well devised plan. The probate process itself is not a terrible thing. The greater harm is the lack of a clear, organized and established plan.

D. The Fundamental Linchpin: Titling Your Property

What many people fail to realize is that even if you sign a Will or Trust it does not assure the document you signed will actually control your property. The ***way*** you own your property determines how (and to whom) it will pass upon your death. Basically, we own property in three ways:

- **Individual Name** – My name alone is listed as the owner on the account, contract, title or deed. When I die, these assets will be distributed to my creditors and my heirs through the probate process. If I have a valid Last Will & Testament, the terms of my Will will control the final distribution of my "individual name" assets.

- **Joint Name** – Multiple people are named as owners on the asset. There are primarily two types of joint property: tenants in common and tenants with rights of survivorship. A person's portion of tenants in common property is treated as individually owned and can be left to anyone the person chooses through the probate process mentioned above. However, tenants with rights of survivorship property automatically transfers ownership to the surviving joint tenants upon my death. This occurs outside the probate process and outside any estate planning documents I may have signed.

- **Subject to Contractual Arrangements** – A contractual agreement has been made directing who shall receive the asset upon my death, such as beneficiary designations (i.e. retirement plans, annuities, life insurance), payable-on-death accounts, buy-sell agreements, Trust agreements, etc. Because a contract has been made between me and the third party payor arranging for the asset to be distributed to a named beneficiary upon my death, the probate process is unnecessary for the orderly legal transfer of ownership. Therefore, like joint tenancy property, these types of assets automatically transfer to the named beneficiary upon my death, outside the probate process and outside any estate planning documents I may have signed unless the contract says specifically to pay to my estate or my Trust.

What this means is that if you prepare a Will with the understanding it will control where your property passes upon your death, you need to realize that the Will only controls assets you own in *individual* name. This can be a critical point as shown in the following illustrations:

- **Illustration 1** – Tom and Susan have three children under the age of 7, and they have recently been to the lawyer to have their Wills prepared. In the event both Tom and Susan pass away, the Will names a guardian for their minor children and directs that a Trust shall be created to hold their assets for their minor children, thus avoiding the need for a court guardianship over the assets. The provisions in the Will concerning the children's Trust were carefully drafted to (i) provide for the children's anticipated needs during their formative years and (ii) to establish when and how the children will eventually receive the inheritance once they reach adulthood.

  After signing their Wills, Tom and Susan met with their insurance agent and increased their insurance policies to ensure there would be adequate financial resources to raise their children and fund their inheritance. Without realizing the impact, they named each other as the primary beneficiary on their respective policies and the children as the secondary beneficiaries. Because a beneficiary designation will be distributed outside of the Will and outside the probate process, should Tom and Susan both pass away; the life insurance will pass directly to the children who are unable to receive the proceeds due to their minor age. Thus, those proceeds will be held in a court guardianship for the children to be distributed under court order during their minor years and handed over to them once they reach legal adulthood (often age 18).

- **Illustration 2** – Helen is a widow with three adult children, two of whom live on the West coast and one child who lives in the same town with Helen in the Midwest. As Helen is advancing in years, she is advised to name her local daughter on all her assets as joint tenant – just in case Helen gets sick and needs help managing her affairs. Helen's Will says upon her death her estate is to be divided into three equal shares for each of her children. However, with all of Helen's property owned in joint name with the local child, none of her assets will pass through probate to be distributed under the Will. Therefore, the other two children will inadvertently receive nothing. Even if the local daughter does gift back a one-third interest to each of her siblings, the key word is *gift*. She has no legal responsibility to make such a distribution, and she could be subject to gift taxes for transferring amounts back to her siblings.

- **Illustration 3** – Well into their retirement years, John and Mary recently married after having both been widowed years earlier. Because both John and Mary are financially independent and stable, they have prepared Wills stating their respective estates shall be distributed upon death to each of their own children from their prior marriage. Of course, they explained this to their adult children, and everyone gets along quite well.

> However, faced with the decision of whose home to move into, John and Mary decided to buy their own home in a zero maintenance community, and they took title to the home as husband and wife. Furthermore, they decided now that they were married, it would be simpler to combine their investment and banking accounts into joint name. Lastly, John's 401(k) and old life insurance policy still listed his "spouse" as his primary beneficiary (though he had retired several years before when his first wife was still living).
>
> Upon John's death, Mary and his children sit down with the lawyer to go over John's Will only to learn that because his assets were in joint name with Mary and because his 401(k) and life insurance named his "spouse" as the beneficiary, no assets were left in his estate to go through probate and be distributed under his Will. Thus, the children had equal shares of nothing, and Mary inadvertently received it all.

