

Chapter 34

Simplify Your Life: How to Manage Your Estate and Life – and Benefit You and Your Heirs

Marianne Blackwell, Esq.

Amanda Brodie, J.D.

Gift Planning and Leadership Giving University of Colorado

SYNOPSIS

- 34-1. What Is an Estate?
 - 34-2. Organizing Your Financial Affairs and Your Estate
 - 34-3. Keep It Simple
 - 34-4. Enhance Your Income Through Charitable Planning
 - 34-5. Resources
-

Over the course of our lifetimes, we accumulate a lot: tangible assets, like furniture, household items, vehicles, homes, retirement accounts, and other things that have a physical form. If we are lucky, we have gained some other intangible assets like wisdom, perspective, patience, integrity, a strong reputation, and more. But what most of us realize is that the personal relationships with friends and family we have made throughout the years are our most treasured assets. As we age, it's important that we start to consider what life might be like for those we leave behind. Of course we want to leave memories of love, appreciation, and solid values, but we need to be mindful how we will leave behind the physical asset collection of our lifetimes. Often, important questions to ask are, "How can we best do that?" and "Is there a way to make it easier for those who will inherit from us?" This chapter is intended to help you prepare for this eventuality and become aware of the nature of your estate. We will provide information about what makes up your estate, how to organize all of your lifetime accumulations, how to share this knowledge and detail, and how to simplify your ownership of certain assets to make inheritance less stressful to your family and friends.

This chapter will also introduce some planning ideas that can "repurpose" some of your less productive or hard to liquidate assets to make them more valuable to you while you are living and possibly easier for surviving spouses, family members, friends, and

favorite charities to understand, manage, and benefit from. Finally, we have included some reputable online resources and tools that you can use to gather and consolidate all of your lifetime information into a single document that will be of lasting value to your heirs and those responsible for distribution of your assets. Ultimately, we encourage you to seek the advice of professionals to help you with implementing your personal estate plan. With the understanding that sometimes getting to that stage can be overwhelming, we hope this chapter will help get you started.

34-1. What Is an Estate?

An estate is a person's net worth in the eyes of the law. It typically refers to what is left in your name and in your possession after you die. That can mean your home, autos, boats, trailers, livestock, farms, ranches, equipment, bank accounts, personal property, art-work, collections, land, other real estate, and any smaller assets you have in your name. It also could include any receivable accounts, rights, patent revenue, and licenses you might have on file, loan balances if someone owes you, or even your social media accounts. If you have provided loans to adult children, their repayment obligation is part of your estate. Any outstanding work or business revenue, like stock options, future bonuses, and profit distributions, are also part of your estate.

But an estate is more than everything you own, it's also everything you owe, including your mortgage, car loans, unpaid rent, utilities, student loans, hospital bills, taxes, credit card bills, and other debts you might have outstanding. Creditors have a right to estate assets before distributions to heirs are allowed, so these debts must be considered.

So, what is excluded from your estate? An estate does not include assets a person has transferred to an irrevocable trust during his or her lifetime. If a trust is *irrevocable*, it means the assets cannot be taken back by the grantor or trustor. Once the transfer is made, the person no longer owns or controls those assets, even if the trust continues to benefit that person — those trust assets are not part of their estate.

However, property that someone places in a *revocable* trust, such as a living trust, may be considered part of the estate for tax purposes. You still have control over property that you place into a revocable trust, and therefore that property is still subject to death taxes. So, if you can change your mind about the trust and retrieve the property from the trust at any time while you are still alive, the property is really yours and should be considered part of your estate. When drafting trusts, it's crucial to fully understand the consequences of asset transfers, ultimate ownership of those assets, and how they will impact your final estate. Be sure to work with your accountant to understand any and all tax implications — gift or federal and state estate — for property transfers to both irrevocable and revocable trusts. Your accountant can help you set up the right planning mechanisms and avoid tax-related surprises because of some provision of the tax code you did not know about.

Other property is also excluded from an estate when the property passes directly to another on the former owner's death. For example, insurance policies, pension funds, U.S. savings bonds with named beneficiaries, property owned with a right of survivorship, and bank accounts that pass directly to a named party (also called pay-on-death accounts or Totten trusts) are not considered part of a decedent's estate.

At the end of all of our lives, we have a pile of assets that belong to us that we can freely pass along to others, some property that we might have owned jointly with others that passes directly to the co-owner at our deaths, and debts that must be paid in full, if possible. In any probate proceeding, be it by will (if you have created a document during your lifetime that sets out instructions for how to divide your estate) or intestate (if you do not have a will or trust and the state laws establish how your estate will be distributed and to whom), your estate will be accumulated and valued, debts paid, assets sold or liquidated to cash, and final amounts or items distributed to your heirs or charity.

