



REVERMANN
— LAW —

Estate Planning Frequently Asked Questions

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1. Is the Will I did online just as good as one done by a lawyer?

A Will is an important legal document. Keep in mind that online forms are not specific to Minnesota and may not comply with our State's laws. Your estate plan should be molded to your specific needs, with the necessary wording and execution to ensure your wishes will be complied with after you pass away.

2. Will my assets be probated if I have Will?

A Will is instructions for probate. It does not avoid probate. The way your assets are titled determines whether you have an estate to be probated. Having a Will may reduce the cost of probate and provide more direction for your family and friends.

3. Can I just add my child's name to my property to avoid probate?

While you can avoid probate for this property interest, it is important to realize that the rights you have created in that property for your child are equal to yours. After adding the child's name, you cannot change your mind about sharing title unless the child agrees, even through your own Will or Trust. When you pass away, that child becomes the sole owner of the property and does not have any legal responsibilities to share it with anyone else, despite your wishes to the contrary. Other considerations are that your ownership rights could be compromised if your child is sued or has creditor problems.

Also, if you add your child to the title of your home, you will be disqualified from the personal residence exemption for income tax purposes.

4. Will I avoid paying estate taxes if I have a trust?

For 2015, the federal government has a \$5,430,000 limit on assets you can own before paying estate tax. This is indexed for inflation and will rise each year. Minnesota's exemption amount is \$1,400,000 in 2015, which is set to increase to \$2,000,000 by 2018.

A simple revocable trust (sometimes called a living trust) does not provide any tax advantages that are otherwise available to a person using a Will or similar estate planning tool. However, there are more complex trusts that can provide for estate tax reduction planning.

5. How much can I gift to someone without tax consequences?

You may gift \$14,000 per person per year without any tax consequences, no matter how large your estate. As a married couple, you can give \$28,000 to any one person per year. For example, if you and your spouse have three children, you may give a total of \$84,000 free of gift and estate tax. The amount of these gifts will not be included in your gross estate at your death.

You have the ability to make total gifts of \$5,430,000 during your lifetime. Therefore, if you have a gross estate below that amount you need not worry about the amount you give to anyone in a particular year. For instance, in this case, you could give \$100,000 to one person in one year and still not have any gift or estate tax consequences. Your only requirement would be to file a gift tax return by April 15th of the year following the gift.

6. Will my children have to pay inheritance tax or income tax on their inheritance?

There is no federal or Minnesota inheritance tax. Instead, there is an estate tax, which if your estate is more than the allowed exemption (see #4 above), the estate will pay taxes on the amount exceeding that exemption. Your children do not pay the tax personally.

However, there may be income tax consequences for your children. If they receive an asset that has never been taxed (e.g. a retirement account with pre-tax contributions such as an IRA), they must pay income taxes on the untaxed amount. Also, if they receive an asset and later sell it for a price in excess of what it was worth on the date of your death, they may have capital gains tax consequences, which they must report on their individual income tax returns. Inheritances such as term life insurance proceeds will generally not have income tax consequences.

7. Who gets my property if I do not have a Will or if I do not have a spouse or children?

Contrary to what some people have been told, your property will not go to the State. The law essentially has a "Will" drawn for you, which outlines who gets your probate property should you die without a Will. A probate will be started and your "heirs" (the people that will inherit) are determined. Often times, however, this is not what people would have wanted. That is why it is important to do your own Will to direct to whom you want your assets to go. Also, a Will can include a trust to hold and manage your assets for the benefit of your minor or young adult children.

8. Can I disinherit my children or spouse?

You may disinherit a child. Your estate planning document must specifically state your intention to do so. Also, if the child is a minor, the law provides an allowance to support the child until he or she is an adult.

You can only disinherit your spouse if you and your spouse have waived the right to inherit from each other. This can be done with documents like a prenuptial agreement or a postnuptial agreement. Without this waiver of rights, a surviving spouse has certain rights to the deceased spouse's property and the surviving spouse can "elect against" the Will and collect his or her legal share of the deceased spouse's estate.

9. Do I need a financial Power of Attorney?

Yes. This is a relatively simple document that gives someone else authority to make your financial decisions for you if you become incapacitated for any reason. The person you name, called the attorney-in-fact, acts in your best interests to perform transactions for you such as paying bills, selling your real estate if it is necessary, etc. when you are no longer able to do them on your own. If you become incapacitated and do not have a Power of Attorney, your loved ones may need to go through a Court process to obtain a conservatorship over you.

10. Since I've already done a Will, am I finished with my estate planning?

After completing your Will, you will need to be sure your beneficiary designations on your life insurance policies, annuities, retirement accounts, and other bank accounts reflect your wishes. These designations trump what you have in your Will, so you will likely want them to be the same, depending on your overall plan.

Too often children are left not knowing what their deceased parents owned, or much less what they had for an estate plan. It is important to keep your important records organized, in a safe place, where they can be easily found by your survivors. While it is not necessary to discuss the details of your plan, we encourage you to have a discussion with your loved ones about where they can locate the necessary information when the time comes. This is never an easy discussion, however, it may relieve added stress during a difficult time.

You should review your estate plan regularly, in particular if any major events have occurred (a death of a spouse, child or nominated personal representative, a potential sale of a business, etc.). You may find that you need a change to your Will (a Codicil) or your Trust (an Amendment) to account for the change in circumstances.