These illustrations describe common mistakes that happen on a regular basis. Therefore, it is important that you consult with an attorney about how to own your property to be sure that the ***property*** you own will pass to the ***people*** you care about in accordance with the ***plans*** you have set forth.

Because the ownership of your property is the primary determiner of who will receive it upon your death, the starting point for any estate plan is understanding what you own and how you own it. Attached you will find a sample Asset Inventory Worksheet to assist you in starting this process.

E. Careful Planning = Good Stewardship

Taking the time to think through how your loved ones and your assets should be cared for upon your death is good stewardship. By having a thoughtful plan in place, ***you*** decide:

- ***who*** will receive property upon your death;
- ***what*** they will receive;
- **when** they are to receive it; and
- ***how*** they are to receive it.

You can lovingly and faithfully transfer the stewardship of God's blessing to the next generation and beyond by:

- not ignoring the responsibility and leaving it for the courts to decide;
- earnestly seeking the Lord's will through prayer;
- seeking godly wisdom from Christian professionals; and
- establishing an estate plan that accomplishes your stewardship calling.

Finishing the race as a good and faithful steward – without dropping the baton at the handoff – that's good stewardship!

II. What Issues Need to Be Addressed?

A. The Big Picture

Estate planning discussions centered on the legal documents (i.e. Wills, Trusts, Powers of Attorney) quickly spiral into the realm of overwhelming and confusing. Therefore, a better approach is to center on the issues that need to be addressed. Once those decisions are made, the legal documents necessary to accomplish your objectives easily fall into place.

What are the important issues to address in your estate planning? Basically, they are the who, what, when and how of transitioning your responsibilities when you can no longer perform them due to disability or death. You need to appoint, empower and instruct the individuals and professionals you trust to carry out your responsibilities concerning the ***people*** in your life, the ***property*** in your estate, and the ***plans*** you have for both.

To get started, make a quick inventory of the people who are important to you and who depend on you for their care and support (for example, minor children, adult parents, spouses, business partners and employees, etc.). Next, make a list of the property over which you have ownership and control. The attached Asset Inventory Worksheet will help you with this task. Now consider who are the individuals you would want to care for these people and your assets in the event you are no longer able to do so? What instructions or guidelines would you like for them to have?

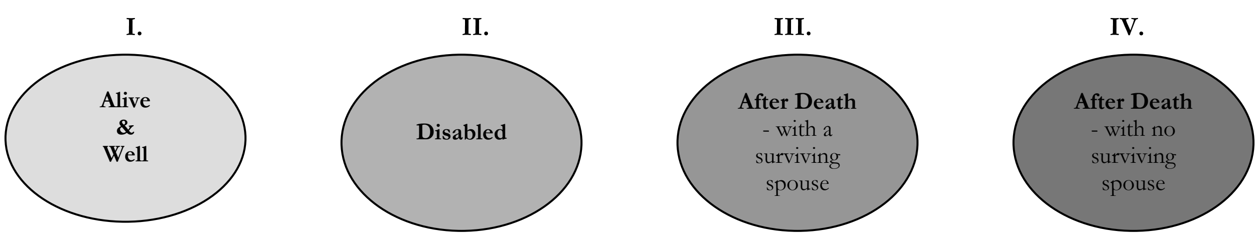
These are the issues a responsible estate plan should address. There are rarely perfect solutions as you think through these questions, but keep in mind that if you are not making these choices, the Judge in your local county court will be making them for you.

B. Working through the Details

The Great Wall of China is one of the largest building construction projects ever completed. Constructed in the Qin Dynasty (221 B.C - 206 B.C.) of masonry, rocks and packed-earth, it was built by connecting and extending four old fortification walls that originated over 2500 years ago. Although your estate planning won't be as monumental an effort as the construction of the Great Wall of China, it will bear some similarities:

- It will serve as a source of protection for the people and property you care about;
- It will be a tribute to the blessings and "victories" you have experienced; and
- It will be built slowly – one intentional and strategic decision at a time.

