Money Mechanics

Estate Planning

ESTATE PLANNING MEANS *developing a plan to transfer your property—your estate—after your death. This publication can help you get started. As you develop an estate plan, talk with family members and get competent legal advice. As your situation changes, review and revise your plan.*

Why Have an Estate Plan?

State law specifies how your property will be distributed if you don't have a will. If the state laws don't meet your personal objectives, you may want to develop your own plan. Your personal estate plan may include forms of property ownership, beneficiary designations on assets such as life insurance and retirement accounts, and a will—a document, in writing, that designates your wishes regarding the disposition of property after death.

Because there are many ways to transfer property, first determine your objectives. Identify what the property is to be used for and for whose benefit.

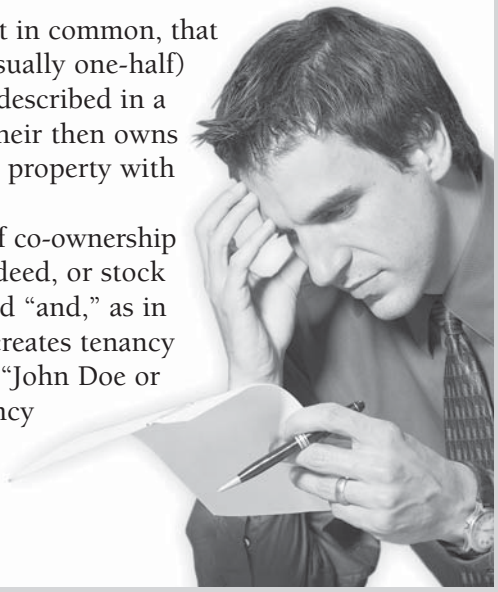
Property Ownership

The method of ownership may dictate how property is transferred upon your death. In most young families, property is owned either solely by one individual or co-owned by two or more people. The method of co-ownership may determine who eventually owns the property. Two widely used types of co-ownership are tenancy in common and joint tenancy.

Tenancy in common

Upon the death of one tenant in common, that person's property interest (usually one-half) passes to his or her heirs as described in a will or under state law. The heir then owns the undivided interest in the property with the living co-owner.

To determine the type of co-ownership involved, examine the title, deed, or stock certificate. Typically, the word "and," as in "John Doe and Mary Doe," creates tenancy in common. For most cases, "John Doe or Mary Doe" also creates tenancy in common.



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Joint tenancy

With joint tenancy, two or more people own property together, but each has an undivided interest in the property. The major difference occurs when one owner dies. The surviving owner takes all. An ordinary will does not affect the disposition of property in joint tenancy at the death of the first joint tenant.

In Iowa, the creation of joint tenancy requires specific language. The words typically creating joint tenancy for land are "John Doe and Mary Doe as joint tenants with right of survivorship and not as tenants in common." Bank accounts may read "John Doe and Mary Doe or the survivor of them." Joint tenancy gives the surviving owner immediate access to the property. For example, with a bank account in joint tenancy, the survivor can continue to use the account after the death of one owner.

Most young families are unlikely to owe either federal estate tax or Iowa inheritance tax. Estates above approximately $2 million in 2007 encounter federal estate tax liability at the death of a single person or surviving spouse. At the death of the first spouse, the federal estate tax consequences depend upon the size of the "marital deduction" claimed. The marital deduction can be as much as 100 percent of the property passing to a surviving spouse.

For Iowa inheritance tax purposes, husband-wife joint tenancies are not subject to tax at the first death. Iowa inheritance tax is not imposed on any share of an estate that passes to a lineal ascendant (e.g., parent, grandparent), lineal descendant (e.g., child, grandchild), stepchild, or spouse.

In some instances with a small estate, use of joint tenancy allows for simpler and shorter probate of an estate. Joint tenancy generally is less advisable as estates increase in size, because of possible additional death taxes and costs as compared to tenancy in common.

Designating a Beneficiary

If you own assets such as savings accounts, life insurance, retirement plans, and mutual funds, you can name one or more beneficiaries so that the proceeds go directly to the beneficiaries outside the provisions of a will. If a beneficiary or contingent beneficiary (designated to receive the proceeds in case the beneficiary has died) has not been named for a particular asset, that property will go to your estate and will be distributed according to a will or state law if there is no will.

A will is a powerful estate planning tool.

