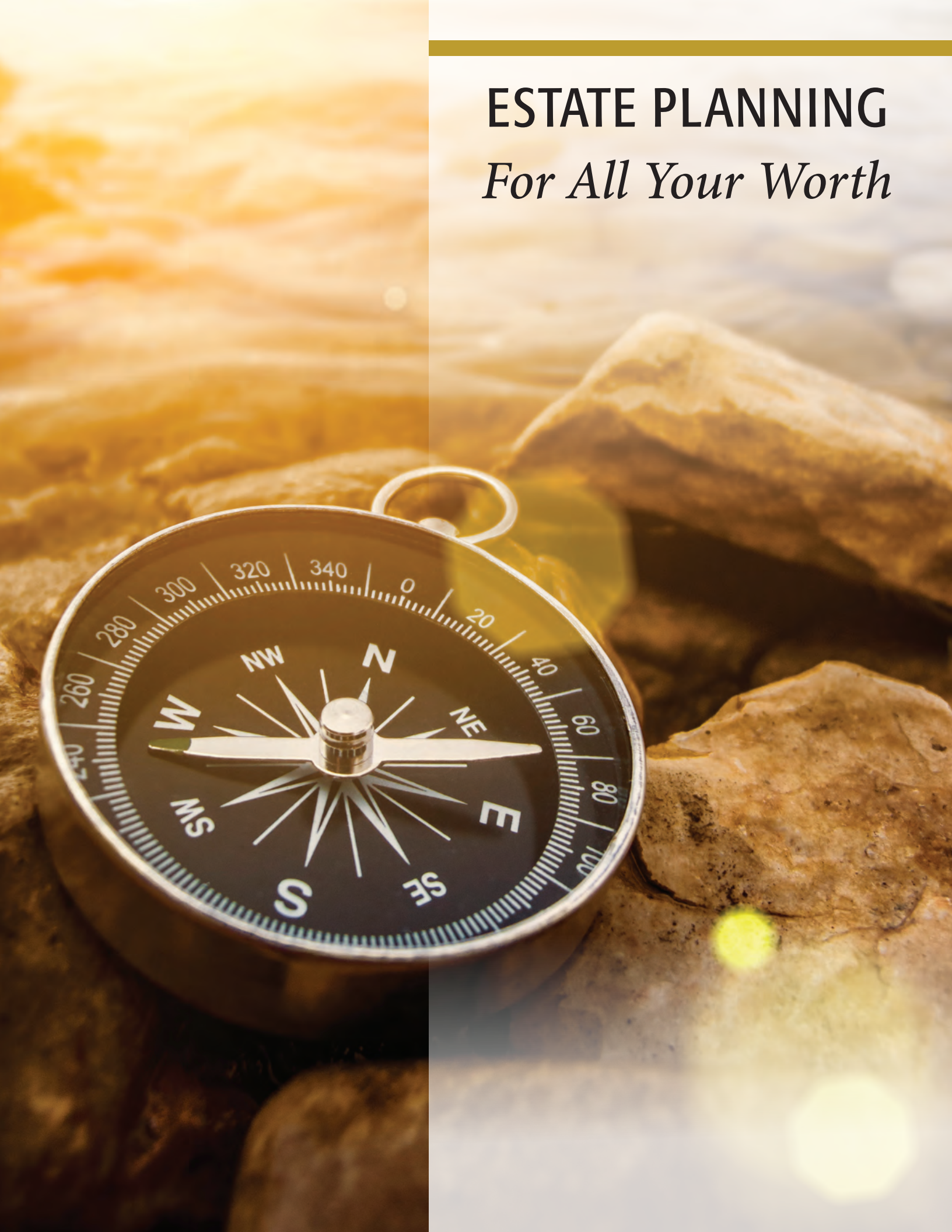
ESTATE PLANNING

For All Your Worth



YOUR EXECUTOR OR PERSONAL REPRESENTATIVE

The estate settlement laws of more and more states have combined the terms “executor” and “administrator” under the term “Personal Representative.” Most readers are more familiar with the traditional terms—we are using “executor” and “administrator” throughout this booklet.

Who can make a Will?

Under the laws of this state, you may dispose of your property by Will, provided you are of sound mind and legal age.

