

Chapter 12

Estate Planning

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**What should I talk over
with my elderly parents?**



- access to important documents
- a living trust may be necessary
- get a health-care proxy
- know your parents will
- get a complete list of expensive items
- any hidden valuables?
- a living will
- have a general power of attorney

What are four ways I can own property?

- Tenants in the Entirety
- Joint tenancy
- Tenancy in common
- Community property

What is tenants in the entirety?



- When your spouse dies the property automatically reverts to the survivor
- Both you and your spouse have to agree before you can sell the property
- Only married couples can own property this way

What is joint tenancy?



- The deceased will does not take precedence
- When a member dies the ownership reverts to the other members
- Property can be sold without the permission of the other owners

What is tenancy in common?

- When one person dies ownership does not revert to the other members
- The deceased will takes precedence

What is community property?

- When one dies all the property reverts to the survivor no matter what is in a will

Everything a husband and wife have are equally owned

What is intestacy?

The state of dying
without a will



What happens if I die without a will?

Unless your property is jointly owned or you have a will, authorities will distribute your property according to state law

Is a will always valid?

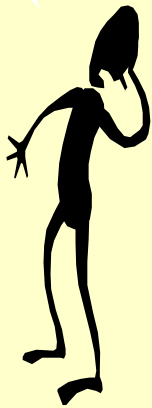
No! It is only valid if it is written according the statutes of your state



Do I always need a will?

No!

Not if state laws
are commensurate
with your wishes



If I have a spouse and children, what happens if I die without a will?

In some states the state will divide your assets equally between your spouse and children

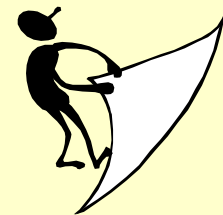
What happens to the children's assets in this case?

They will be frozen and administered by a guardian until they reach 18 years of age

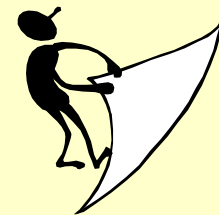
Who is an executor of a will?

A person to whom state law gives legal authority to carry out directions and requests of a will

What are the duties of an executor?



- Reads the will
- Secures final discharge as executor
- Distributes your assets according to your will
- Makes out your tax returns
- Carries out any specific duties set down in your will
- Contacts all your creditors



- Appraises value of your assets for tax purposes
- Petitions the court to probate your will, including verifying heirship and finding witnesses
- Calls newspaper for obituary
- Gives notice of your death to your bank and other financial institutions
- Pays necessary bills
- Contacts insurance companies

Should I have a substitute executor?

This is a wise thing to do in case the first executor cannot perform his/her duties

Where can I find an executor?

Friend, relative, or
most banks have trust
departments that act
as executors



Who is a testator?



A person who
makes a will



**What does a typical
will contain?**



- All wills must be witnessed according to state law, dated, and signed
- states who you are and that this is your last will and testament and revokes all previous wills
- Specify dollar amounts or percentages to be received and by who
- Specify gifts and to whom
- Appoint a guardian for any children
- An explanation of how to pay your debts and final expenses

What is a codicil?

A supplement added to a will by an attorney used to make certain changes



What is a letter of last instruction?

An informal letter that accompanies a will which requires no legal counsel

What should a letter of last instruction contain?

- funeral arrangements
- donation of your organs
- assets instructions and there location

What taxes are associated with estates?

The federal gift and estate tax is a combined tax



Are there taxes on money I give away?

Yes! Any money you give away in any given year over \$10,000 is taxed



Do I have to pay this gift tax immediately?

No, gift or estate taxes are due until after your death



Must estate taxes on my assets be paid after I die?

No inheritance taxes are due on estates valued at less than \$600,000

What tax form do I have to file?

When you give a gift of more than \$10,000 in any one year you have to file Form 709

Do I have to pay taxes on property I do not own?

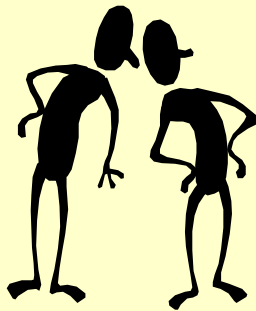
Any property you give away but you retain the income from that property is included in your estate

Can a deceased person be audited by the tax authorities?

It is standard procedure for the IRS to examine the federal income tax returns of a decedent for 3 years prior to death

What constitutes a taxable estate?

Any estate minus certain deductions and credits



How much is the federal estate tax?