Like any sizable task, building an estate plan is the cumulative result of several small steps. Breaking it up into smaller, methodical decisions makes the endeavor more manageable. Like the Great Wall of China, which was the result of connecting and extending four fortification walls, your estate plan should incorporate and address four distinct life stages:



You may want to take four sheets of paper representing each of these four stages. For each stage, consider your preferences for the following questions:

- **Who** needs to be cared for during this time? (the beneficiaries)
- **What** assets of mine need special care or attention? (the property)
- **Who** should have the authority to care for my loved ones & assets? (the caretaker/fiduciary)
- **What** specific authority do I want to give them? (the power)
- **When** are they to have this authority? (the time period)
- **How** do I prefer they to use their authority? (the plan)

Attached you will find a suggested planning grid for your consideration and use as you think through the specific details your estate plan should include. The key to remember is you don't scale a mountain in a single leap; you accomplish it one step at a time.

C. Estate Taxes

Estate taxes are an important consideration in any person's estate plan. In general, when an individual passes away, the transfer of assets to his or her beneficiaries will be taxed. This is called the estate tax. Although there have been significant changes in recent years concerning the estate tax, it still remains a formidable concern for those who are subject to its reach. You see, the estate tax rate is 45%. For larger estates, the United States Treasury could be the largest beneficiary of one's estate!

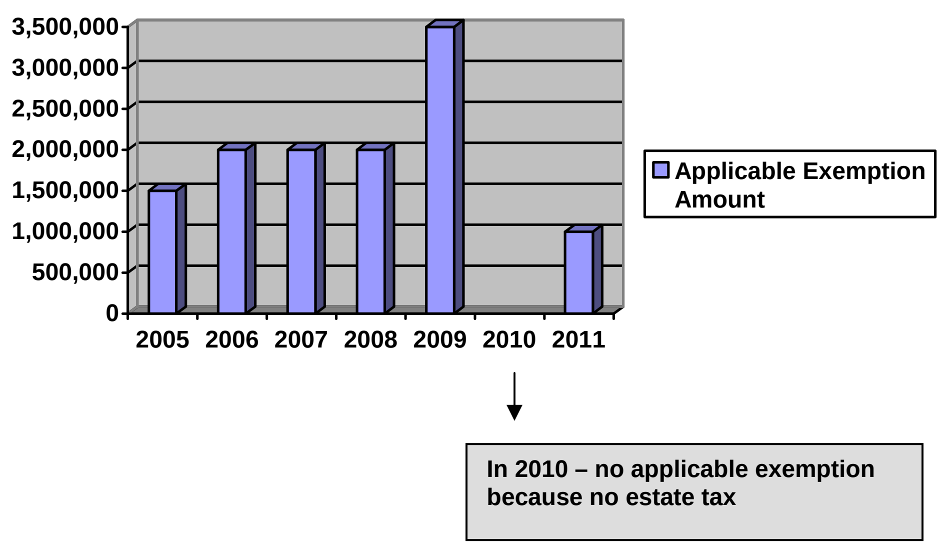
Thankfully, there are alternatives to paying nearly half of one's estate to the federal government; each faithful steward should carefully consider the use of three basic estate tax "tools" within their estate planning.

- **The marital deduction** – You can leave an unlimited amount to a surviving spouse resulting in a 100% deduction (and no estate tax due) for those assets left to a spouse.

- **The charitable deduction** – You can leave an unlimited amount to a tax exempt charity resulting in a 100% deduction (and no estate tax due) for those assets left to charity.

- **The applicable exclusion amount** – You can also leave assets to any other person or entity without paying estate tax so long as the total amount of all non-spouse, non-charity bequests are less than the applicable exclusion amount available in the year of your death. Under current law for 2009, the amount is $3.5 Million. In 2010, the estate tax is scheduled to be repealed, and anyone passing away in 2010 will owe no estate tax. However, starting in 2011, the estate tax will be reinstated, and estates will be taxed in accordance with the prior law which allows for a $1 Million applicable exclusion amount.

Economic Growth & Tax Relief Reconciliation Act of 2001



All too often when talking about estate tax minimization, we hear Christians saying with resignation, "We pay to Caesar what is Caesar's and plan the best we can with what is left over." While it is certainly biblical and honorable to pay the taxes we rightfully owe, it does not relieve us from the responsibility to wisely plan our estate so that our asset holdings pass in accordance with God's will to individuals and entities who will continue to honor Him.

