

# The Wealth Advisor

*A monthly newsletter for our valued clients*

## Why "I Love You" Wills Really Don't Say "I Love You"

As Valentine's Day brings heart-shaped chocolate boxes and roses by the dozen into your imagination, seize the moment to learn about the drawbacks of "I love you" wills and introduce yourself to the estate planning move that's actually going to ensure you do well by your loved ones: a lifetime beneficiary trust.

### Rise above the misconceptions

No aspect of estate planning brings out as much emotional decision-making as the division of assets. Many people think, "I love you," so I'll leave you everything. In order to understand why "I love you" wills are, contrary to their name, not the most caring of estate planning gestures, it's important to understand the risks of "I love you" wills.

Simply put, an "I love you" will is a common name for a will in which the maker leaves all of his or her assets outright to his or her surviving spouse. Many people consider or even use this approach because they think that leaving assets in trust shows they don't trust their spouse. They may also think that a lack of federal estate taxes protects their assets from getting into the wrong hands. Sadly, many people also think that a will can be used to avoid probate. Unfortunately, none of these things are true.

### Understand why "I love you" wills aren't effective

Say you want to make sure your spouse, Lisa, gets access to your wealth upon your death. In the case of an "I love you" will, Lisa will have to go to the probate court in order to validate your will and ultimately transfer the assets. Since Lisa receives the assets outright, Lisa's estate plan will eventually control the distribution of whatever assets are left at her death. This could be a significant problem because Lisa could alter her estate

From [Robert Smith](#)

**Chartwell Capital Advisors and Robert C. Smith, PLC**

The Branch House  
2501 Monument Avenue  
Richmond Virginia 23220  
804-357-5977



More than just a law firm. We provide legal and financial services to businesses and wealthy individuals. We are problem solvers and opportunity seekers. We deliver and manage a wide variety of professional services for our clients. Once we identify your needs, we offer state of the art financial products to allow our clients to build and retain wealth and reduce risks. We either provide or broker/manage: legal, accounting, financial and real estate advisory services through our "best in the industry" model that allows our clients to receive outstanding professional services at competitive and fair prices.

plan at any time. Any verbal agreements about what will be done with those assets could go out the window, contrary to your wishes or any agreements you may have made.

- You could inadvertently disinherit your children. If you use an “I love you” will, your assets are now Lisa’s assets for her to leave however she wants. For example, Lisa could leave her assets to her own kids, a charity, a lover, or a new husband. Likewise, assets left outright to children could be lost in a divorce.
- Basic planning with outright inheritance sets your heirs up for asset protection issues. Once your assets are owned outright by your beneficiaries through a direct inheritance, those assets can be seized by creditors, divorcing spouses, or lost in bankruptcy. Even if your estate is below the exemption for the death tax, predatory creditors and lawsuits could still spell trouble.
- These wills still have to go through probate. Surviving spouses do not receive an exemption from probate. Even a simple will still has to go through the process, which you may not be anticipating — especially if you had hoped to keep the details of the will private. Trusts, however, don’t need to go through probate.
- An “I love you will” does not protect against guardianship or conservatorship court involvement for you or for your beneficiaries. For example, if you leave all of your assets to Lisa and she develops dementia, her entire estate (her assets plus the inheritance she received from you) could be under the control of a guardianship or conservatorship court.
- Basic plans pile more assets into survivors’ estates. Although portability between spouses can help, it still doesn’t prove useful with the generation-skipping transfer tax (GSTT). Portability isn’t available for non-spouse beneficiaries. This will only affect a very narrow group of people with very high net worth, and we don’t know yet what will happen with tax policy under the new Trump presidency. In a changing tax policy landscape, keeping yourself as informed as possible is an important tactic for ongoing success.

### **Explore lifetime beneficiary directed trusts**

Comprehensive, trust-based estate planning with lifetime beneficiary trusts is a better option than outright inheritance for surviving spouses, children, grandchildren, or other beneficiaries. If you leave your assets in lifetime beneficiary trusts, you retain control over where assets end up in the long run. Plus, your beneficiaries obtain robust asset protection features that can keep wealth safe from courts, creditors, and divorcing spouses. Your family’s private information can stay out of public record. You can also take advantage of more sophisticated tax planning than you can with a basic will or trust with outright distributions.

With this approach, you can focus enjoying your life with the knowledge that a qualified estate planning attorney is working for your best interests now as well as down the road. Now that’s something to love and truly expresses “I love you” to your beneficiaries.

*This newsletter is for informational purposes only and is not intended to be construed as written advice about a Federal tax matter. Readers should consult with their own professional advisors to evaluate or pursue tax, accounting, financial, or legal planning strategies.*

You have received this newsletter because I believe you will find its content valuable. Please feel free to [Contact Me](#) if you have any questions

about this or any matters relating to estate planning.

Chartwell Capital Advisors and Robert C. Smith, PLC The Branch House 2501 Monument Avenue Richmond Virginia 23220