

What Is Probate?

Probate is the judicial process designed to ensure the faithful execution of all instructions found in a will, as well as to test the validity of a will. Although most states have exemptions for smaller estates, the assets in your will fall under the probate court's jurisdiction upon your death. How could probate affect your estate? Let's take a look at the advantages and disadvantages.

Probate Advantages

- 1. Protection from creditors.** When an estate has been probated and its assets distributed, no creditor can make a claim on the assets.
- 2. Fair analysis of estate value.** If heirs believe property has been overvalued in probate, thus increasing the potential estate tax, the lawyer or executor can bring in an independent appraiser to appear before the judge. The judge may approve the new appraisal or take a position between the independent appraiser and the court-appointed one.
- 3. Protection from some taxation.** An estate is a separate taxable entity, and it may provide opportunities to reduce taxes by shifting income to an heir or keeping it in the estate longer if the estate's tax bracket is lower than that of the heir.
- 4. Lower cost of legal counsel.** It may cost more for legal counsel to draft a **living trust**, which will bypass the probate process, than to draft a will.

Probate Disadvantages

- 1. Higher estate costs.** Probate can be costly; fees are set by law, but they are for ordinary services. If the attorney does extraordinary work, the fees may be greater. The executor may also charge

fees, and if the executor does not waive his or her fee, the actual cost to the estate may be double. The fees are based on gross, not net, estate values. Probate costs can typically run up to approximately five percent of the value of estate assets for executor and attorney fees.

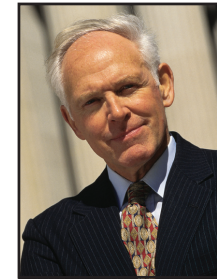
- 2. Delay in asset transfers.** Estate settlement often takes between one and two years. During probate, executors tend to be very conservative money managers due to their financial liability if they are judged to be less than prudent.
- 3. Public knowledge of the estate.** For the probate process to work, the will must be a matter of public record. This may give unknown creditors an opportunity to make claims against the estate.

Using these pros and cons as a guide, you can meet with your estate planning team to determine your best course of action in planning your estate — to either use or avoid the probate process.

Always Remember . . . You Can't Take It with You

Trying to plan for a time when you will be unavailable to support and advise those you love is a task many would like to avoid. Remember that your loved ones will be affected by the plans you make now and will be expected to take control once you are gone.

Successful estate planning requires a great deal of expertise. If you surround yourself with a professional, supportive team as you begin the process, work through its many stages, and adjust your plans over time, you assure yourself — and those you love — that the future will be secure for all.



Name, Designation(s)
Title

Company Name
Street Address
City, State Zip Code
Phone Number
Fax Number
E-mail Address

Estate Planning Strategies

Tax Minimization and Wealth Preservation



interested in saving money and reducing taxes? A well-structured estate plan can help you accomplish these goals. Estate planning involves many strategies, generally designed to preserve assets, minimize estate taxes, and distribute property to your heirs according to your wishes. While the planning process can raise some difficult emotional and personal issues, your heirs will be glad that you developed a thorough estate plan, and most likely, so will you.

How Should You Begin?

Your first step should be to assemble a competent professional estate planning team. Your attorney, financial professional, insurance agent, bank trust officer, and accountant are all possible team members, depending on your estate's size and complexity.

A thorough estate analysis requires the gathering of any and all materials involving current or future income, property ownership, insurance, and any legal arrangements already in place. This includes the following:

- Present income from employment and all investments
- Any expected deferred compensation
- All retirement benefits from Social Security (including survivors' benefits), IRAs, and pension, profit-sharing, and 401(k) plans
- Investment documents, certificates, and pass-books, etc.
- Deeds to primary and vacation residences, personal property, and valuables
- Life insurance policies of which you are the owner, the insured, or the beneficiary
- Your will and trust agreements, if any
- Current and expected debts and obligations, including all loan balances, real estate liens,

taxes payable, consumer debts, and estimates of funeral and estate settlement expenses. Once assembled, a complete analysis can begin, giving you the basis for a solid estate plan.