Any amount of an estate valued more than \$600,000 is taxable at a rate of 37% to 55%

Are taxes owed on income in the last year of a deceased life?

Yes!

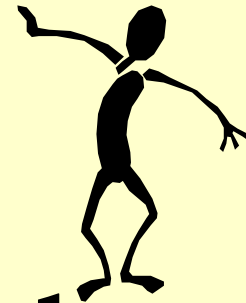


Taxes are owed for the last year of a decedent's life

What is the stepped up basis on inherited property?

The base value of the property is determined by the market at the time of death

Do states access death taxes?



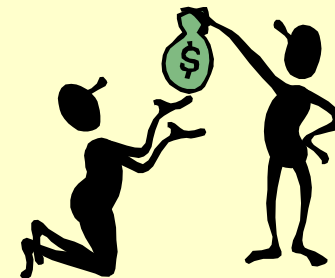
Approximately 30
states collect death
taxes independently
of federal taxes

What is a trust?

A legal title to property held by one party for the benefit of another

Who is a grantor?

In a trust, the person
who gives the assets



Who is a trustee?

A person responsible
for managing the
assets of a trust



What is a living trust?

A legal document used to hold assets, such as stocks, bonds, bank accounts, and real estate

Why is a trust superior to a will?

It provides you with benefits while you are living



What are the 3 kinds of trusts?

- Revocable living trust
- Irrevocable living trust
- Testamentary trust

What is a revocable living trust?

The grantor can control the assets under the trust



What is probate?

The process of legally establishing the validity of a will before a judicial authority

Does a revocable living trust reduce taxes?

No, but it does
eliminate the need for
probate after death

What is an irrevocable living trust?

It cannot be amended like a revocable living trust



What is the benefit of a irrevocable living trust?

The assets in the trust are not counted as a part of a persons assets upon death

What is a disadvantage of an irrevocable living trust?

Gift taxes must be paid on anything put into the trust

What is a testamentary trust?

Becomes effective upon
your death according to
the terms written in a will



When do the terms of a testamentary trust come into being?

Only after the will has been probated



What are the advantages to a testamentary trust?

- The testator holds control during his/her lifetime
- No gift taxes paid on assets shifted into the trust

Does Medicare and private insurance cover long term care?

Should a family member need nursing home care, the average family would lose life savings in just 13 weeks

What is the spousal impoverishment act?

A spouse that goes into a nursing home can use 1/2 of the couple's assets and then qualify for Medicaid

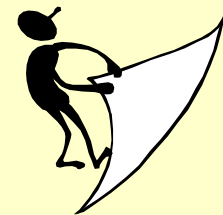
What is Medicare?

Provides payment for hospital and medical expenses of persons 65 and over and some others

Does Medicare pay for a nursing home?

Persons can qualify for
Medicare for the first 100
days in a nursing home

**Who qualifies for this
100 days of coverage?**



- The bed assigned to the patient must be Medicare certified
- The nursing home must provide skilled care to the patient by medically trained professionals
- The nursing home must be a Medicare-approved skilled nursing home
- At least 3 days in a hospital must precede the nursing home care
- The care must be medically necessary

What happens if the patient's condition improves and no longer needs skilled care?

If the patient only needs custodial care Medicare coverage stops

How can the rest of the 100 days be paid for?

Medigap insurance will
pick up the nursing
home expenses



Does Medigap Insurance pay for long term care?

Not unless you buy a
policy specifically for
long term care



What is Medicaid?

A jointly financed program of the federal government and states that pays for some medical expenses for indigent people

Who qualifies for Medicaid?

To determine eligibility a
person's assets are
divided into 3 categories

What are the 3 categories?

- Countable 
- Non-countable
- Inaccessible 

What are countable assets?

- Second vehicles
- Vacation home
- Annuities
- Investment property
- Cash value in life insurance



- Certificate of deposits
- Keogh Accounts
- Cash more than \$2,000
- Bonds
- IRAs
- Stocks

What are non-countable assets?

- Term life insurance
- Burial plots
- Household goods
- One wedding ring & engagement ring
- Less than \$2,000 in cash
- A house

What are inaccessible assets?

Assets that are unavailable to you and thus inaccessible to Medicaid, like money within an irrevocable living trust

What if I dispose of assets to qualify for Medicaid?

It is a felony to
dispose of assets to
qualify for Medicaid

What is the punishment for disposing of assets?

The punishment for this offense can be five years' imprisonment and a fine of up to \$25,000

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