You should not neglect to make a Will if you own—either in your name alone, or jointly with someone else:

- Any *real property* (real estate of any kind, whether it's a vacant lot, a residence, oil and gas, a farm, or "improved" income-producing property).
- *Personal property* (anything of value that is not real property, such as furniture, jewelry, automobiles, stocks, bonds, and bank accounts).

Why you should make a Will?

If you don't make a Will—

You can't direct who will get your property. It will be distributed by law, which is necessarily inflexible and cannot take account of your wishes, or your family's needs. Part of your property may go to your children—not all to your wife or husband as you might suppose; or part may go to relatives whom you barely know, or don't like very much. Someone for whom you wish to provide, and who needs financial help, may get less than he or she needs, or even nothing.

Your estate will be settled by a court-appointed administrator (or personal representative). You can't be sure, in advance, who this will be. It may be a relative in whose business judgment you have no confidence, or with whom your family doesn't get along very well.

The administrator must furnish a bond as security for the faithful performance of his or her duties. And the cost of this bond will be charged against your estate.

Your estate must be settled in accordance with strict legal procedures. This may mean a quick forced sale, at an unfavorable time, of valuable business interests, or other assets of your estate.

All *adult* beneficiaries will receive their shares of your property outright. Yet you may have reason to believe that one or more of these individuals is too inexperienced, or not qualified in some other way, to manage a substantial amount of property wisely and successfully.

The court will appoint a guardian or conservator to manage the share of each minor beneficiary until the child comes of age. This guardian must furnish a bond, and the cost—an annual expense—will be charged against the minor's share.

The guardian—or the administrator—may be prevented by the pressure of other business, by illness, death, or other factors, from completing the job. The appointment of a successor may mean confusion, delay, and extra expense.

Your estate may be exposed to unnecessary shrinkage from settlement costs and federal and state death taxes. As a result, your family may receive substantially less than you expected.

By making a Will—

You can make sure that your property goes to the ones you want to benefit, and in the proportions and manner that will help them most. You can leave something to persons who are not family members or relatives. You can select "contingent"—alternate—beneficiaries to take the share of anyone who dies before you do, or before receiving his or her full share.

You can choose your own executor (or personal representative) and discuss with that person or trust institution your family's special needs and problems so as to ensure that your estate will be settled by one with a sympathetic understanding of your family's situation. You can give your executor the powers necessary to settle your estate in the most effective and economical way.

You can authorize and empower your executor to continue the operation of your business until it can be disposed of advantageously. No need for a quick, forced sale at the wrong time!

You can protect the interests of minor beneficiaries (thus eliminating the guardian problem) and safeguard the future of adult beneficiaries by arranging for the establishment of a trust or trusts. Under a trust the beneficiaries receive the income, but the capital is managed for them, so they are protected against loss resulting from inexperience, carelessness or unwise spending.

You can minimize, by careful planning, the shrinkage your estate will suffer and thus make sure that your family actually receives as much as possible of what you leave.

NOTABLE EXAMPLE

If you die without a Will

Singer/songwriter Prince did not have a Will when he died in 2016. Family members petitioned the probate court for appointment of a special administrator to begin the estate settlement process promptly. Local news sources pegged the value of Prince's Minnesota real estate holdings at $31 million. The value of intellectual property and publicity rights has been estimated at $100 million to $300 million.

That is quite a fortune to fight over. Two persons claiming to be illegitimate children of Prince came forward, but flunked their DNA tests. In the absence of a Will, Minnesota's intestacy law governs what the heirs receive, after the payment of federal and state death taxes, debts, and expenses. The heirs to Prince's estate were ultimately narrowed down to six: Tyka Nelson, his full sister, and his half-siblings, Norrine Nelson, Sharon Nelson, John Nelson, Alfred Jackson, and Omarr Baker.

Controversies over managing the estate continue, and reportedly federal and state death taxes remain unpaid. Some $45 million in administrative expenses were incurred in the first three years of the estate. The latest twist is that Tyka Nelson sold her interest in Prince's estate to a private equity firm, a development that has unnerved the trustee.

When to review your Will

Actor Philip Seymour Hoffman died of an apparent drug overdose in February 2014 at age 46. He last attended to his estate plans on October 7, 2004, ten years earlier. The estate tax laws changed dramatically during that period, as did Mr. Hoffman's personal circumstances. When he drafted the Will, he had one son with his partner, Marianne O'Donnell, but they later had two daughters.