The experience of the sadness and labor of going through the remaining assets and possessions of a loved one or a friend who has passed, can be either overwhelming or relatively organized and efficient. How we prepare for this eventuality is extremely important.

34-2. Organizing Your Financial Affairs and Your Estate

Consolidation of Accounts

By the time you reach your 50s or 60s, you likely have your money in more places than you can count or remember. Perhaps you have a mutual fund in one location and a retirement account someplace else, and your spouse has these same issues. Maybe you never got around to rolling over a 401(k) you left at a former employer. Getting these ducks in a row is not only good for your estate administrators, but it is also good for you today. Organizing your financial life is a great way to organize your estate.

How many checking or saving accounts do you really need? It may make sense to just have a few accounts at one bank or credit union. Keeping track of all your resources and accounts can be overwhelming, even if you do not hold large amounts in any one area. One solution may be to consolidate all your investment accounts at a single financial institution, and consolidate your checking or savings account at the same or another institution. Perhaps the bank across town was offering better CD rates than your bank; you definitely do not want to forego getting a better return on your investments, but make sure that you keep written records of where your funds are located. In some worst-case scenarios, money left or forgotten at a bank might be turned over to the state if no one claims it. This could happen if your heirs do not know where your funds are located.

The benefits of consolidation are numerous: reducing paper and digital clutter, saving investment fees, having a single-point-of-contact, understanding the complete picture of your required minimum distribution income for your retirement accounts, and helping your loved ones or executor find all of your accounts easily. Perhaps the best thing about consolidating is that, unlike many other financial chores, you only have to do it once, and then you are set for life.

Identify and Document Your Estate

Do you have an estate plan? Preparing to make an estate plan can be a lot of work. Do you want to pass on your assets via a will or through a trust? Wills are subject to probate; trusts are not. To properly prepare an estate plan, especially a trust-based estate plan, you first need to gather asset information and make a list of everything you own.

Every bank account, investment account, IRA, and retirement account should be itemized, as well as all life insurance policies, annuities, and every parcel of real estate owned. If there are any stocks, bonds, or mutual funds held directly and not in a brokerage account, they too should be listed. Not only do the assets need to be listed, you need to gather documentation showing account numbers, names of institutions, types of accounts, and contact information. A good way to aggregate all of this information is to list it all on an inventory sheet. To help you with this chore, we have included in section 34-5 web links to resources, tools, and suggestions for collecting all of your financial information.

Gathering information for all your assets is a lot of work and it can be highly personal. However, all of the information will have to be gathered eventually. You can do it now when you are alive and well, or it can be done by someone else after you experience an illness or death. Gathering the information at that point is much more difficult and costly, and it often takes more time.

34-3. Keep It Simple

Asset Ownership

On average, a person works more than 40 years to accumulate assets and spends 10 years conserving what has been earned, but does not spend even two hours to plan for distribution of those assets. The chaos that often occurs following the death of a loved one can be burdensome and confusing. We have all heard stories from families who are overwhelmed with the task of going through their deceased family member's possessions during probate and trying to understand what their loved one's intentions might have been. We all know of individuals who want to simplify their estates for their own peace of mind and also so that surviving spouses will not be confused by complex ownership structures or be unaware of where assets are located and how to manage them.

We have looked at some ways to better organize assets and valuable financial information. In this section we will discuss ideas to simplify asset ownership, and in the next section, we will highlight charitable planning methods that can assist people, including beneficiary deeds, charitable remainder trusts, charitable gift annuities, bargain sales, retirement account giving, and more.

Joint Ownership

Many ideas exist to simplify your assets and their ownership by you and your family members and partners. One of the easiest ways is to own property in joint tenancy with another person — often a spouse, but property could also be held with a child or business partner. The property automatically passes to the survivor when one of the original owners dies. Real estate, bank accounts, vehicles, and investments can all pass this way. No probate is necessary to transfer ownership of the property. Often homes are owned in joint tenancy, as Joint Tenants with Right of Survivorship.