If your total estate (including stocks, bonds, real estate, business interests, life insurance, personal property, retirement plans, etc.) exceeds the $2 Million applicable exemption equivalent, please know there are many planning strategies available to help you minimize your estate tax burden. Feel free to call us for additional resources on these planning strategies. And, of course, we encourage you to seek the advice of an experienced estate planning attorney.

Furthermore, when reviewing the impact of transfer taxes on your estate plan, keep in mind most states will have an additional estate tax or inheritance tax. As part of your estate planning process, you should also talk about the impact of these state taxes with your lawyer or accountant.

D. Inheritance Design

If you have more than one child, are they all the same? Are their needs the same? Their abilities? Their personalities? Their life challenges? When raising them, did what worked for one child work for all the others? For most families, the answer to these questions will be a resounding, "No!" So why do we often have the misperception that when we pass on into eternity that the inheritance we leave behind for our children must be the same for each child – without thought or concern for their individuality?

There are three primary questions each person should consider when leaving an inheritance for any individual (child or otherwise):

How Much? – The question of how much to leave someone is a highly personal and individualized question. To faithfully steward both the resources and the relationships you have been blessed with, you should prayerfully consider the impact of each bequest on the life of the recipient. What are their financial needs? What are their wants? What will likely happen to their work ethic and spending habits if they receive an inheritance from your estate? Will they put it to use in a manner that is God-honoring? How much is enough for their personal use, and how much might be too much for their emotional and spiritual well being? For further assistance on addressing the issue of how much to leave your beneficiaries, you may wish to read Splitting Heirs by Ronald Blue.

When to Give Unrestricted Control & Use? – While beneficiaries are young, it is common practice to place a guardian or trustee in control over the inheritance to make wise decisions on how best to use the inheritance to provide for the well being of the beneficiary. However, as these young children reach legal adulthood, many estate plans will require the guardianship or Trust to terminate, and the inheritance is then handed over to the beneficiary's complete control. When making these decisions, it is important to consider when might be the appropriate time for the beneficiary to receive full control and unrestricted use of the inherited assets from your estate.

An eighteen year old will have a different perspective on what is "necessary" and "wise" with respect to savings and spending than will a twenty-eight year old or a thirty-eight year old. The greater tragedy of a squandered inheritance is not the loss of financial resources, but often the guilt and sense of failure accompanying such a loss. Furthermore, receiving a sizable inheritance in young adulthood can often have a negative effect on the development of a solid work ethic and responsible stewardship practices.

When planning the inheritance for your loved one, consider his or her individual strengths and challenges. Ask yourself when would be a good age for this person to receive the total control over the inheritance. One common approach is to hand over control of the inheritance in installments (i.e. 1/3 at age 25; 1/3 at age 30 and 1/3 at age 35). While this might make sense for some estates, the critical question is what will be best for your beneficiaries?

How to Give the Inheritance? – The way you leave the inheritance for your beneficiary is just as important as how much and when you leave it to them. Every individual has their own unique abilities and challenges. Here are just a few ways you could design your estate to provide for the individual's specific needs and situation:

- **Divorce protected** – An inheritance can be designed so that if the beneficiary's marriage later ends in divorce, the inheritance will be protected and will have greater likelihood of being kept by your beneficiary rather than divided in the divorce settlement.

- **Creditor protected** – If your beneficiary's profession or lifestyle places him or her at risk of being sued, the inheritance can be designed so that it would be protected from a lawsuit judgment.

- **Tax protected** – If your beneficiary is in a high income tax bracket or will have his or her own estate tax concerns, the inheritance can be designed so that it is not included in the beneficiary's taxable income or taxable estate.

- **Spendthrift protected** – If your beneficiary tends to spend excessively or rely too much on credit, the inheritance can be designed to provide for their lifetime needs rather than their temporary wants.

- **Disability planning** – If your beneficiary is challenged with a physical or mental disability, the inheritance can be designed to provide for their lifetime needs in a manner that will not disqualify them from government-provided financial assistance.

- **Addictive Behavior planning** – If your beneficiary suffers from alcohol, drug, gambling or other types of addictive behaviors, the inheritance can be designed to provide for their lifetime needs (and rehabilitation) and not used to fund their addictive behaviors.

