
The Need for Estate Planning

At a person's demise there are certain typical problems which, if not planned for, create a burden on those who are left behind.

Proper estate planning can eliminate or reduce these problems.

Financial Burdens

- **Estate settlement costs are too high:** These costs consist primarily of probate fees and death taxes.
 - **Probate fees:** These are generally paid to the executor of the estate and the attorney who assists with the probate.
 - **Death taxes:** Estates that exceed certain amounts may be subject to both state and federal death taxes.
- **Estate assets are improperly arranged:**
 - **Liquidity:** There are not enough liquid (cash type) assets to pay estate settlement costs.
 - **Cash flow:** There is not enough income to care for loved ones left behind, e.g., spouse and minor children.

Transfer of Assets

- Estate assets may be subject to probate delays and expense.
- Assets transferred to minors may be in cumbersome guardianship accounts until they attain age 18 (or 21 in some states) and are then distributed outright to the children. A court supervised guardianship may be required.
- Additional death taxes may be paid because there was no pre-death planning.
- Without planning, estate assets may not pass to the intended heirs.

Care of Minors

- **Guardians:** Parents can nominate a guardian for their minor children in a will.
- **Asset management:** If the wrong persons are chosen to manage the assets left for the minors, the assets may be lost or unnecessarily reduced.

Key Estate Planning Considerations

Although Congressional action has effectively eliminated federal estate and gift taxes for all but the wealthiest Americans, there is still a vital need to do estate planning.

Why? There are several key reasons: (1) to be sure that all of your wishes are followed after death; (2) to plan for *state* inheritance or estate taxes, if you live (or own property) in a state which levies such a tax; and (3) to plan in advance how to pay for any estate settlement costs. Federal estate tax law may have changed, but estate planning *still* matters.

Transfer of Assets

A primary objective is to insure that your assets go to those you want to receive them.

Method	Description
Will	Considered a key element in any estate plan, a will is a legal document, prepared under state law, which names those who should receive your property. An “executor” is generally named in the will to carry out your wishes. After death, “probate” will be required, a process in which the property listed in the will is distributed to the named heirs under court supervision. Unfortunately, the probate process is frequently expensive and time-consuming, and generally makes the contents of a will a public record. If you die without a will (termed “intestate”), your property will be distributed according to state law, which may result in your assets being distributed in a manner <i>not</i> in accordance with your wishes.
Revocable Trust	Also known as a “living” trust, a revocable trust can be changed or revoked during the lifetime of the trust creator (the “grantor,” “settlor,” or “trustor”). Such a trust is often used as a will substitute, when the grantor transfers assets into the trust during life or at death through a “pour-over” will. A revocable trust can make settling a decedent’s estate easier and less expensive than probating a will and can also provide privacy not available in probate.
Irrevocable Trust	An irrevocable trust – as the name implies – cannot be changed once it is set up. These trusts are often used in estate planning for wealthy individuals. An irrevocable trust which holds life insurance can provide the funds needed to pay death taxes and other estate settlement expenses, while keeping the life insurance proceeds outside of the taxable estate.

Key Estate Planning Considerations

Method	Description
Joint Tenancy	Assets held in joint tenancy pass automatically at the time of death to the surviving joint owner, if living. In community property states, community property with right of survivorship has the same result. How ownership of an asset is “titled” can be important.
Beneficiary Designations	Some assets, such as life insurance policies, qualified retirement plans, and IRAs allow the owner to name a “beneficiary.” At death, the policy death benefit or title to the asset automatically passes to the named beneficiary or beneficiaries. In some states, “Transfer-on-Death,” (TOD) and “Pay-on-Death” (POD) allow certain types of property to automatically pass to named beneficiaries upon the death of the owner. Proper beneficiary designations are essential to make sure the assets pass according to your wishes.

Planning for Estate Transfer Costs

If proper prior planning is not done, estate and inheritance taxes, legal fees, and other estate settlement expenses can significantly reduce the legacy passing to your intended heirs.

Planning for estate settlement costs: Making maximum use of non-probate transfer methods such as revocable trusts, joint tenancy, community property with right of survivorship, or named beneficiaries, can help limit estate settlement costs and avoid the delay and publicity of probate.