Beneficiary Deed

Colorado is one of several states that allow property to be transferred at death through a beneficiary deed. This type of deed is created during a property owner's lifetime, authorizing the transfer of the property to another person or to a charity at the death of the creator of the deed, or grantor. The deed is filed with the county clerk where the property is located and does not go into effect until notice of the death of the property owner is provided to the court. At that time, the deed is acknowledged and the property ownership transfers to the beneficiary. The grantor retains ownership, responsibility, and control over the property during his or her life and can revoke the beneficiary deed or file a subsequent deed that inactivates the earlier-filed beneficiary deed. The cost is minimal and usually includes only court filing fees and perhaps the cost to download a Colorado form (check with the county clerk, who may have free forms). The real property is not subject to probate and heirs have immediate ownership after proof of death is supplied to the court. Using a beneficiary deed to transfer property to children or a charity at death is a way to avoid probate for the property subject to the beneficiary deed.

Payable on Death Accounts

In Colorado, you can add a "payable on death" (POD) designation to bank accounts such as savings accounts or certificates of deposit. The account owner still controls all the money in the account, during which time the POD beneficiary has no rights to the money, and the owner can spend it all if he or she desires. At death, the beneficiary can claim the money directly from the bank, without probate proceedings. There is no cost to create this type of account, however, not all banks offer this option. Naming a child, friend, or charity as a POD beneficiary can be another simple way to plan your estate and get assets to the beneficiary of your choice shortly after your death, without the administrative delay of probate proceedings in court.

Transfer on Death Registration for Securities

The State of Colorado lets you register stocks and bonds in transfer on death (TOD) form. People often hold brokerage accounts in this manner. If registration is made as an account in TOD (also called beneficiary) form, the named beneficiary will inherit the account automatically at the death of the account owner. No probate court proceedings will be necessary. As with POD accounts, there is no cost for registration of TOD accounts, and your brokerage firm will be able to help with the forms.

Other Designated Beneficiary Ideas

There are other types of property that automatically transfer ownership to the beneficiary at the death of the owner because they already have a designated beneficiary. Life insurance policies, annuity contracts, and retirement benefits all fall into this category. Property held in a living trust also falls into this category because the trust instrument provides for a designated beneficiary of the trust property upon the death of the grantor. A living trust can be funded with a grantor's assets that produce an income, or other assets can be sold by the trustee and used to purchase other income-generating assets, to support a surviving spouse or a special needs family member. Establishing a testamentary surviving

spouse or special needs trust, created when valid instructions are included in the will and the trust is funded after you pass, is a worry-free way to make sure your family is not burdened by confusing estate matters; the trust pays them an income for their lifetimes.

The above examples illustrate ways to structure property ownership so that transfer at death happens easily and without legal complexity, making it simple for your heirs to receive your assets. We would like to offer some other practical ideas for asset management and proactive distribution planning to help you and your heirs:

- ▶ ***Take a video “walk about” of your personal household property.*** This is a great way to talk about the importance or historical and personal value of your possessions in a casual setting. Perhaps that painting that you have kept all these years (and your kids think is ugly!) has a deep meaning to you and you would like to let them know where you bought it, or maybe you knew the artist. You could also video record your intentions about who is to receive your household items and why you want them to have the item. We recommend making this video presentation upbeat, thoughtful, and intentional; your family members and friends will likely learn something about you and your appreciation of your possessions.
- ▶ ***Allow your family and friends to identify personal possessions that they want to inherit from you when you are gone.*** By proactively engaging your children, family, and friends in this exercise, there may be less conflict after you pass regarding who is to receive your property. Make a list and share it with everyone involved so that there is clear understanding of who is to inherit your property.
- ▶ ***Keep a current inventory of valuables, including antiques, collections, jewelry, art-work, etc.*** Make sure that insurance coverage is kept updated on possessions that require it. Share your inventory with your personal representative or trustee, and be sure to include the names of your heirs who should inherit these assets. This list can be presented in probate proceedings if there is any disagreement about who is to receive certain property.
- ▶ ***Make a list of charities or other organizations who you would like to receive certain of your assets and include contact information and those possessions you would like to leave to each organization or charity.*** Perhaps you have an antique miniature train collection that would receive pennies on the dollar in an estate auction, but you know of a train museum that would benefit from your generosity. Your children may not want or need the majority of your furniture and you might decide to leave it to a home for disabled adults; your washer and dryer could be donated to the local humane society; your vehicles might be good assets to leave to the public radio station. The idea is to plan appropriately for certain distributions of your property, providing your personal representative, trustee, or heirs with clear instructions and locations or organizations that will value and utilize what you have collected throughout your lifetime.
- ▶ ***Look into an auction or consignment company to sell some of your assets.*** This option could provide needed cash and help you downsize some of your personal property. The benefit of doing this while you are living is that you can negotiate better prices and provide better information on the property that is purchased.