- **Incentive/Legacy Planning** – If there are certain practices you want to encourage in your beneficiaries or achievements you want to recognize, an inheritance can be designed to encourage and recognize these behaviors and events. A few examples are enabling or recognizing beneficiaries who are going into ministry, staying home to raise children, obtaining academic degrees, starting a business, celebrating milestone anniversaries, practicing consistent savings habits, etc.

The planning opportunities are as diverse as the beneficiaries for whom you plan. It takes prayer, imagination and an individual interest in the impact an inheritance will have on each beneficiary to whom you intend to leave a portion of your estate.

> **"I do not only ask, 'Will my fortune be safe with my children?'- I also ask, 'Will my children be safe with my fortune?'"**
>
> **- Andrew Carnegie**

III. What Is a Will?

A Last Will and Testament is a legal document expressing your directive to the probate court regarding how your assets are to be distributed upon your death. Every Will is controlled by the state law in which you are a legal resident. Each state has specific requirements regarding the formality with which your Will must be signed, how the Will is to be interpreted, how certain property rights are determined, and what entitlement share certain relatives have to your estate by virtue of their relationship to you (usually called a statutory "elective share"). Because these matters can vary significantly from state to state, you should have your Will reviewed and updated when you change residency to a new state.

While the technicalities for creating and administering a Will can vary from state to state, most Wills address the following matters:

- appointing an Executor to administer your estate;
- appointing a Guardian to take custody over any minor children;
- paying creditors, expenses and taxes; and
- distributing property to the rightful beneficiaries.

A. The Executor

The Executor (sometimes called "Personal Representative") is the individual or entity responsible for taking control over all assets and property interests legally owned by the deceased. The Executor then works through the probate process to pay the deceased person's creditors, final expenses and taxes and to distribute the probate assets to the next rightful beneficiary.

When choosing an Executor, select an individual who is completely trustworthy, able to work competently with professional advisors and able to keep the probate affairs completely separate from his or her own personal affairs. Good judgment, decision-making ability, time and organizational skills are also important characteristics. While certainly a "do-able" task for most individuals with the help of professional advisors, another option when naming an Executor is to select a professional bank, trust company or accountant to serve as Executor. When doing so, however, always be sure to reserve the power for trusted family members or friends to remove the professional financial institution in the event the service is not being performed as desired.

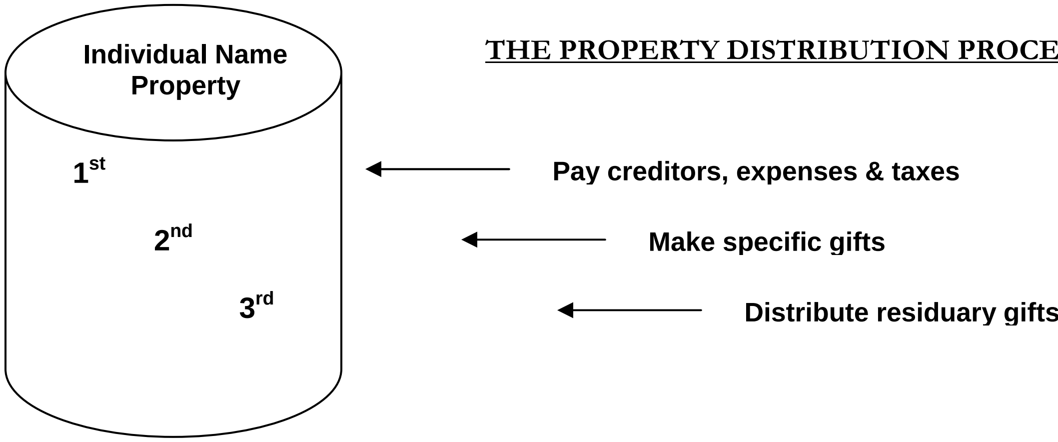
B. The Guardian

The Guardian is the individual appointed to raise your children for the remainder of their minor years. When considering a Guardian, think carefully about the home environment you want your children to be raised in. Someone who believes and lives out their Christian values and who will lovingly direct your children along the path the Lord has prepared for them – these are the essential qualities when selecting a Guardian. When thinking about the immense significance of our stewardship role as parents, you need to prayerfully consider who God would want to raise your children on His behalf if you are no longer able to do so. There is no greater entrustment than that of the parenting role. Keep in mind there will be no perfect solution (for there are no perfect people); however, your prayerful decision will undoubtedly be a better choice than the impersonal decision of your county probate court.