Planning for estate taxes:¹ If the dollar value of an estate is large enough to be subject to estate and/or inheritance taxes, these taxes can add appreciably to transfer costs. In 2025, an estate with a net value of \$13,990,000² or less is exempt from federal estate tax. This federal estate tax threshold is also known as the “applicable exclusion amount.” However, most states with an estate or inheritance tax have estate tax thresholds which are considerably lower. Thus, an estate which has no federal estate tax liability could easily be subject to state death taxes.

Under federal estate tax law there are a number of ways to shrink the taxable estate:

- **Lifetime gifts:** each individual has an annual gift tax exclusion, currently \$19,000² per person per year, generally allowing for tax-free gifts to others.

¹ The discussion here primarily concerns federal law; state or local law may differ.

² These values apply to 2025 and are subject to adjustment for inflation in future years.

Key Estate Planning Considerations

- **Marital deduction:** spouses who are both U.S. citizens can gift any amount to each other, generally with no estate or gift tax consequences. The survivor's now larger estate could face a greater estate tax problem when he or she later dies.
- **Charitable giving:** gifts to charities, during life or at death, reduce the estate size.
- **Bypass trust:** A type of trust known as a "bypass" trust allows the first-to-die of a married couple to set aside a portion of his or her assets. In years before 2011, such trusts were used in an effort not to "waste" the first-to-die's applicable exclusion amount. With the applicable exclusion amount currently set at a very high level, plus the introduction in 2011 of the "Deceased Spousal Unused Exclusion" (see below), for *federal estate tax* purposes at least, the bypass trust is less useful than before. When planning for *state death taxes*, however, often with much lower taxability thresholds, the bypass trust remains a useful estate planning tool.¹
- **Deceased spouse unused exclusion (DSUE):** Beginning in 2011, a change in federal estate tax law provided that any portion of the applicable exclusion amount that remained unused at the death of a spouse could be held over and made available for use by the surviving spouse, in addition to the surviving spouse's own applicable exclusion amount. This "portability" opened up new planning opportunities that did not exist under prior law.

Paying estate settlement costs: While careful planning can help reduce estate settlement expenses, the planning process also needs to consider how to pay for the costs that do remain. There may be a need for funds to sustain the family until the estate is settled, to pay off debt or otherwise provide for the surviving spouse or children. An estate will often need to sell assets to raise the needed cash. While some assets are relatively liquid, others may take months or even years to be sold. Working with your investment advisor, you may need to rearrange some of your assets to provide increased liquidity to your estate. If there are currently not enough liquid assets in the estate, consider life insurance as a way to provide the needed funds.

Caring for Survivors

Your survivors – a spouse, minor children, or a disabled child of any age – must also be considered in the estate plan.

¹ There may also be other, *non-tax* reasons, for including a bypass trust in an estate plan.

Key Estate Planning Considerations

A guardian for dependents: In case both parents are deceased, a guardian (and one or more alternates) should be named to care for minor children or other dependents.

Asset management: Professional asset management may be necessary to insure that financial resources are not squandered.

Who Makes Medical Decisions When I Cannot?

Modern medicine can now keep someone “alive” in situations that formerly would have resulted in death. Those who do not wish to have their lives artificially prolonged by such techniques must plan ahead and put their wishes in writing:

“Living Will”: Also known as a “Directive to Physicians”, this document provides guidance as to the type of medical treatment to be provided or withheld and the general circumstances under which the directive applies.

Durable power of attorney for health care: Many states have laws allowing a person to appoint someone to make health care decisions for them if they become unable to do so for themselves.

Durable power of attorney for financial affairs: Allows another individual to act on your behalf with regard to financial matters in the event of your incapacity.

Outside the Legal Framework

Most of the documents involved in an estate plan are legal in nature and should be prepared by an attorney. However, not all documents involved in an estate plan are legal ones:

Letter of Instructions: A “Letter of Instructions” is an informal document that can include information such as your wishes regarding disposition of your remains, contact information for key advisors and family members, the location of important documents, the description and location of assets, user names and passwords for online accounts, or notes on family history. It is used to provide, in a private manner, direction and guidance to your family or executor in settling your estate.

Ethical Will: While a legal will or a trust is used to distribute assets, an “Ethical Will” serves to transfer values and beliefs. It is a very personal expression of the writer’s life and values as

Key Estate Planning Considerations

well as the people, events, and experiences that influenced that life. In a very real sense, an ethical will is a spiritual legacy to future generations.