34-4. Enhance Your Income Through Charitable Planning

This chapter has provided ideas for financial organization, consolidation, simplification of assets, and efficient asset ownership. Hopefully, these concepts can be easily implemented in your life as constructive planning tools. You can now prepare lists of assets and personal property with instructions for your family and heirs. As you are compiling your inventory, perhaps you should take the opportunity to fully assess and evaluate these assets and determine their effectiveness in helping you achieve your goals, especially with regard to income. You may learn in your evaluation that your liquid assets are heavily invested in low-yield money market or certificate of deposit funds, or you have a stock portfolio that is no longer producing the dividends it had in the past. You may have inherited stock from parents long ago and the basis of that stock makes it prohibitively expensive to sell because of capital gains tax. This section will provide some ideas to “repurpose” or reallocate these assets into vehicles that will produce a greater income stream for you and your family.

Charitable Gift Annuities

A charitable gift annuity (CGA) is a contract between a donor and an issuing charity. This is often the gift of choice when a guaranteed present income or future income is desired. In this gift option, typically a gift of cash or securities is transferred to the charity of your choice in exchange for a contractual life income paid to the donor or donors annually, or deferred to a later date in the case of a deferred charitable gift annuity. The income is guaranteed by the issuing charity, and the donor can name himself or herself sole annuitant or designate a second annuitant, usually a spouse. A gift annuity can also be purchased on behalf of another party, for example an adult child or other family member. If the CGA is a two-life annuity, the payout will continue until the death of the second annuitant. A portion of the gift is invested by the charity and used to provide income for life, and the remaining portion qualifies as a present-interest gift to the charity, which then entitles the donor to a charitable tax deduction. Some charities require that annuitants be a certain age, say 65, before they can enter into any gift annuity. Current CGA rates are:

Age 65	4.7%
Age 70	5.1%
Age 75	5.8%
Age 80	6.8%
Age 85	7.8%
Age 90 and over	9.0%

If your accounts are not producing these kinds of returns, a CGA might be a good choice of investment. CGAs are best suited to donors who have other assets that can become liquid in the event of emergency, because they are irrevocable and cannot be undone. Most charities and community foundations offer these types of annuities and would be happy to help you decide if this is a good option for you.

Charitable Options for Real Estate

There are several good charitable options to help you dispose of real estate that you no longer wish to own. Creating a charitable remainder trust (CRT), engaging in a bargain sale arrangement, or simply gifting real estate might provide you with a better after-gift income or tax situation. Rental properties can be transferred into a CRT to allow the sale of the properties within the CRT with advantageous capital gains tax treatment and then have the proceeds reinvested in income-producing assets to provide a life-long income stream. Low-basis, low-dividend-paying securities can also be transferred into a CRT, with a sale of these shares creating proceeds that can be used to purchase better yielding assets, even creating tax-free income if desired.

A bargain sale transaction is another creative way to repurpose an asset, allowing part gift, part sale to charity. A bargain sale takes place when a donor sells a property (usually one that is appreciated, ideally mortgage-free) to a charitable organization and receives less than the fair market value in return. The amount that is less than fair market value is considered a charitable donation and the amount received by the donor is the amount used for taxable gain purposes. The donor benefits from the bypass of taxable gain on the gift portion and receives a charitable deduction on the gift portion. The donor could receive cash outright on the sale portion of the transaction, take an installment note in return to create term income, or the charity could use the gift portion to create a CGA that pays the donor a life income.

There are a lot of creative ways to structure charitable giving that can result in an income stream to a donor and provide advantageous tax savings. Consulting with your advisors, in collaboration with the charity of your choice, could be a beneficial exercise. There are many options that you may not have even considered. You will never know until you start asking questions!

34-5. Resources

American Bar Association Estate Planning Checklist

www.americanbar.org/content/dam/aba/migrated/publiced/practical/books/wills/appendix_a.authcheckdam.pdf

FindLaw Estate Planning Questionnaire

<http://estate.findlaw.com/planning-an-estate/estate-planning-checklist.html>

Certified Financial Planners — Let's Make a Plan

www.letsmakeaplan.org/learning-center/Publications

AARP

www.aarp.org

National Network of Estate Planning Attorneys

<https://nnepa.com>

The Motley Fool — How-To Guide: Plan Your Estate

www.fool.com/personal-finance/taxes/how-to-guide-plan-your-estate.aspx

Carr, Riggs and Ingram — 2017 WebEstate Guide

www.webtaxguide.net/WEG/CRI/index.html

NOLO — Law for All — Get It Together (book to purchase)

www.nolo.com/products/get-it-together-get.html

Market Watch — The RetireMentors

www.marketwatch.com/retirement/mentors