Making a Will

Your estate plan may involve making a will. To make a will, you must be of full age and sound mind. Full age means that you must be either 18 or have been married. Making a will is a privilege that allows you to dispose of your property as you wish after death.

In Iowa, wills must be in writing and signed by the testator (the person making the will). The signature must be witnessed by at least two disinterested parties. Witnesses are there to ensure that the person making the will appears to be of sound mind and isn't being forced

Where Should You Keep Your Will?

Generally, only one copy of your will is executed (signed). Unsigned copies may be kept for reference. The signed copy of your will should be stored in a secure place. Your attorney may provide a storage service. The clerk of the district court in your county provides free storage of wills.

You may choose to keep your will in a safe deposit box. If the will is stored there, usually the attorney for the estate and a family member can obtain it from the bank. Other items cannot be removed until the box has been inventoried.

to make the will. A will can be changed with a written amending document—called a codicil—which also must be signed and then witnessed by two disinterested parties.

Can you disinherit family members?
Generally, a spouse cannot be disinherited unless he or she is willing to abide by the share of property left under the will or the couple has written an "antenuptual agreement" that limits the right of the surviving spouse to inherit. A spouse can "elect to take against" the will, which entitles the spouse to receive, in general, one-third of the real property and one-third of the personal property after debts are paid. The remainder of the property would be distributed as nearly as possible in the manner specified in the will.

Children can be disinherited rather easily by not mentioning them in the will. However, children born after a will is made are eligible to take a share of the estate as if there had never been a will. If you wish to disinherit these children, you must state this in the will.

What other purposes are served by a will?
A will allows you to designate the executor of your estate—the person to manage it. A will also enables you to nominate a guardian for minor children. The court makes the appointment, but in most cases will follow your wishes. A person nominated as guardian may decline to serve, so check with those you nominate before their names appear in the will.

If you die without a will, state law determines how your property will be distributed.

Dying without a Will

When a person dies with a will, it is said the person died testate. When a person dies without a will, the person died intestate. The following examples illustrate the rules for distribution of property according to Iowa law.

No spouse, no children
If you die leaving no will, no surviving spouse, and no children, but with a surviving mother and father, your parents share the estate equally. If one parent died earlier, then the surviving parent receives the entire estate.

A will enables you to nominate a guardian for your minor children.

If both parents died before you, the parents are resurrected, theoretically, and the estate goes through their hands to their descendants, who would be your brothers and sisters. If you were an only child, or there are no survivors, the property goes back up the family tree—splitting the estate between your mother's parents and your father's parents.

If no heirs are found, the property returns to the state of Iowa.

Married, no children

If you are married, leaving a surviving mother and father and also a spouse, but no children, your surviving spouse receives all of your property. Your spouse also receives any life insurance proceeds where he or she is named beneficiary and any joint tenancy property if he or she is the surviving joint tenant.

Where there are children

If you die without a will, leaving a spouse and children who are all the biological or adopted children of your surviving spouse, your spouse receives all of your property.

If some of the children are step-children of your spouse, he or she receives part of the estate with a fixed minimum amount. If the estate is $50,000 or less, your spouse would receive all the property. If the estate exceeds $50,000, your spouse would get a portion and the children the rest.

Disadvantages

One of the disadvantages of dying without a will is that your property may not be distributed as you would have wanted. But unless your desires are reflected in a will or in some other legal way, the rules apply.

Another disadvantage of death intestate occurs if children are minors. This may require that a conservator be appointed to look after their interests. This may be inconvenient and expensive.

An administrator—the one who manages the estate if there is no will—usually is required to post a bond to ensure that the interests of the heirs are protected while the estate is being settled. This expense can be saved if a person makes a will and asks the court not to require the estate representative—an executor, in the case of a will—to post a bond.

The extension publication *Estate Planning,* PM 993, discusses estate planning in more detail and covers more topics such as probate and federal estate taxes. It's available from the ISU Extension Distribution Center Online Store, www.extension.iastate.edu/store/.

For more information, visit **www.extension.iastate.edu/finances** *or* **www.extension.org/personal+finance** *or the Iowa State University Extension office in your county.*

Prepared by Cynthia Needles Fletcher, *professor and extension specialist, Department of Human Development and Family Studies;* Neil E. Harl, *Charles F. Curtiss Distinguished Professor in Agriculture and emeritus professor of economics, Iowa State University, member of the Iowa Bar;* and Laura Sternweis, *extension communication specialist.* **Designed by** Mary K. Sailer, *Spring Valley Studio.*

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