Seek Professional Guidance

Although an estate plan can be as simple as a set of hand-written instructions, there are a number of situations where legal guidance is considered vital:

To create a will or trust: An experienced attorney, familiar with local law, can prepare the legal documents required to meet the needs of your individual situation.

Estate taxes: If your estate is large enough to be subject to estate tax, your attorney can suggest ways to lighten the tax burden.

Squabbling heirs: Planning may be needed to minimize potential conflicts between your heirs or beneficiaries. Such disputes can occur when siblings don't get along or there are children from more than one marriage.

Property elsewhere: If you own property in more than one state or country, there may be a need for an ancillary probate. Living trusts are often used to transfer these assets and avoid the additional probate.

In addition to your attorney, your estate planning "team" will likely include experts from other disciplines such as income tax, life insurance, trust administration, charitable giving, and investment management. The professional guidance provided by such advisors is a key part of creating and implementing a successful estate plan.

Periodic Review

Because tax law and personal lives are never static, don't just put your estate plan in a drawer and forget about it. Many financial professionals recommend a periodic estate plan review.

The Importance of Beneficiary Designations

Some types of assets allow the owner of the asset to name a “beneficiary.” If the original owner later dies, ownership of the asset passes automatically to the named beneficiary. Because beneficiary designations are easy to use, they can be a key estate planning tool. However, significant negative tax, financial, and even personal problems can arise if the “wrong” individual or entity is named as the beneficiary.

Common Named Beneficiaries

A number of individuals, entities, or organizations are commonly named as a designated beneficiary:

- **Spouse:** A married individual’s spouse is perhaps the most common beneficiary designation. Assets passing to a surviving spouse generally escape federal estate tax because of the unlimited marital deduction.¹
- **Children:** Children, as adults or minors,² are often named as beneficiaries. Step-children or other children adopted informally generally need to be specifically identified.
- **Other family members:** Brothers and sisters, aunts and uncles, and nieces and nephews are frequently encountered beneficiaries.
- **Estate:** In some situations, the asset owner will name his or her estate as the beneficiary.
- **Trust:** As a part of a more complex estate plan, a trust may be named as a beneficiary. The trust must exist at the time of death for the beneficiary designation to be valid.
- **Charity:** A charity may be a designated beneficiary, which can reduce the owner’s taxable estate.
- **Corporation or partnership:** Buy-sell agreements, key man insurance, stock redemption, split-dollar arrangements, and salary continuation plans are all valid business reasons why a corporation or partnership may be named as a beneficiary.

¹ The discussion here concerns federal income and estate tax law. Under federal law, if the surviving spouse is not a U.S. citizen, special rules apply. State or local law may vary.

² In most states, 18 is the age of “majority” when an individual is considered, for legal purposes, to be an “adult.”

The Importance of Beneficiary Designations

General Considerations in Making Beneficiary Designations

There are a number of general issues to consider when using beneficiary designations:

- **Keep beneficiary designations current:** Divorce, the birth of a child, the death of a beneficiary, or any number of other life changes can result in the need to update a beneficiary designation. Lack of planning can result in an ex-spouse receiving retirement benefits intended to provide for others or for assets to inadvertently be paid to the estate when a named beneficiary has predeceased the owner.
- **Your estate or executor as the beneficiary:** In these situations, the transferred assets must generally go through a costly and time-consuming court-supervised process known as “probate.” During probate the proceeds can be subject to the claims of creditors. In some situations there may be valid estate planning reasons for naming the estate as a beneficiary.
- **A minor as beneficiary:** In most states, a minor generally cannot legally enter into contracts or own property. If a minor is named as the beneficiary of an asset, the end result is frequently an expensive court-appointed guardianship with court supervision of the use of these funds. Once reaching his or her majority, the individual then takes control of the assets.
- **Per Capita vs. Per Stirpes:** A beneficiary designation form will generally use one of these two terms to specify how an asset will be distributed if a named beneficiary predeceases the asset owner. In a “Per Capita” distribution, generally, each survivor (a living beneficiary or a deceased beneficiary’s heirs) receives an equal share. In a “Per Stirpes” distribution, generally, a deceased beneficiary’s heirs divide his or her share into equal portions. Many states have modified these rules.
- **Spousal rights:** In some states, a surviving spouse may have the right to claim a portion of a decedent’s estate, including part of assets that can be transferred by a beneficiary designation. In Community Property¹ states, a surviving spouse may have rights that need to be considered.