C. The Property Distribution

There are several ways to provide for a beneficiary under your Will. You can designate a specific property item or dollar amount to receive ("specific gift"), or you can designate a fraction or percentage of the remaining estate once all creditors, expenses and taxes have been paid and all specific gifts have been made ("remainder gift" or "residuary gift").

THE PROPERTY DISTRIBUTION PROCESS



As explained earlier, Wills govern how the property you own in your ***individual name*** will be distributed upon your death. As such, all Wills are administered through the probate process. Other types of property (i.e. joint tenancy property, assets with beneficiary designations, and trust property) do not go through probate and are not governed by your Will.

IV. What Is a Revocable Living Trust?

A. Types of Trusts

Reading about Trusts can often be confusing because there are different types of Trusts. In general, Trusts can be characterized by: when they are created and come into effect under law, and whether or not the Trust maker retains certain powers over the Trust (like the power to amend or revoke the Trust at a later date). Specifically, there are four common classifications of Trusts you will often read about:

- **The Testamentary Trust** – a Trust created after death under the provisions of a Last Will and Testament.
- **The Living ("Inter Vivos") Trust** – a Trust created during the Trust maker's lifetime.
- **The Irrevocable Trust** – a Trust that cannot be changed or modified once created.
- **The Revocable Trust** – a Trust that can be changed and modified after created.

These Trusts are often taxed differently and treated differently under state law, so it is important to talk with an experienced estate planning attorney about which type of Trust will best fit your needs.

B. Revocable Living Trusts

A widely used method of accomplishing one's estate planning goals is to utilize the Revocable Living Trust as the primary estate planning document. A Revocable Living Trust is created during the Trust maker's lifetime, and the Trust maker reserves the right to change or revoke (terminate) the Trust. A Revocable Living Trust is simply a contract made between the Trust maker (sometimes called a "grantor" or "settler") and the Trustee who is responsible for carrying out the Trust's terms. It is a legal arrangement by which the Trust maker says, "I ***trust*** the Trustee to take these assets and perform these duties for the benefit of these beneficiaries."

The Trustee has the legal authority to control the Trust assets; however, he or she can only do so for the benefit of the named beneficiaries. A Trustee cannot use the Trust assets for himself or herself unless the Trustee is also named as a beneficiary.

> ***For example:*** A spouse can serve as both the Trustee (the person who controls the Trust assets) – and the beneficiary (the person who the assets are used for).

The Trustee role is very similar to the Executor role, discussed previously on page 9. Both positions require a trusted individual or financial institution to take over the duties and responsibilities concerning certain assets for the benefit of other people or entities. Trustworthiness, ability to handle detail, ease in working with professional advisors, wise judgment - all are important characteristics for a well selected Trustee.

Just as with a Will, the Trust should contain specific instructions concerning how the Trust property should be used and distributed to care for the individuals and charities you care about. All of the above discussion on how to design an inheritance and leave property under a Will can be applied to Trust planning as well.

V. Will vs. Trust?

You might be wondering with all the discussion on Wills and Trusts just what are the differences that make one better than the other? Unfortunately, there is no absolute rule of thumb that says all Wills are good and all Trusts are bad or vice versa. Nor is it true that Trusts are only for "rich people." The fact is they both are a useful means to control your property and to plan for its disbursement during periods of time when you are no longer able to make these decisions. The foundation of a successful estate plan is the ***planning*** and ***implementation*** put into it, not whether you have signed a Will document or Trust document. Nonetheless, there are a few fundamental differences between Wills and Trusts.

A. Disability Planning

When do you use a Will? Is it something you get out and use while you are alive, or does it sit in a file drawer for someone to find and file with the court once you have died? By its nature, a Will is an instrument used to direct the distribution of someone's estate after he or she has died. A Will does absolutely nothing for your disability planning. A person with a Will as their primary estate planning document will need to rely exclusively on their Powers of Attorney to avoid a court-supervised conservatorship (or guardianship) during a period of extended incapacity to manage his or her own financial affairs.

Because Powers of Attorney are usually fairly impersonal and boilerplate, they provide very little opportunity to leave personal instructions and guidelines concerning how you want to be cared for. Furthermore, Powers of Attorney are state-specific documents and may not be enforceable or useful in dealing with out-of-state property. Now you might be thinking, "I don't own any out-of-state property." But, think about the last brokerage statement you received. Was the return address in your home state? If not, the account is technically out-of-state property.