How Much Can It Really Cost to Die?

Not everyone has to pay federal estate taxes. Your entire estate can pass to your spouse free of estate tax. For transfers to other beneficiaries, estate tax calculations are based on the total value of your estate.

In general, unless your executor can obtain an extension or your estate qualifies for an installment plan, your heirs will be required to pay the estate tax bill within nine months of the date of your death, no matter what assets need to be sold to do so.

If you begin planning in a timely fashion, there are clear, legitimate methods that allow you to preserve your estate and minimize estate taxation while satisfying both the IRS and the courts. You will also save your heirs needless effort and expense.

Estate tax rates will gradually fall over the next several years, and the amount you may exempt from federal estate taxes will rise under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). In 2010, estate taxes will be repealed for one year. Unless Congress enacts further legislation, estate taxes will be reinstated in 2011 at levels in effect prior to EGTRRA.

Year	Top Estate Tax Rate	Exemption Amount
2008	45%	\$2 million
2009	45%	\$3.5 million
2010	repealed	N/A
2011	55%	\$1 million

Steps to Estate Preservation

1. Use your estate tax credit to the fullest.

Every individual may use a federal estate tax credit that allows the shielding of up to \$2,000,000 (in 2008) in property from taxation. (Under current law, this \$2,000,000 exclusion amount will increase to \$3,500,000 in 2009.)

2. Plan a gifting program. Further tax shielding is gained through use of the \$12,000 annual exclusion (indexed annually for inflation). This allows the gifting of \$12,000 each to any number of donees annually without exposure to gift tax. (When a spouse is involved in the gifting program, the annual exclusion increases to \$24,000 per donee.) Provision must be made for the immediate use of the gift by the donee; gifts of future interest will not qualify. Professional assistance and careful structuring of your gifting program are essential.

3. Draft a will. A **will** is a formal legal document instructing your survivors in the settlement of your estate. It is crucial to an estate plan's success that your will be properly written by a qualified, experienced legal professional and witnessed simultaneously by two parties.

Dying without a will triggers your resident state's "rule of intestacy." Your assets will be disposed of according to your state's intestacy statutes without regard to what your intent might have been.

4. Establish trusts. Using trusts can be an excellent method of accomplishing long-term estate planning goals. Trusts, while seemingly complex, are simply very powerful tools designed to help individuals handle a variety of family and tax-related issues.

5. Plan your charitable bequests. The value of all property transferred for "charitable" or "public" purposes is deductible, with certain limitations, when valuing an estate for tax purposes.

6. Title assets properly. The simplest, perhaps most common, and possibly least expensive estate planning technique for married couples is to take title to assets as "joint tenants." This will exclude assets from probate and may eventually save legal costs.

[NOTE: Residents of community property states should remember that all income and assets acquired by a married couple living in those states, except for individual gifts and inheritances, are considered community property, half of which is included in each spouse's estate valuation.]

7. Select guardians. Taking the proper legal steps in naming guardians for your children or other dependents is one of the most difficult, but most important, parts of your estate plan. You cannot assume the courts will know your wishes, or follow them, if they are not clearly defined in your will.

8. Use life insurance to its fullest advantage. Life insurance can fulfill two important functions in your estate planning. First and foremost, it can help provide for the immediate cash needs of your spouse or other beneficiaries.

Second, and of equal importance, the use of an **irrevocable life insurance trust (ILIT)** can prevent inclusion of your life insurance proceeds in your estate and help your executor pay your estate tax bill without having to sell estate assets.

9. Plan for incapacity. First, analyze your **disability income insurance** coverage. Second, consider executing a **durable power of attorney** and a **health care proxy** to cover financial and medical matters. These legal documents enable the named individual to make decisions on your behalf should you be mentally or physically unable to do so.

In addition, execute a **living will** to make your wishes known in the event of your total incapacity.