Hoffman's Will left all of his property to O'Donnell. His estate was estimated to be worth roughly $35 million, and the federal estate tax was imposed at 40% of everything above a $5.34 million exemption in 2014. Because the couple never married, the marital deduction was not available to defer estate taxes until both spouses have died. Therefore, Ms. O'Donnell could have been looking at a $12 million federal estate tax bill. New York State also imposes an estate tax at 16% on assets above $1 million, but that tax payment was deductible when calculating the federal tax.

The Will invited Ms. O'Donnell to disclaim all or part of her inheritance. To the extent that she did so, the property passed to a trust for their son, who was one year old when the Will was executed. That trust will pay its principal to the son when he reaches age 25, the balance when he is 30. Unfortunately, the trust made no provision for after-born children, so the daughters seem to have been disinherited.

On the other hand, it is possible that Hoffman made provisions for the daughters that didn't pass under the Will. Still, the lesson is that when the tax law or personal circumstances change dramatically, it's important to review the estate plans.

Facts you should know about a Will

A Will has no force or effect until its maker dies. It does not have to be filed or recorded anywhere before then. It may be revoked or rewritten at any time. Finally, only the *most recent* one will prevail at death.

A Will controls only the property that you own *individually*. Any real or personal property that you own jointly with another under "right of survivorship," or any property the proceeds of which are payable to a named beneficiary, probably will pass directly to the co-owner or the beneficiary. Such property ordinarily will not pass under your Will, so it will naturally not be governed by the Will's terms and provisions. Here are some examples of such property:

A *bank account* that you hold jointly with another—on which either of you can draw, and which will be payable to the survivor if one of you dies.

A *U.S. savings bond* that is registered in your name with someone else as co-owner, or in your name alone but payable on your death to someone else whom you have designated.

An *insurance policy* on your life, the proceeds of which will be payable on your death to someone you have named, rather than to your estate.

Real estate (or any other property) that you own jointly with someone else, and that will pass to the surviving joint owner at your death.

Because a Will does not become effective *immediately* upon the death of its maker—it must first be proved and admitted to probate—there are certain things that it may be well to omit from the Will.

Such details as the purchase of a cemetery plot, funeral arrangements, and so on, all require immediate attention, so it is usually better to leave them to the discretion of the family or a trusted friend. If you have any definite plans or ideas about these matters, you can leave a simple letter of instructions, or an informal memorandum of your wishes, to guide them in their decisions.

If you follow this procedure, the fact that you don't now own a cemetery plot, or are undecided about funeral details, will not stand in the way of your making a Will now without further delay.

Planning your Will

First list all the property you own of the type discussed in the preceding section—that is, property over which your Will can have no control. (Use the handy Estate Inventory form on the inside back cover for this purpose.) The amount of such property, to whom it will go, and in what manner, will naturally influence the provisions to be made for the disposition of the rest of your estate. So bear all this in mind while you are planning the details of your Will.

Now consider each of the following points in light of your overall objectives. By recording your decisions as you go along, you automatically will build a systematic outline of the basic provisions to be included in your Will.

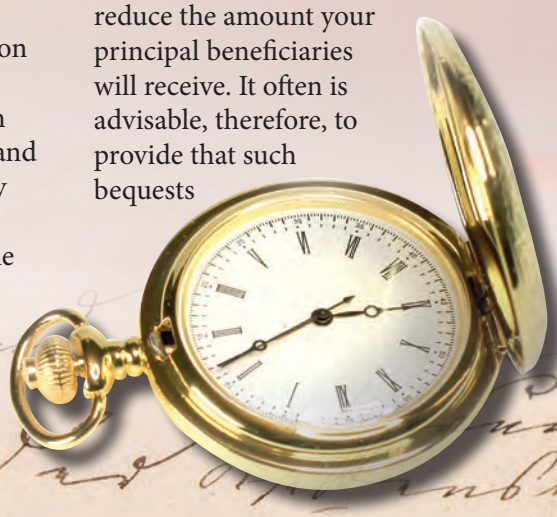
How to dispose of your personal effects.

Clothing, jewelry, furniture, automobiles, and articles of personal use are usually left outright to particular members of the family, or to friends. If you do not provide specifically for the disposition of these articles, they will become part of your "residuary estate"—that which remains after the payment of specified legacies or bequests.

Cash gifts to individuals or to charities.

If you leave a stated amount of money to a particular person or charity, that bequest must be paid in full *before* any distribution is made to those entitled to the "residue" of your estate.