¹ The Community Property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. In Alaska, spouses may opt-in to a community property arrangement.

The Importance of Beneficiary Designations

- **Common disaster:** What provision has been made for a situation in which both the asset owner and a designated beneficiary (think of spouses who travel together) die in a common disaster? This contingency is frequently addressed in an individual's will.
- **Impact on the beneficiary:** Consider how receiving an asset will impact the beneficiary's life:
 - Is the beneficiary capable of using the inheritance as the donor might wish, or will it be wasted? Is the beneficiary capable of managing the inheritance?
 - Are there income tax considerations? Assets such as deferred annuities, or retirement plans such as IRAs or 401(k) plans, have varying distribution requirements, depending on who inherits the assets. Will one beneficiary pay less income tax than another?
 - Does the intended beneficiary need the money?
 - Are there other ways, such as via a will or trust, to transfer assets to the intended beneficiary that might ultimately benefit the beneficiary more than an outright gift?
- **Conflict with other estate planning documents:** In some cases, an individual will leave contradictory instructions with regard to how his or her assets should be distributed. For example, a will may indicate that an individual's retirement plan assets are to pass to a child, while the beneficiary designation form for the retirement plan shows that the ex-wife is to receive the funds. As a general rule, the instructions contained in the beneficiary designation form will take precedence over those contained in a will or trust.

Seek Professional Guidance

While beneficiary designations are easy to use, they should be considered to be only one part of an overall, coordinated estate plan. The guidance of experienced, trained estate, income tax, and other financial professionals is strongly recommended.

Per Capita vs. Per Stirpes

Per Capita, Latin for “by the head” and *Per Stirpes*, Latin for “by the root” are terms used in estate planning to describe how an individual’s assets are to be distributed at death. They are often encountered when an individual names an alternate beneficiary to receive assets such as life insurance death benefits or the funds in IRAs or other retirement plans. Such planning is needed as a primary beneficiary may predecease the estate owner.

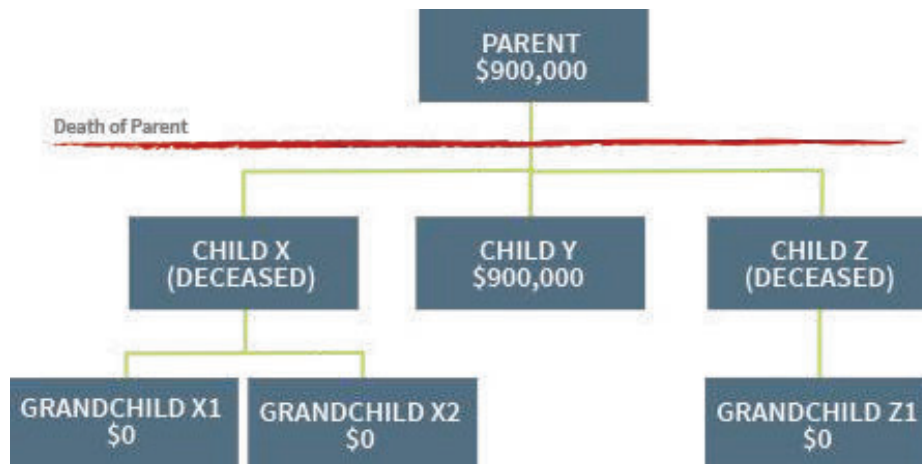
They are also found in cases where someone dies without a will. A person who dies without a will is said to have died “intestate”; each state has laws to deal with such situations.

It’s important to understand that the meaning of these terms can vary from state to state. The examples which follow are designed to illustrate how Per Capita and Per Stirpes are generally understood to operate. Individual state law, however, may lead to a different result, even if the same term is used. The guidance of a knowledgeable estate planning attorney, familiar with local law, is highly recommended.

In these examples, assume that a Parent has three children, Child X, Child Y, and Child Z. There are three grandchildren, two born to Child X and one born to Child Z. At the Parent’s death, how would the Parent’s assets be distributed assuming that both Child X and Child Z have predeceased the Parent?

