

How To Die Right

by Nicolas J McLeod

We all know that at some point our bodies will give out. We don't know when. We certainly don't know how, but we do know that death is inevitable. The last thing anyone wants is to leave our loved ones with financial messes to clean up.

There's a way for your loved ones to avoid family feuds, outlaw in-laws, inheritance nightmares, and the IRS.

When a loved one dies, everyone seems to come out of the woodwork. They all want some part of the estate. Remarkably, you don't have to have a large estate for this to occur. Ex-spouses, relatives, ex-employees, even complete strangers can show up claiming they have a "right" to part of your estate. They interfere with the standard procedure of probate. They can interrupt or delay the disbursement of bank accounts, properties, cars, heirlooms, real estate—the list goes on.

People you thought you knew seem to change when someone dies. The "traditional" way of handling your estate is by a will. With a will, you tell the world how you want your assets distributed and to whom. But it's not a straight-through process. All wills must go through probate.

Probate is simply the legal process that deals with the debts and assets of a recently deceased person. Probate happens no matter if there is a will or not. When you have a will, at least the courts know what you intended. However, if there is no will, the courts decide who is going to execute—carry out of the wishes of—the deceased. It's called dying "intestate," in which case your state laws will dictate how and to whom your property is distributed.

Probate can be a very complicated process, and this is where family feuds start. Outlaw in-laws show up, and the inheritance nightmare that everyone reads about but thinks "that's not going to happen to my family," becomes reality.

The Four Evils Of Probate

There are four main reasons why probate is not the preferred option for your estate:

1. The cost. Probate means that you're going to court. Court is expensive. It requires lawyer fees and court fees. These can eat up 20% to 30% of the estate, and I'm not talking about taxes.
2. The time. Probate can take a few months if all goes accordingly to plan. But how often does that happen? Probate can stretch into years. When an estate is going through the probate courts, the money and all the assets are frozen. This can cause havoc to heirs and beneficiaries who may desperately need funds to meet their needs.
3. More time through contestation. Anyone can contest a will. Take the case of the super wealthy billionaire Howard Hughes. When his will was being handled in probate court, a complete stranger showed up, lawsuit in hand. The

probate process slammed to a halt because this guy claimed he had given Mr. Hughes money. Hughes was an aviation pioneer, a producer, a romancer of leading ladies, and one of the first multi-billionaires. By the time Hughes' inheritance was settled by a probate court jury in Texas, more than 600 people had made claims to his estate. It was claimed that 40 wills supposedly were written. These claims were rejected over time, but it took years to finally settle the estate.

That's an extreme story, and you might think, "yeah, Howard Hughes was not only rich, he was obsessive/compulsive...among other things." It is extreme, but it pounds the point home that it isn't up to what you stated in your will. It's up to the court to decide what claims get heard, what gets thrown out, and who gets what part of the assets.

This happens all the time. Take the case of a woman who had a home valued at \$200,000.

This woman had two children, an attentive daughter and a son who couldn't have cared less what happened to his mom. The woman had put her daughter on the title of the house and in her will left the house to the daughter. When she passed, her estranged son was able to challenge the will. It delayed the disbursement of the home to the daughter.

When it was finally settled, the daughter did retain the home, but she spent a considerable amount of time, had paid thousands in legal costs in court, and her health suffered because of the enormous amount of stress the whole process took on her.

4. Probate is a public process. Anyone can see where the assets end up, such as swindlers, stalkers, you name it. The proceedings can be in the newspapers and on social media. Who would want that?

You might be thinking, "You know, it would be a smart thing to avoid probate at all costs." But how? Doesn't everyone have a will?

The answer is simple: A trust.

Essentially a trust enables you to control assets from the grave. It allows you to designate the beneficiaries you want. No one can contest it. It doesn't get caught up for months or years in the probate-court system. In short, a trust ensures that your assets don't end up in the hands of people you never intended to have any part of your estate. Even the IRS.

The Benefits Of Creating A Trust

A trust is the tool to use so that you can avoid family feuds, outlaw in-laws, and inheritance nightmares.

Here are 10 good reasons to utilize a trust:

1. Privacy. The trust does not have to be filed in probate court. No social media exposure is created. The only people who know what your wishes are, are those you designate in the trust.
2. Control of asset disbursement. A trust allows for specific control of asset disbursement after death.
3. Protection. A trust protects your estate from people attempting to access your assets.
4. Time. A trust significantly cuts down the amount of time it takes to disburse assets. This way, your heirs and beneficiaries can be taken care of financially in the way that you intended.
5. Cost savings. A trust saves enormous amount of death costs when compared to probate.
6. Tax planning. You simply cannot be without a trust when planning to save on estate taxation.
7. Creditor protection. Creditors cannot access the trust assets. Whereas with a will, the debts are the first to be paid.
8. Charitable planning. Your church or charity can greatly benefit from trust planning.
9. Foundations. Trusts are used to funnel assets into endowments, so that your favorite foundations are benefiting from your posthumous support.