If your estate proves smaller than you anticipated, this may unduly reduce the amount your principal beneficiaries will receive. It often is advisable, therefore, to provide that such bequests



NOTABLE EXAMPLE

Tell the family your estate plan details

The estate plan of Robin Williams was quite thorough, including separate trusts for his widow, Susan, and his children from earlier marriages. Susan received lifetime use of a home, and the children received other real estate.

The children also were given certain collectibles, including a valuable watch collection, that were located in Susan's home. The independent trustees (Williams' accountant and lawyer) went to the home fairly soon after Williams' death to begin the process of inventorying these items for purposes of estate settlement. Susan became upset, concerned that an attempt to strip the home of its contents might be under way. She brought a lawsuit over interpreting the trust language, and the children were forced to hire their own lawyers in defense.

Although Robin Williams seems to have done a very good job of preparing his estate plan, he (or his advisors) may not have prepared the beneficiaries for the implementation of that plan. Perhaps this is not surprising, especially when one considers how many people have done no estate planning at all. Had the beneficiaries been advised, they would have learned that conducting an inventory of assets is an essential first step in settling an estate. For death tax purposes, all assets must be valued at the date of death, so the inventory is not something that should be put off for several months, even if grieving relatives feel otherwise.

to beneficiaries of secondary importance be paid only if the total estate exceeds a specified minimum. Similarly, cash gifts that are likely to represent a substantial portion of the total estate might better be made in *fractions* or *percentages* of the total, rather than in fixed dollar amounts.

Gifts of income.

Do you wish to leave a regular income, rather than a lump sum, to a parent, or other relative, or a friend? You may do so through a trust set up in your Will. You can set aside a specific sum, or particular assets, or a stated proportion of your estate, and direct that the income—or periodic payments of stated amounts—shall be paid to such individuals for a limited time or for life, with the remaining principal then passing to others after it has fulfilled its purpose.

What to do with a residence.

Subject to the legal rights of a surviving spouse—your lawyer will explain these—you may: (1) leave your home, or other real estate, to one or more beneficiaries; (2) place it in trust along with other property; (3) direct that it be sold and the proceeds added to your estate; (4) or let one beneficiary have the use of it for life, with outright ownership then passing to another.

How to preserve or liquidate a business interest.

If you have an interest in an unincorporated business, your death probably will cause the termination of the business, and your interest will have to be sold by your executor for whatever it will bring.

If the business is incorporated, your death will not necessarily interrupt its operations. With you removed from the picture, however, the actual value to your family of your stock interest may be questionable—especially if your holdings do not constitute the controlling interest.

It often is desirable, if possible, to make definite *advance* arrangements for the sale of your interest at your death, at a figure that will reflect its true value as a going concern, under a binding purchase-and-sale agreement. This agreement may be between you and key employees, if you're the sole owner . . . between you and your partner or partners, if the firm is a partnership . . . or between you and other principal stockholders or the company itself, if it is a corporation.

On the other hand, you may wish to preserve your interest in the business for the benefit of a child, or others. If so, proper provisions must be included in your Will; otherwise there may be complications and extra expense.

Matters to be considered carefully are such things as the availability in your estate of enough cash to pay estimated taxes and settlement costs, the possible effect on your family's future security of continuing the business, and other more technical matters that cannot be covered here.

Regardless of the circumstances, however, this problem *demands* careful deliberation, and the counsel of people whose specialized training and experience will enable them to give you dependable advice on the legal, tax, and administrative aspects. Otherwise, your family may be penalized severely and unnecessarily.

How to distribute the rest of your property—your Residuary Estate

Your residuary estate will include all of your assets not specifically earmarked for particular beneficiaries, plus any property that returns to the estate through failure or lapse of specific legacies.

You should remember, of course, that only the *net* amount of what remains *after* the payment of your debts, specific legacies, taxes, and settlement costs will actually go to those who share in the residuary estate. On the other hand, don't overlook the possibility that you may own more at your death than you do now—perhaps as the result of increased values, accumulated savings, or inheritance.

The provisions that should be included in your Will for the distribution of the so-called "rest, residue and remainder" of your estate will depend on your answers to these questions:

1. Whom do you want to benefit?

First, list the names of those of primary importance, who are to receive immediate benefits.