By comparison, Trusts are often drafted to be effective during the Trust maker's lifetime. Thus, they provide the opportunity to leave detailed personal instructions regarding your care during disability. Also, Trusts are valid in every state and will control all property titled in the Trust name, - regardless of whether it is in-state or out-of-state property.

B. Probate Avoidance

Another difference between Wills and Trusts is the process used to "administer" them when you die. All Wills go through probate and are subject to the purview of the county court. Trusts, however, are privately administered outside of the probate process. The instructions to pay bills, pay taxes, and distribute property to a beneficiary are all handled by the Trustee without court supervision or reporting. Of course, if the Trustee is not doing the job correctly, a beneficiary can always request the court to intervene. Because probate is a state specific process, it can be problematic for the individual that owns out-of-state real estate. This is because a probate process will usually be required in each state in which the individual who died owned real estate in his or her own individual name. In cases such as this, Trust planning can be the simpler (and less expensive) after-death administrative process.

C. Mobility

Wills are state specific documents. Each state has specific requirements regarding the formality with which your Will must be signed, how the Will is to be interpreted, how certain property rights are determined, and what entitlement share do certain relatives have to your estate by virtue of their relationship to you. When an individual moves to a new state after signing a Will, there is risk that the Will will not be valid or will not be interpreted the same way. For example, the term "heirs' can mean entirely different family members from one state to another. Because of this, it is prudent to review and update your Will each time you move to a new state. Trusts are in essence a contractual agreement and remain valid and under the same interpretation no matter where you move. Therefore, if you are likely to move in the near future, or with some degree of frequency, you may wish to consider the mobility advantages a Trust provides.

VI. Naming Focus on the Family in Your Will

If you are interested in including Focus on the Family in your estate plan, there are several ways to do so:

A. Outright Gifts – Wills, Trusts and Beneficiary Designations (Retirement Plans, Life Insurance, Annuities, etc.)

- **Specific dollar amount** – You can list a specific dollar amount to be distributed to Focus on the Family. This approach provides certainty and simplicity. However, it is important to keep in mind the impact of fluctuating estate values over long periods of time. This is because cash bequests are given priority over distributions of the remaining estate. So, for instance, if you provided a $50,000 bequest when your estate was larger with the remaining estate passing to children, and subsequently your estate declines in value, the cash bequest will not be reduced and your children will only receive the amounts left after the cash bequest to charity had been made. If you are comfortable the amount will not adversely affect other beneficiaries' shares, a specific dollar amount is a good way to provide for charity in your estate plan.

- **Property Bequests** – You can also direct specific property items that are to pass to Focus on the Family (i.e. real property, business interests, investments, promissory notes, items of personal property, etc.). However, we strongly encourage you to contact our Gift & Estate Planning Department so we can share with you our gift acceptance policies. Also, please remember that if you later sell or give away the asset during lifetime, there will be no charitable bequest upon your death unless you provide for an alternate bequest.

- **Bequest of residuary** – You can also direct that Focus on the Family should receive a percentage or fraction of your remaining estate after all expenses, debts, taxes and other specific bequests have been paid. Planning in this manner will increase and decrease the value of the charitable bequest in direct proportion with the value of your overall estate. However, if you have an estate that will be subject to the Federal Estate Tax, please speak with your attorney about the impact of the interrelated estate tax charitable deduction and how to avoid that occurrence.

B. "Shared" Or Deferred Gifts – Charitable Trusts and Charitable Gift Annuities

In addition to outright gifts to Focus on the Family, a gift can be structured to share the benefit with family members and loved ones. For instance, a gift can be made such that:

- An income interest for yourself, spouse and others may be kept with the assets eventually going to charity after their death or after a specified term of years; or

- An income interest can be paid to charity for a period of years with the assets eventually being distributed back to you or your loved ones when the specified term of years is complete.

These shared giving strategies are a great way to provide for your loved ones and Focus on the Family. If you are interested in learning more, feel free to call us for additional resources on these shared giving strategies.

C. Identifying Information

If you are considering naming Focus on the Family in your estate plan, you or your attorney will need the following legal information:

Focus on the Family
Attn: Gift & Estate Planning
8605 Explorer Drive
Colorado Springs, CO 80920
TAX ID#: 95-3188150
Phone: 800-782-8227 or 719-548-5839

We also ask that if you name Focus on the Family in your Will, Trust, insurance policy or retirement plan, please let us know. We would love to have the opportunity to express our appreciation of your confidence in the mission of Focus on the Family and to thank you for this significant stewardship decision.

