

A Lasting Legacy Workbook



Personal Information
Intergenerational Relationships
Transferring Property
End of Life Information
References and Other Resources

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Profitable & Sustainable
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UNIVERSITY
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New Thinking



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This project was funded in part by the United States Department of Agriculture Risk Management Agency, Colorado State University, and the University of Wyoming.

A Lasting Legacy Workbook

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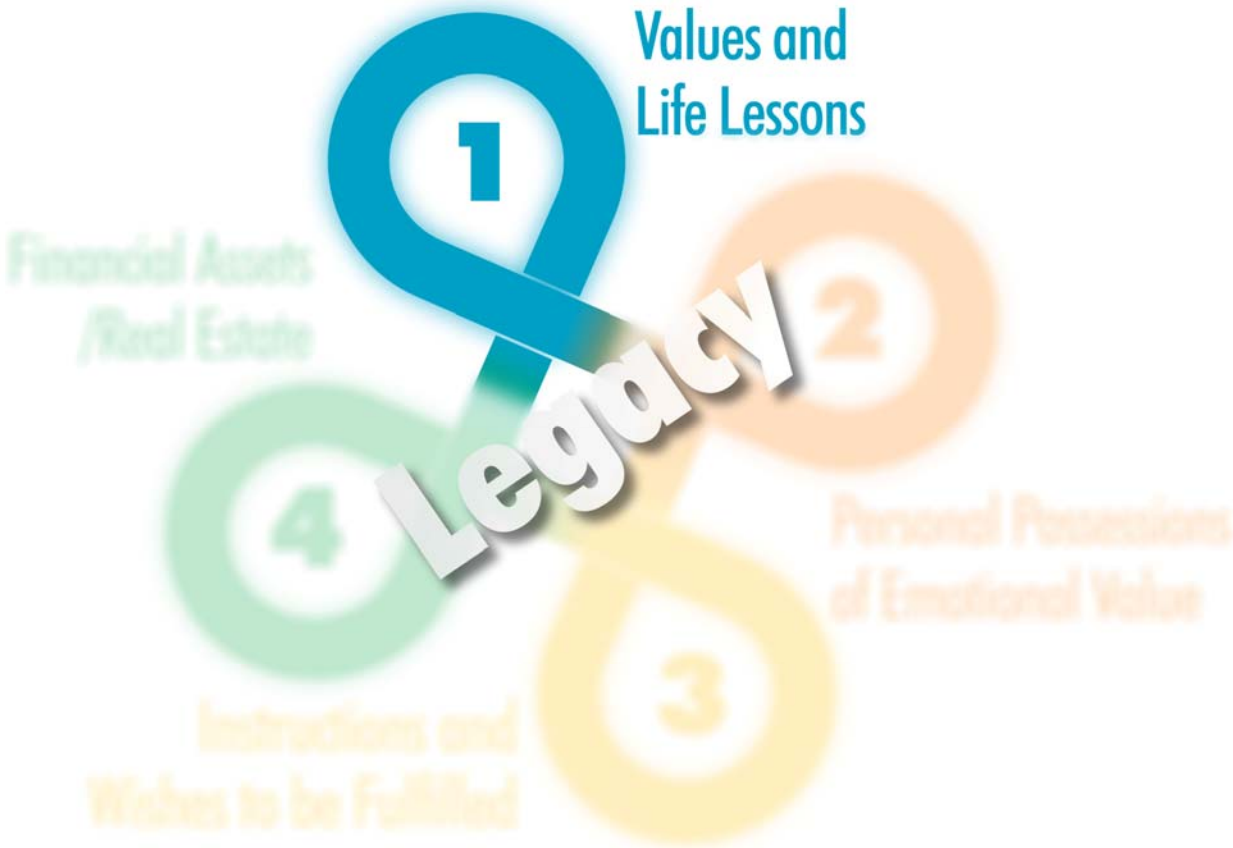
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Section I: Personal Information





Your Vital Statistics Worksheet

Legal Name:	Common Name:
Mailing Address:	Telephone Number(s):
How long have you lived at this address:	Email:
Your birth date:	Your birthplace:
Education (institution, degree, years):	
Occupation:	Supervisor's name and telephone number, if still working:
Social Security number:	Veteran's serial number:
Current Spouse's name:	
Date of marriage:	Location of marriage:
Former spouse's name:	County/state of wedding:
Dates of marriage:	County/state of divorce:
Former spouse's name:	County/state of wedding:
Dates of marriage:	County/state of divorce:
If you served in the military, complete the "Military Service" worksheet.	



