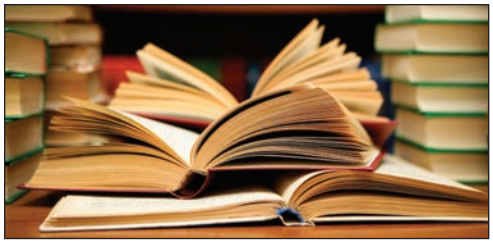

TAX YEAR
2018

Estate Planning, Wills, Probate, and Transfer of Assets

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Wills and Intestacy

A will allows the testator (the person creating the will) to specify:

- Who receives property at the testator's death.
- Whether beneficiaries receive gifts outright or in trust.
- Who will act as personal representative.
- Who will be the guardian of minor children.

In the absence of a will, these matters are settled by state law.

Who Needs a Will?

- ***Include persons who are not heirs.*** Wills are needed to provide for a person who is not an heir under state law—unmarried partners, stepchildren, friends, charities, in-laws, etc.
- ***Exclude an heir.*** Heirs are the persons who inherit an estate under state law in the absence of a will. A will is needed to prevent an heir from inheriting probate assets.
- ***Minors and disabled adults.*** Trust provisions can be included in a will to delay receipt of an inheritance or to allow assets to be used on behalf of an adult who is disabled.
- ***Estate tax planning.*** Married couples can include trust provisions to reduce estate tax.

Dying Intestate—Without a Will

State law determines who receives probate property if a decedent dies without a will.

- Most states provide first for the surviving spouse and children. Children of the decedent always inherit a share in some states while in others they inherit only if they are not also children of the surviving spouse. Children also receive a share in some states if the surviving spouse has any children who are not also children of the decedent.
- Intestacy laws generally provide for distribution by representation, also known as per stirpes distribution. The share of any heir who dies before the decedent passes in equal shares to that heir's children.
- When there are no descendants, the surviving spouse receives the entire estate in some states but more commonly shares the estate with the decedent's parents.
- When there is no spouse and no descendants, parents and siblings share the estate in some states. In others, parents inherit the entire estate, and siblings inherit only if there is no surviving parent.
- If there are no parents or descendants of parents, grandparents generally inherit next, followed by their descendants.
- The final beneficiary under intestacy law is the state. Only relations up to a certain degree inherit under each state's laws. After that point, the decedent's property "escheats" to the state. State laws vary—a third cousin thrice removed may inherit in one state but a second cousin may be too remotely related to inherit in another.

Example: *Nola died at age 103 without a will. Under state law, her property passes to her descendants per stirpes. Nola's three children, Brian, Kyle, and Lloyd, all died before Nola. Nola's six grandchildren inherit her $900,000 estate. Brian's only child receives $300,000. Kyle's two children each receive $150,000. Lloyd's three children each receive $100,000.*

Estate Planning, Wills, Probate, and Transfer of Assets

Property Passing at Death

The disposition of property after death depends on the form of ownership of each asset. Some assets may need to be probated while others pass automatically to new owners. Property ownership is a matter of state law so rules vary. Generally:

- ***Joint assets.*** Joint tenancies and tenancies by the entirety pass to the surviving joint tenant. Bank accounts in joint tenancy only for convenience and not intended to pass the property to the surviving joint tenant may be probate assets in some states.
- ***Assets with designated beneficiaries.*** Life insurance policies, annuities, IRAs, and similar assets pass to designated beneficiaries if the beneficiaries are alive when the insured or plan owner dies. Pay-on-death (POD) bank accounts and transfer-on-death (TOD) security registrations also pass assets to beneficiaries. TOD deeds (available in some states) allow real property to pass to a beneficiary without probate.
- ***Trust assets.*** Property passes to beneficiaries specified in the trust document.
- ***Life estates and remainders.*** Property passes to the remainder owners at the death of the life tenant.

Probate Assets

Other assets—those that will not pass automatically to new owners at death—are subject to state probate rules. These assets pass to the beneficiaries named in the decedent's will or, if none, according to state intestacy law.

Probate Assets	Nonprobate Assets
Pass to beneficiaries named in a will or (if none) according to state law.	Pass to new owners without probate.
• Assets owned solely by decedent. • Decedent's share of assets owned as tenant-in-common. • Assets that name the estate as beneficiary. • Assets with no beneficiary or a predeceased beneficiary. • Assets that do not take joint ownership or beneficiaries—wages, tax refunds of a single filer, other refunds, etc.	• Most joint tenancies. • Life insurance, IRAs, retirement plans with living beneficiaries. • Bank accounts POD to living beneficiaries. • Stock or real property TOD to living beneficiaries. • Assets held in trust if the trust instrument provides for distributions at death. • Remainder interests.

This brochure contains general information for taxpayers and should not be relied upon as the only source of authority. Taxpayers should seek professional tax advice for more information.

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Probate

Probate is the court-monitored process for administering the estate of a decedent. The process includes notifying heirs, submitting and validating the will, collecting decedent's assets, paying taxes and creditors, and distributing property to the estate's beneficiaries. An estate is probated in the decedent's state of domicile. If the decedent owned real property outside his or her home state, an ancillary probate proceeding in that state may also be required. Probate is required if the decedent's probate assets are above the state's threshold (generally $10,000–$100,000). When probate is required, nonprobate assets are not included in the proceeding.

Small Estates—Collection of Personal Property By Affidavit

If the decedent's probate assets are less than the state threshold, no court proceeding is required. The assets can be collected using an affidavit under state procedures for small estates. Typically, the decedent's successors (those entitled to property under the will or state law) complete an affidavit following the form specified by state law. The affidavit is given to anyone in possession of decedent's assets (banks, brokerages, DMVs, etc.). Ownership of the assets passes directly to successors, who also report any after-death income.

Wills and Nonprobate Assets

Only probate assets pass according to the terms of a decedent's will. Nonprobate assets pass to the surviving joint tenant or beneficiary.

Example: *Betty's will leaves half her estate to her church and half to her children. In 2015, Betty changed title to her home to joint tenancy with her children. When Betty died, the only probate asset was her car. Her church is entitled to one-half of the value of Betty's car.*

Contact Us

There are many events that occur during the year that can affect your tax situation. Preparation of your tax return involves summarizing transactions and events that occurred during the prior year. In most situations, treatment is firmly established at the time the transaction occurs. However, negative tax effects can be avoided by proper planning. Please contact us in advance if you have questions about the tax effects of a transaction or event, including the following:

- Pension or IRA distributions.
- Significant change in income or deductions.
- Job change.
- Marriage.
- Attainment of age 59½ or 70½.
- Sale or purchase of a business.
- Sale or purchase of a residence or other real estate.
- Retirement.
- Notice from IRS or other revenue department.
- Divorce or separation.
- Self-employment.
- Charitable contributions of property in excess of $5,000.