Then, after each of these, indicate to whom you would want his or her share to go if he or she does

not survive you, or dies before receiving distribution in full.

You can continue this process as far as you wish. If, however, there are only a few people involved, be sure to explain what you want done with the residue if none of them survive you.

2. What should each receive?

Unless there is a very good reason for doing so, don't try to allocate specific assets to certain beneficiaries, or to say what each is to receive in dollar amounts.

Rather, allot to each primary beneficiary a percentage or fractional part of the whole. This will prevent increases or decreases in the value of particular assets from disturbing the proportionate share you want each individual to receive; and subsequent changes in your estate holdings will not make it necessary to revise your Will repeatedly, for this reason alone.

3. When should each receive outright possession of his or her share?

Outright gifts are too often dissipated in a relatively short time.

The recipient's inexperience in investment and financial matters; the influence of well-meaning or designing friends and relatives; smooth-talking salesmen with promises of quick profits or tales of worthy causes—those are just a few of the dangers that constantly threaten the preservation of an inheritance.

You can protect the members of your family against such risks, and at the same time relieve them of the unfamiliar, laborious details of property management, by leaving their share in trust, to be administered for their benefit by an experienced trustee —such as this institution.

You can provide, for instance, that the income, and as much of the capital as may be needed for a beneficiary's comfortable maintenance and welfare, shall be paid to him or her, every year for life, with whatever remains then passing to others. Or you may arrange for the capital to be distributed outright, either all at once or in installments, when the beneficiary reaches a specified age or ages.

Whom to appoint as executor and trustee

Your estate will not settle itself—nor will the distribution of your property proceed automatically. You must name an executor (and perhaps a trustee) to carry out the provisions of your Will—to attend to the numerous details inherent in estate settlement—and to manage and protect your property until it is turned over to your beneficiaries.

Your choice of an executor is therefore tremendously important. On it depends in large part the *success* of your Will, and whether your estate is settled as efficiently and economically as possible.

Before making your choice, you will naturally wish to consider the whole matter carefully—and—we suggest—with these basic facts in mind:

• The executor's job means continuing, time-consuming work, which is often spread over many months.

• An executor, therefore, should be one that is always available—that does not take vacations—or move to another state—or become ill . . . or die.

• Moreover, the job may involve over 50 separate steps—many of them highly complicated, technical procedures of which the average person has never even heard.

• It calls for—*demands*—the combination of training, experience, and varied knowledge, which can be found only in the specialist, that makes estate settlement a business.

• This institution is such a specialist. Estate settlement is our business; we are always available; we do not go away —or become ill—or move to another state.

• One might expect such specialized, constantly available service to be expensive—but this is not the case.

Your estate generally will pay no more for the services provided by us than for those of a completely untrained individual who never has been an executor before, and to whom the complexities of the job are in every way unfamiliar and puzzling. And by naming this institution, you

provide your family with a friendly, unbiased financial and personal advisor, acting through experienced trust officers to whom they may turn for guidance.

What to do about life insurance

Your life insurance may be made payable in any one of the following ways:

- In a lump sum to a named beneficiary or beneficiaries.
- In installments, by the insurance company, to a designated beneficiary (or series of beneficiaries), under one of several optional modes of settlement.
- To your estate, to be disbursed in accordance with the terms of your Will.
- To a trustee, to be invested and managed for the benefit of your family or others, under an agreement of trust. This agreement would contain your instructions about the manner in which the fund is to be invested; and to whom, at what time, and under what circumstances the income and capital are to be paid to your beneficiaries.

The best method of settlement for you to use can be determined only by a thorough study of all the facts that relate to your estate and your family situation.

The amount and nature of your other estate assets; the ease with which they can be converted into cash; the ages and physical condition of your dependents; the number and total face value of your insurance policies, together with the specific guarantees contained in each; the extent to which your overall estate objectives require flexibility in the disbursement of funds to your beneficiaries—these are only some of the factors that will have a direct bearing on what you decide. As a result, you cannot develop a sound and dependable estate plan unless your insurance plan is made an integral part of it.