“Simple” Per Capita

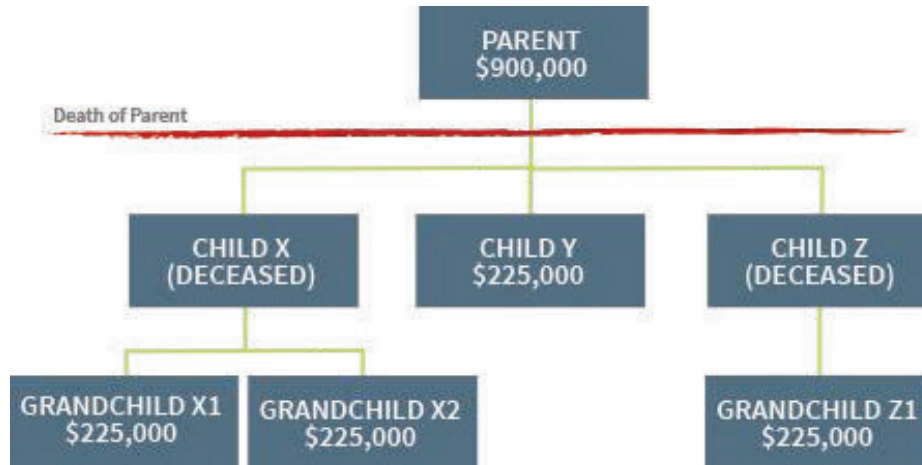
In what might be called a “simple” Per Capita distribution, the Parent’s entire estate, \$900,000, passes to the sole surviving child, Child Y. The grandchildren receive nothing.



Per Capita vs. Per Stirpes

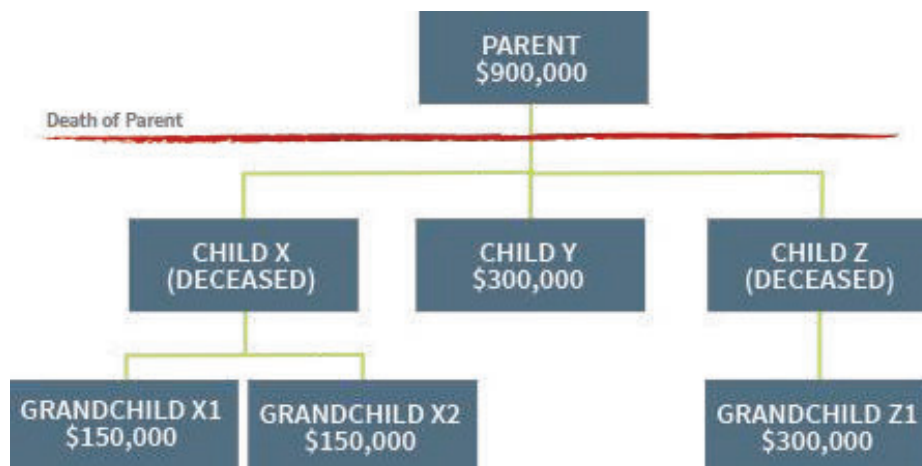
Per Capita

In another version of the Per Capita distribution, all family members who survive the Parent receive an equal share of the Parent's estate. Thus, Child Y and the grandchildren each receive \$225,000 ($\$900,000 \div 4$).