Disclaimer: We inform you that any federal tax information contained in this communication (including attachments) is not intended and cannot be used or relied upon to avoid IRS imposed penalties or to promote, market or advise any other person(s) of such information. The information provided in this booklet is not intended as specific legal advice. State laws vary and are subject to change. We strongly recommend you consult your attorney when considering any legal or tax matter.

APPENDIX A

Asset Inventory Worksheet

Owner: JT=Joint, H=Husband, W=Wife

Income	Amount	Source
You:		
Your Spouse:		

Real Estate Address	Mortgage	Owner	Type	Fair Market Value
TOTAL:				$

Personal Assets	Type	Owner	Value
Personal Property	Home Furnishings		
Vehicles			
Watercrafts			
Collectibles			
Jewelry			
Other:			
TOTAL:			$

Business Assets	Type	Owner	Value
TOTAL:			$

Cash Accounts Bank/Institution	Type-i.e., checking, savings, money market	Owner	Account No.	Value
TOTAL:				$

APPENDIX A

C.D.'s Bank/Institution	Owner	Maturity Date	Value
TOTAL:			$

U. S. Savings Bonds	Owner	Value
TOTAL:		$

Investment Accounts	Location	Owner	Cost Basis	Value
TOTAL:				$

Retirement Accounts Name/Institution	Account No.	Type: IRA, 401K, SEP, Keogh, etc.	Owner	Beneficiary	Value
TOTAL:					$

Stock Options Company	Type: NQ or ISO	Owner	Vesting Date	Current Value
TOTAL:				$

APPENDIX A

Life Insurance	Owner	Premium	Cash Value	Insured	Beneficiary	Death Benefit
TOTAL:						$

Children's Accounts	Owner	Value
TOTAL:		$

Other - Description	Owner	Value
TOTAL:		$

Liabilities - Owed to**:**	Comments	Value
TOTAL:		$

NET WORTH	
Total Assets	$
Total Liabilities	$
Net Worth (Assets – Liabilities)	$

APPENDIX A

In addition to completing the above asset inventory worksheet, it is likely your attorney will need to see the following support documentation to adequately advise and assist you in the proper titling of your assets to coordinate with your overall estate plan:

ASSET INFORMATION NEEDED	✓	ASSET INFORMATION NEEDED	✓
Business Interests-corporate books, if available; certificates; partnership or other ownership agreements; brief statement of business equipment; inventory; receivables.		**Oil, Gas or Mineral Interests**-certificate of interest or lease agreement; statement of earnings; legal description of interest or deed.	
Cash Accounts-written list of checking, savings and money market accounts, including name of institution.		**Real Estate**-copies of deeds and legal descriptions for all real property interests including residence, vacation homes, time shares, rentals, partial/future interests.	
Certificates of Deposit-actual certificate or statement with certificate details.		**Retirement Accounts**-first page of statement for all 401(k), defined benefit or cash balance plans, IRA's (Roth or Traditional). Keogh or other deferred compensation plans (include current beneficiary information, if known).	
Collections-listing and estimated value of art, sculpture, coins, stamps or any unique pieces or items.		**Stock**-copies of certificates for certificated shares: copy of statement for shares held in book-entry form.	
Investment Accounts-copies of statements for accounts with a brokerage/investment firm or mutual fund company.		**Stock Options**-plan summary or details from issuing company; statement of options showing type (ISO or NQ) and exercise schedule.	
Insurance-bring original policies for life (whole, term variable) and AD&D; statement for company provided insurance; if policies are not available, bring annual statement.		**Other -**	
Miscellaneous-certificates of ownership for limited partnerships; agreement or statement for investment clubs or other investment vehicles; children's account or college funds.		**Other** -	

APPENDIX B

Estate Planning Issues

	Alive & Well	Disability	After Death - with a surviving spouse	After Death - with no surviving spouse
The beneficiary Who needs care?				
The property What assets (if any) need special handling?				
The caretaker/fiduciary Who should have the authority to care for my loved ones & assets?				
The power What powers should I specifically give (or not give) my caretaker/fiduciary?				
The time period When are they to have this power?				
The plan How do I want them to use their authority? (instructions/guidelines)				