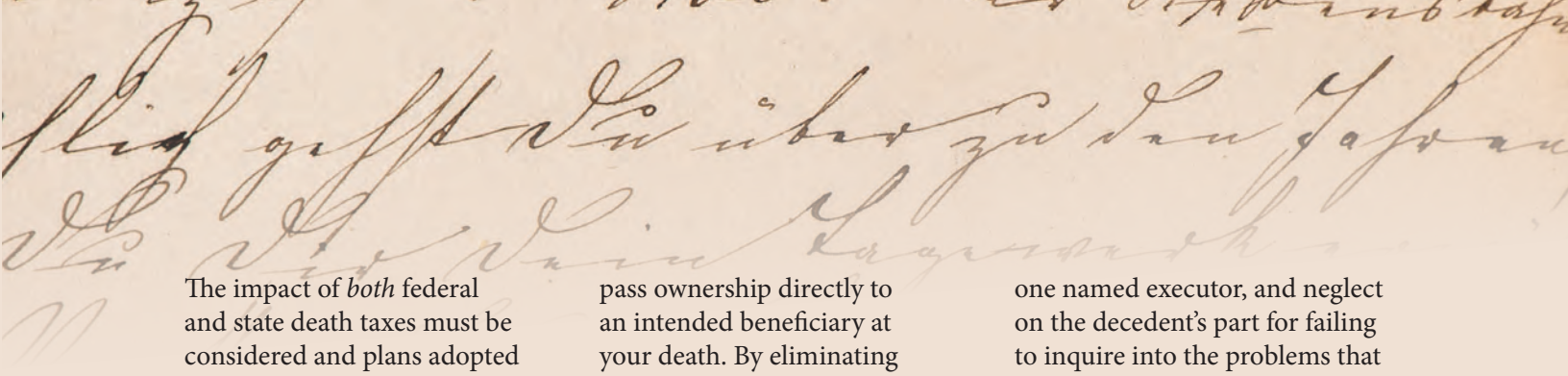
Because each should supplement the other, it is only logical to consider your insurance program and your Will at the same time.

How to reduce estate settlement shrinkage

Taxes

Most people, in considering the shrinkage that an estate suffers during settlement, are primarily concerned about federal estate taxes.

But state death taxes sometimes are overlooked because of the erroneous assumption that state death taxes will be insignificant or offset by credits under the federal law.



The impact of *both* federal and state death taxes must be considered and plans adopted that will hold the combined total to a minimum.

Probate expense

Fees charged for services rendered by an executor, attorney and other professionals employed to settle an estate often are based upon the total value of the assets subject to administration. Court costs and miscellaneous expenses similarly tend to relate to such values.

It may be possible to hold some of your assets in a form that automatically will pass ownership directly to an intended beneficiary at your death. By eliminating the necessity of probate administration, the *judicious* use of joint ownership and/or living trusts, for example, can lower the value of probate estate assets and reduce these expenses.

Such possibilities should be investigated and, if applicable, employed in your overall comprehensive estate plans.

Losses, penalties and unnecessary expenses

Excessive shrinkage may result from inexperience and neglect—inexperience on the part of the one named executor, and neglect on the decedent's part for failing to inquire into the problems that will confront his or her estate and taking the necessary steps to meet them successfully.

Failure to file required tax returns on time . . . inadequate recordkeeping . . . mingling of estate and personal assets . . . lack of liquidity, requiring the sacrifice sale of valuable assets to meet taxes . . . unwise investment choices or timing. These are but a few of the situations that may cause losses, penalties and other costs that could be avoided.

A NOTE ON FEDERAL ESTATE TAXES

The amount exempt from the federal estate tax in 2020 is $11.58 million. Married couples no longer need to employ a trust plan to secure the doubled exemption available to them of $23.16 million. By making a *portability election* at the death of the first spouse, the executor may preserve any unused exemption amount until the death of the second spouse.

A *bypass trust* may be used instead at the first spouse's death to shelter assets from future federal estate taxes, with these additional advantages:

- beneficiaries may include more than the surviving spouse;
- professional management of trust assets;
- income may be sprinkled among beneficiaries as warranted, consistent with the instructions and goals included in the trust document; and
- assets are protected from the claims of beneficiaries' creditors.

Caution: Don't get too comfortable with the large amount exempt from federal estate tax, as it is scheduled to be cut roughly in half in 2026. Some politicians have advocated accelerating that sunset date and making the exemption even smaller.

Many estate planners therefore have recommended a "use it, don't lose it" strategy to take advantage of the larger federal exemption while it is still available. See your estate planning attorney soon to learn more, if federal estate taxes might affect your family's future.