10. Peace of mind. When you have a trust, you can sleep at night knowing that your final wishes—what you worked so hard for throughout your life—will be carried out in the way you want. No one can contest it, so your assets will be disbursed in a timely manner. Your assets won't be eaten up with court costs, and your last wishes will stay private.

I recommend to all my clients that they utilize trusts in order to successfully transfer their wealth. It is the best way to control and protect estates. In short, a trust is far superior to a will.

Types Of Trusts

Creating a trust is not something you embark on without a clear understanding of what it entails.

Anyone can write a trust; however, it is far better to enlist expert help so that it is set up correctly.

Having said that, it is also a very good idea to know what kind of trust you want before you talk to an expert. It can save you some headaches and possibly some time.

There are two classes of trusts: living and testamentary.

A living trust consists of two types: revocable and irrevocable.

A testamentary trust is established after someone dies and has made provisions for a trust in his or her will.

LIVING TRUST

A living trust is set up while you are alive. It designates someone to act as your trustee, which means they are managing the assets for the eventual beneficiary. You are the trustor or grantor, and your agent is the trustee. A living trust may have more than one trustee. The trustee has the duty to manage the assets well so that upon your death, they will then flow to the beneficiaries of the trust.

The trust itself may be named as a beneficiary for certain types of assets, which include accounts payable on death (POD), insurance policies, IRA

accounts, and employer-sponsored accounts such as a 401(k).

If the trust is **revocable**, the settlor (the party that creates the trust, usually the donor of the assets) can change the beneficiaries or take control of the assets of the trust. The settlor can even undo the trust altogether. In other words, the terms of the trust can be reversed (thus revocable.) However this could have tax implications for the estate if the assets are of a larger value than the estate tax exemptions at the time of death.

A revocable trust is great if you're single and have assets titled solely in your name. If you're in a second or subsequent marriage, and you each will have different beneficiaries (kids or grandkids), then a revocable trust might be a good idea.

If the trust is **irrevocable**, then the terms of the trust are irreversible. In an irrevocable trust, the settlor sets the terms of the trust, and for ever-after the trustee and only the trustee can make any changes. The named beneficiaries are set. The trustee becomes the legal owner, and the grantor reduces their taxable estate.

Irrevocable trusts move assets out of your estate and beyond the reach of creditors. With an irrevocable trust, you can avoid estate taxes and probate costs altogether because you are moving funds from your estate into the trust. By doing so, you're relinquishing control of those funds, but that gives your funds a level of legal protection not enjoyed in any other way. In other words, if you put your estate into an irrevocable trust, then they are beyond the reach of any legal action against you.

A TESTAMENTARY TRUST

A testamentary trust is established after death as one of the provisions of a will. The executor of the will is given instructions for setting up the trust. This ensures that the assets of the trust are administered and managed by professionals.

A testamentary trust contains all or a part of the assets. Testamentary trusts are often used to confer assets to a minor, to be paid out only when the person reaches a specified age. It can be also be used to reduce estate tax liabilities.

A testamentary trust does not avoid probate, so the court process of distributing assets can still lengthy.

What Kind Of Legacy Will You Leave?

A trust allows you to be in control of the legacy you leave. It allows you to create a legacy plan that benefits everyone.

This is perhaps the most important part of the trust process.

What does the idea of leaving a legacy mean to you? Your legacy is a personal contribution that you leave to the world. It's something that will continue after you are gone, something that can be of value to future generations.

Your legacy tells the story about you and your life, about what has been most important to you and what you worked to achieve. Your legacy shows the world a vision of what you have been and what you want others to have as a result of what you have done.

It can be a guide for others to "following in your footsteps." It represents your vision for the future even after you're gone.

When you think about your legacy, think about how you want to be remembered. What do you want your legacy plan to say about you: that you were generous? Thoughtful? Practical? Organized?

Planning a trust is a way for you to leave the kind of legacy that you want. A carefully crafted legacy plan may provide peace of mind, provide control after you pass, and create a greater harmony within the family.

Everyone leaves behind a legacy after they die, but only a few people leave a legacy worth talking about.

When all is said and done, having a plan and executing that plan through the proper instruments will serve you and your family well for generations.

To die "right" means that you've planned for the future—a future that you helped create from the grave. You deserve to rest peacefully knowing that your hard work and good intentions will be remembered and respected.



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