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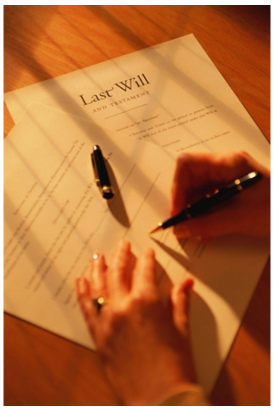
# Leaving a Legacy




***Benefits of a will:***

- *Distributes property according to your wishes*
- *Names an executor to settle your estate*
- *Names a guardian for minor children*
- *Can create a trust*


You've worked hard over the years to accumulate wealth, and you probably find it comforting to know that after your death the assets you leave behind will continue to be a source of support for your family, friends, and the causes that are important to you. But to ensure that your legacy reaches your heirs as you intend, you must make the proper arrangements now. There are four basic ways to leave a legacy: (1) by will, (2) by trust, (3) by beneficiary designation, and (4) by joint ownership arrangements.

## Wills

A will is the cornerstone of any estate plan. You should have a will no matter how much your estate is worth, and even if you've implemented other estate planning strategies.

You can leave property by will in two ways: making specific bequests and making general bequests. A specific bequest directs a particular piece of property to a particular person ("I leave Aunt Martha's diamond broach to my niece, Jen"). A general bequest is typically a percentage of property or property that is left over after all specific bequests have been made. Typically, principal heirs receive general bequests ("I leave all the rest of my property to my wife, Jane").

With a will, you can generally leave any type of property to whomever you wish, with some exceptions, including:

- Property will pass according to a beneficiary designation even if you name a different beneficiary for the same property in your will
- Property owned jointly with rights of survivorship passes directly to the joint owner
- Property in a trust passes according to the terms of the trust
- Your surviving spouse has a right to a statutory share (e.g., 50%) of your property, regardless of what you leave him or her in your will
- Children may have inheritance rights in certain states

***Caution:*** *Leaving property outright to minor children is problematic. You should name a custodian or property guardian, or use a trust.*

## Trusts

You can also leave property to your heirs using a trust. Trust property passes directly to the trust beneficiaries according to the trust terms. There are two basic types of trusts: (1) living or revocable, and (2) irrevocable.

Living trusts are very flexible because you can change the terms of the trust (e.g., rename beneficiaries) and the property in the trust at any time. You can even change your mind by taking your property back and ending the trust.

An irrevocable trust, on the other hand, can't be changed or ended except by its terms, but can be useful if you want to minimize estate taxes or protect your property from potential creditors.

You create a trust by executing a document called a trust agreement (you should have an attorney draft any type of trust to be sure it accomplishes what you want).

A trust can't distribute property it does not own, so you must also transfer ownership of your property to the name of the trust. Property without ownership documentation (e.g., jewelry, tools, furniture) are transferred to a trust by listing the items on a trust schedule. Property with ownership documents must be re-titled or re-registered.

You must also name a trustee to administer the trust and manage the trust property. With a living trust, you can name yourself trustee, but you'll need to name a successor trustee who'll transfer the property to your heirs after your death.

***Tip:*** *A living trust is also a good way to protect your property in case you become incapacitated.*


***While property that passes by will is subject to probate, property that passes by a trust, beneficiary designation, or joint ownership arrangement bypasses probate.***

## Beneficiary designations

Property that is contractual in nature, such as life insurance, annuities, and retirement accounts, passes to heirs by beneficiary designation. Typically, all you have to do is fill out a form and sign it. Beneficiaries can be persons or entities, such as a charity or a trust, and you can name multiple beneficiaries to share the proceeds. You should name primary and contingent beneficiaries.

***Caution:*** *You shouldn't name minor children as beneficiaries. You can, however, name a guardian to receive the proceeds for the benefit of the minor child.*

You should consider the income and estate tax ramifications for your heirs and your estate when naming a beneficiary. For example, proceeds your beneficiaries receive from life insurance are generally not subject to income tax, while your beneficiaries will have to pay income tax on proceeds received from tax-deferred retirement plans (e.g., traditional IRAs). Check with your financial planning professional to determine whether your beneficiary designations will have the desired results.

Be sure to re-evaluate your beneficiary designations when your circumstances change (e.g., marriage, divorce, death of beneficiary). You can't change the beneficiary with your will or a trust. You must fill out and sign a new beneficiary designation form.

***Caution:*** *Some beneficiaries can't be changed. For example, a divorce decree may stipulate that an ex-spouse will receive the proceeds.*

***Tip:*** *Certain bank accounts and investments also allow you to name someone to receive the asset at your death.*

## Joint ownership arrangements

Two (or more) persons can own property equally, and at the death of one, the other becomes the sole owner. This type of ownership is called joint tenancy with rights of survivorship (JTWRS). A JTWRS arrangement between spouses is known as tenancy by the entirety in certain states, and a handful of states have a form of joint ownership known as community property.

***Caution:*** *There is another type of joint ownership called tenancy in common where there is no right of survivorship. Property held as tenancy in common will not pass to a joint owner automatically, although you can leave your interest in the property to your heirs in your will.*

You may find joint ownership arrangements are useful and convenient with some types of property, but may not be desirable with all of your property. For example, having a joint checking account ensures that, upon your death, an heir will have immediate access to needed cash. And owning an out-of state residence jointly (e.g., a vacation home) can avoid an ancillary probate process in that state. But it may not be practical to own property jointly where frequent transactions are involved (e.g., your investment portfolio or business assets) because you may need the joint owner's approval and signature for each transaction.

There are some other disadvantages to joint ownership arrangements, including: (1) your co-owner has immediate access to your property, (2) naming someone who is not your spouse as co-owner may trigger gift tax consequences, and (3) if the co-owner has debt problems, creditors may go after the co-owner's share.

***Caution:*** *Unlike with most other types of property, a co-owner of your checking or savings account can withdraw the entire balance without your knowledge or consent.*