	PORTABILITY ELECTION	BYPASS TRUST
Simplicity	Easier to understand and implement	Requires attorney services to establish
Costs	Limited to costs of filing federal estate tax return	Ongoing trustee's fees for necessary services
Nonspouse beneficiaries	No	Yes
Creditor protections	No	Yes
Professional asset management	No	Yes

Preparing–and signing–your Will

None of us can foretell the future—and the unexpected happens all too often. So unless a Will covers, as nearly as possible, *all* the things that *may* happen, the result may be serious trouble for the family.

Furthermore, certain legal phrases have been used in special ways for a long time. As a result, if your Will doesn't use those accepted legal terms, the court may conclude that your intentions are obscure—and that also means trouble; it *may* mean that your property will not go to those for whom you intended it.

And, finally, every Will must conform to certain legal requirements—both as to form, and as to the manner of signing and witnessing—which vary from state to state. So the requirements your Will must meet will depend not only on the laws of the state in which you live at the time of your death, but also the laws of each state in which you own real estate. And unless they are met exactly, your Will may not prove effective—your plans and hopes for the future may not be realized.

In view of all this, it is dangerous for anyone who is not a lawyer to try to write a Will. After considering carefully your overall objectives—after discussing them, and how to achieve them, with your lawyer, your life insurance underwriter, and your trust officer . . . *have your Will drawn by your lawyer, and have your lawyer supervise its signing and witnessing.*

Where to keep your Will

Your signed Will is, of course, a valuable document which should be kept in a safe place where it will be readily available when needed. If it is kept at home, there is always a possibility that something may happen to it. It may be unintentionally destroyed, or even thrown away with other papers by mistake. Some Wills, hidden carefully from prying eyes, have been secreted so successfully that they have never been found.

Wills in which this institution is named executor or trustee may be deposited with us for safekeeping. An official receipt is issued; this indicates where the original Will is located. The Will may be withdrawn at any time, but only by the maker or on his or her written order.

An unsigned copy will be retained by your lawyer, and another may be kept, if you wish, among your personal papers; you may want it there for reference purposes.

If the original of your Will is in a safe deposit box at your bank, be sure to leave a memorandum indicating where it may be found in case of emergency.

ESTATE PLANNING CHECKLIST

- ☐ Does the estate plan include an up-to-date Will?
- ☐ Have family circumstances changed since the last Will was executed?
- ☐ Has the composition of the estate changed significantly since the last Will was executed?
- ☐ Are beneficiary designations for life insurance and retirement plans up-to-date?
- ☐ Does the Will include specific bequests of property that is no longer owned?
- ☐ Is there a health care directive?
- ☐ Does someone have a power of attorney?
- ☐ Should a living trust be considered for the owner of the estate?
- ☐ Does the estate plan take advantage of lifetime gifts?
- ☐ What steps are being taken to minimize death taxes?
- ☐ Which beneficiaries should receive their inheritance in trust?
- ☐ Who will be the trustee?
- ☐ If there are trusts, in what circumstances can the trust be invaded?
- ☐ Where will the estate planning documents be kept?

Regardless of the size of your estate, please feel free to talk to us at any time. We are as near to you as your telephone!

ESTATE INVENTORY—Personal and Family Information

Date Prepared:

ASSETS	In my name	In spouse's name	In joint names
Family home	$	$	$
Other real estate	$	$	$
Collections	$	$	$
Bank accounts and CDs	$	$	$
Investment Accounts	$	$	$
Business interest	$	$	$
Life insurance	$	$	$
Pension plan (death benefits)	$	$	$
401(k) or 403(b) plan (vested benefits)	$	$	$
Other assets	$	$	$
Total assets	$	$	$

LIABILITIES	In my name	In spouse's name	In joint names
Mortgages	$	$	$
Installment loans	$	$	$
Credit card debt	$	$	$
Bills payable	$	$	$
Other	$	$	$
Total liabilities	$	$	$
NET WORTH			
(Total assets less Total liabilities)	**$**	**$**	**$**

PERSONAL INFORMATION

Name: _____

Address: _____

City _____ State: _____ Zip: _____

Birth date: _____

FAMILY INFORMATION

Family member's name:	Birth date:	Relationship:
Family member's name:	Birth date:	Relationship:
Family member's name:	Birth date:	Relationship:
Family member's name:	Birth date:	Relationship:
Family member's name:	Birth date:	Relationship:
Family member's name:	Birth date:	Relationship: