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Your Guide to “Will Substitutes”

Everyone knows a will distributes property, but most people don't know about the many other ways of passing property at or before death. It's not that these substitutes eliminate the need for a will. Almost everyone needs a will to cover property not conveyed in other ways and to nominate guardians for minor children. But there may be advantages in passing some property outside of a will. This article looks at a few possibilities. Your lawyer can advise how they could fit into your estate plan.

Q. Does a will cover all my property?

A. Not necessarily. Because property can be passed to others by gift, contract, joint tenancy, life insurance or other methods, a will might best be viewed as just one of many ways to determine how and to whom your estate will distributed at your death.

Q. What are will substitutes?

A. These days, it's common for a person to have up to a dozen will substitutes—that is, various ways of distributing property regardless of whether the person has a formal will. Retirement plans, joint ownership and trusts are a few ways you can transfer property at or before death quickly and inexpensively.

Be sure to keep in mind the kinds of property that a will may not cover, and include them in your estate planning. A good estate plan should coordinate these benefits with your will. Using them well can give property to your beneficiaries more efficiently than a will can.

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Q. My wife and I own our house in joint tenancy. Can't I use joint tenancy to pass property without having to draw up a will?

A. Yes. Joint tenancy is a form of co-ownership. If you and your wife buy a house or car in both your names and as joint tenants, each of you is considered a joint tenant and has co-ownership. When one of the co-owners dies, joint ownership usually gives the other co-owners instant access to the jointly held property.

Q. How can I use life insurance in my estate plan?

A. When you name beneficiaries other than your estate, the money passes to them directly without probate.

Q. How do retirement benefits affect my estate plan?

A. Many of us are entitled to retirement benefits from an employer. Typically, a retirement plan will pay benefits to beneficiaries if you die before reaching retirement age. After retirement, you can usually pick an option that will continue payments to a beneficiary after your death. In most cases, the law requires some portion of these retirement benefits be paid to your spouse. This right may be waived only with your spouse's properly witnessed, signed consent.

IRAs (Individual Retirement Accounts) provide a ready means of cash when one spouse dies. If your spouse is named the beneficiary, the proceeds immediately become his or her property when you die. Like retirement benefits, they will pass to the named beneficiary without having to go through probate. The rules governing IRAs have been changing recently, so check with your lawyer to see how such plans can be coordinated best with your estate plan.

Q. Should I give some of my property away before I die?

A. Making gifts during your lifetime can be a good idea, especially if you have a large estate. They can help you avoid high estate and inheritance taxes. In some states, they might enable you to reduce a relatively small estate to one that is small enough to avoid formal probate procedures. Another advantage of giving property away before you die is that you get to see the recipient's appreciation of your generosity.

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But watch out for a few pitfalls. These gifts will be subject to gift taxes if they're larger than the amount provided by law. Current law allows you to give up to \$11,000 per person per year (\$22,000 if a couple makes the gift) before the gift tax applies. You can make gifts to any number of people, whether or not related to you.

Q. What about trusts?

A. You can place property in a trust while you are alive. This is called a living trust. It can be a way to manage the property while you are alive (and even if you are incapacitated). At death, the property can pass to beneficiaries, without going through probate. Another advantage is that property can pass to beneficiaries over time, not all at once. This might be especially helpful for children or grandchildren who may not be mature enough to handle an outright bequest.

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