Per Capita with Representation

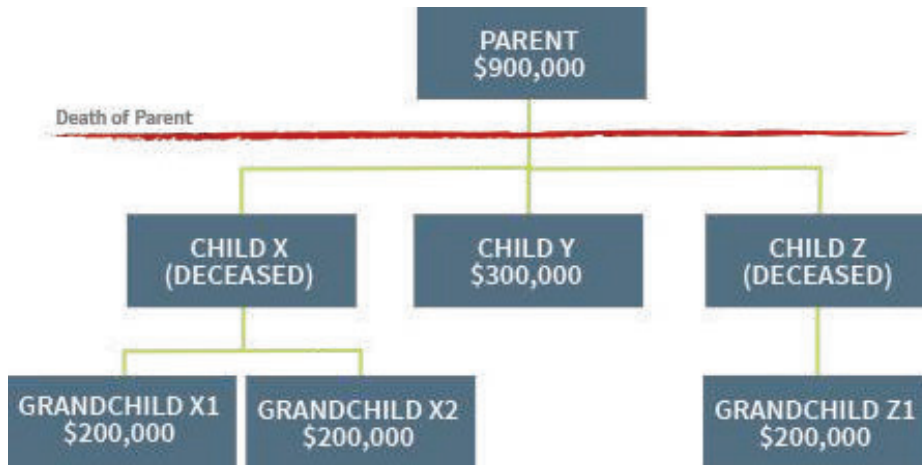
In a Per Capita with Representation situation, the Parent's estate of \$900,000 is split three-ways, with \$300,000 going to Child Y and another \$300,000 passing to Child Z's survivor, Grandchild Z1. However, the children of Child X, Grandchild X1 and Grandchild X2, will split (\$150,000 each) what would have been Child X's one-third portion of the Parent's estate. This type of distribution can result in unequal treatment of surviving grandchildren.



Per Capita vs. Per Stirpes

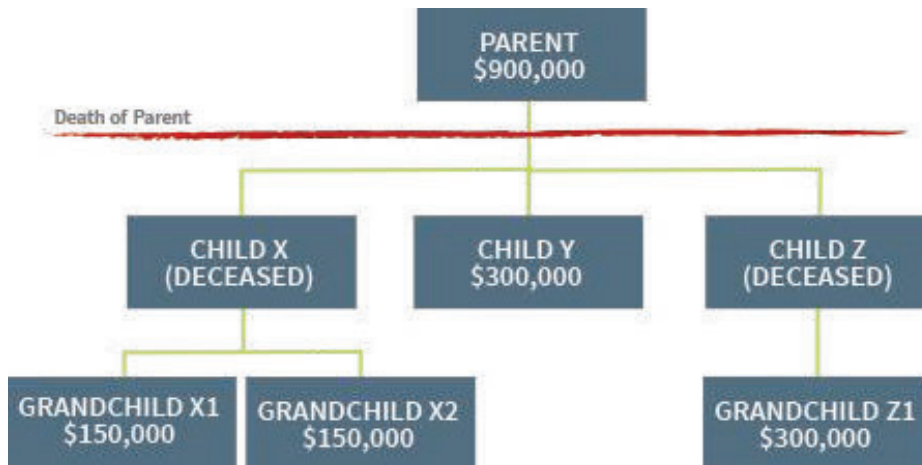
Per Capita at Each Generation

A Per Capita at Each Generation distribution usually results in a more even-handed treatment of the surviving grandchildren. In this example, the Parent's estate is again divided into three parts. Child Y receives \$300,000. The remaining portion of the Parent's estate, \$600,000, is divided equally, with each grandchild receiving \$200,000.



Per Stirpes

With regard to grandchildren, a Per Stirpes distribution often has the same result as a Per Capita with Representation distribution. In our example, a Per Stirpes distribution would leave \$300,000 to Child Y and another \$300,000 to Grandchild Z1. The children of Child X, Grandchild X1 and Grandchild X2, will split (\$150,000 each) what would have been Child X's one-third portion of the Parent's estate.



Estate Analysis Data and Assumptions

January 1, 2025

Client	Years Until Death
Paul Johnson	5
Sally Johnson	10

Assets and Debt

Retirement Plans

Owner	Balance	Assumed Rate of Return
Paul	\$91,000	6.00%
Sally	\$80,000	6.00%

Other Assets

Jointly Held Assets	Balance	Assumed Rate of Return
Other Assets	\$0	0.00%
Cash	\$0	0.00%
Residence	\$0	0.00%

Non - Jointly Held Assets	Balance	Ownership Percentage		Assumed Rate of Return
		Client 1	Client 2	
Other Assets	\$35,000	100.00%	0.00%	0.00%
Cash	\$0	100.00%	0.00%	0.00%
Residence	\$0	100.00%	0.00%	0.00%

Debt and Bequests	Amount	Ownership Percentage	
		Client 1	Client 2
Mortgage Balance	\$205,000	100.00%	0.00%
Other Debt	\$0	100.00%	0.00%
Desired Bequest at Client 1's Death	\$0		
Desired Bequest at Client 2's Death	\$0		

Carry Forward Exclusion Amount: \$0

Estate Analysis Data and Assumptions

January 1, 2025

Life Insurance

Owned by Insured

Insured	Benefit to Surviving Client	Benefit to Other
Paul	\$0	\$0
Sally	\$0	\$0

Not Owned by Insured

Insured	Benefit Payable to Surviving Client
Paul	\$0
Sally	\$0

Insurance to be used to illustrate an ILIT at second death

ILIT Detail	
New Insurance Premium per \$1,000	\$0
Number of Years to Pay New Premiums	0

Assumptions	
Final Expenses	\$10,000
Assumed Asset Growth (Depletion) Rate Between First and Second Death	0.00%
Annual Inflation Rate	2.50%
Annual Inflation Rate for Applicable Exclusion Amount	0.00%

Probate fees to be \$0 plus 0.00% of the probate estate.

Administrative fees to be \$0 plus 0.00% of the probate estate.

At first death state death taxes to be \$0 plus 0.00% of the gross estate.

At second death state death taxes to be \$0 plus 0.00% of the gross estate.

Estate Summary Simple Will

In the absence of a simple will, state law will pass property to certain relatives of a deceased party. The state will also appoint a guardian for minor children. The court may also require a fiduciary bond to be posted by the administrator of the estate, at a cost to the estate.

A simple will allows a person to select the executor of an estate, bequeath specific items or a specific amount to individuals or organizations, and to select the guardian for minor children.

The following illustrates the potential estate tax consequences with only a simple will in place.

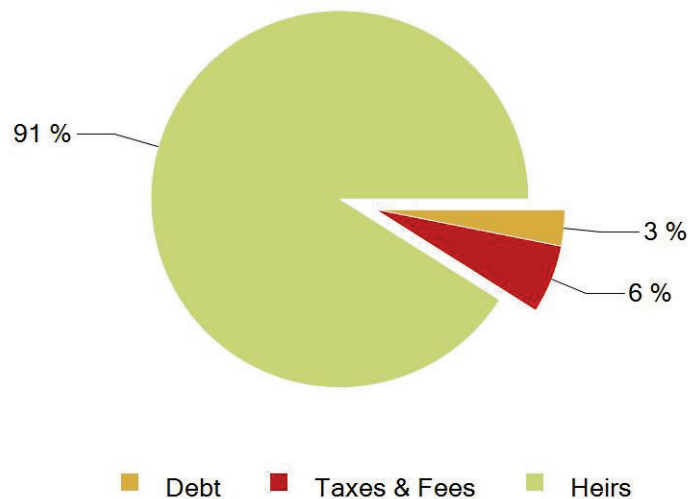
At Paul's death in 2035

Gross estate	\$4,665,678
Debt	-175,000
Taxes and fees	-153,127
Assets to partner	4,302,551
Amount to Others	\$35,000

At Sally's death in 2040

Gross estate	\$5,610,616
Debt	-175,000
Taxes and fees	-328,637
ILIT	0
Total to Heirs	\$5,106,979

At Sally's death in 2040



Estate Analysis Simple Will

Paul's Estate

	Value today	Assumed annual growth rate	Value in 10 years	
Assets				
Joint Ownership				
Cash	\$12,500	1.00%	\$13,808	
Other assets	12,500	7.00%	24,589	
Residence	350,000	2.50%	448,030	
Non - Joint Ownership				
Retirement plans	350,000	11.00%	993,797	
Cash	237,500	1.00%	262,348	
Other assets	880,000	7.00%	1,731,093	
Residence	150,000	2.50%	192,013	
Total Assets			3,665,678	
Life insurance owned by Paul				1,000,000
Gross Estate			4,665,678	
Less				
Debt			175,000	
Final expenses			15,000	
Administration fees			48,709	
Probate fees			89,418	
State death taxes			0	
Taxable Estate			4,337,551	
Federal estate tax			0	
Estate after Taxes			\$4,337,551	

Estate Analysis Simple Will

Sally's Estate

Estate Taxes at Second Death

	Value today	Assumed annual growth rate	Value in 10 years
Assets			
Joint Ownership			
Cash	\$12,500	1.00%	\$13,808
Other assets	12,500	7.00%	24,589
Residence	350,000	2.50%	448,030
Non - Joint Ownership			
Retirement plans	239,000	11.00%	678,622
Cash	237,500	1.00%	262,348
Other assets	220,000	7.00%	432,773
Residence	150,000	2.50%	192,013
Total Assets Inside Estate			2,052,182
Life insurance proceeds payable to Sally			
			250,000
Assets from Paul's estate			
			4,302,551
Total Assets			6,604,733
Asset growth rate assumed after first death			
			-5.00%
Asset value at second death			
			5,110,616
Insurance owned by Sally			
			500,000
Gross Estate			\$5,610,616

Estate Analysis Simple Will

Sally's Estate

Estate Taxes at Second Death

	Value today	Assumed annual growth rate	Value in 10 years
Less			
Debt			\$175,000
Final expenses			15,000
Administration fees			107,212
Probate fees			206,425
State death taxes			0
Taxable Estate			5,106,979
Federal estate tax			0
Irrevocable life insurance trust			0
Total to Heirs			\$5,106,979

Estate Summary Bypass Trust

Under current law, a person may usually pass any size estate to a spouse without incurring federal estate tax. When the surviving spouse dies, the combined estate is subject to tax. There is an applicable exclusion amount available that exempts a certain dollar amount of assets from federal estate tax. This trust is not taxed at either death and the surviving spouse can have access to the trust¹. The amount of the exclusion and the portability of any unused exclusion, makes the use of a bypass trust unnecessary for many estate owners, at least from a federal estate tax perspective. This type of planning should be discussed with your estate attorney.

The following illustrates the use of a bypass trust.

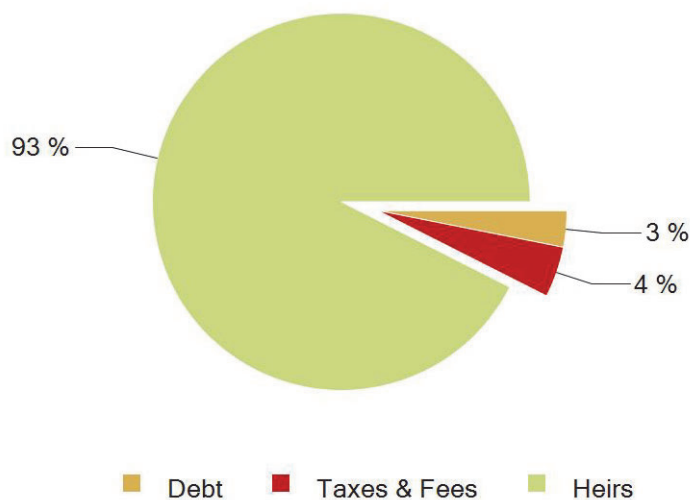
At Paul's death in 2035

Gross estate	\$4,665,678
Debt	-175,000
Taxes and fees	-153,127
Assets to spouse	2,480,224
Amount to BT	1,822,326
Amount to Others	\$35,000

At Sally's death in 2040

Gross estate	\$4,200,535
Debt	-175,000
Taxes and fees	-244,032
ILIT	0
Assets to heirs	3,781,503
BT amount to heirs	1,410,081
Total to Heirs	\$5,191,584

At Sally's death in 2040



¹ Any applicable exclusion amount that remains unused at the death of the first-to-die is generally available for use by the surviving spouse, as an addition to his or her own applicable exclusion amount.

Estate Analysis Bypass Trust

Paul's Estate

	Value today	Assumed annual growth rate	Value in 10 years
Assets			
Joint Ownership			
Cash	\$12,500	1.00%	\$13,808
Other assets	12,500	7.00%	24,589
Residence	350,000	2.50%	448,030
Non - Joint Ownership			
Retirement plans	350,000	11.00%	993,797
Cash	237,500	1.00%	262,348
Other assets	880,000	7.00%	1,731,093
Residence	150,000	2.50%	192,013
Total Assets			3,665,678
Life insurance owned by Paul			1,000,000
Gross Estate			4,665,678
Less			
Debt			175,000
Final expenses			15,000
Administration fees			48,709
Probate fees			89,418
State death taxes			0
Amount to Sally			2,480,224
Taxable Estate			1,857,326
Federal estate tax			0
Amount to bypass trust			1,822,326
Estate after Taxes			\$35,000