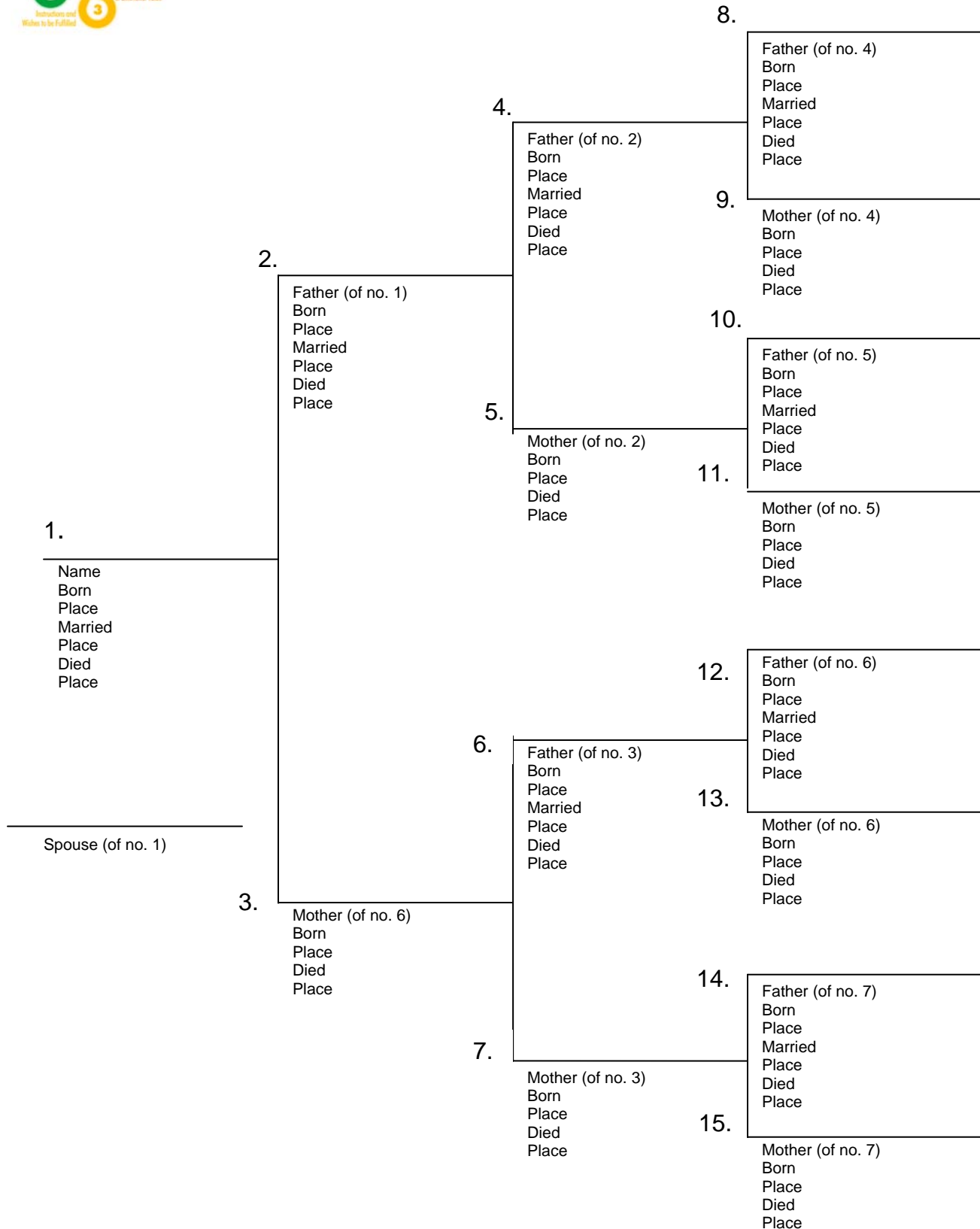
Your Family Information Worksheet

Your Name: _____ Your Birth Date/Location: _____ Your Marriage Date/Location: _____	Spouses Name: _____ Spouses Birth Date/Location: _____ Date of Death (if deceased): _____
---	---

Child's Name	Birth Date and Location	Other Parents Name	Marriage Date/Location	Spouses Name	Date of Death (if deceased)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					



4-Generation Pedigree Chart





Getting To Know Me Worksheet

Nicknames	
By spouse:	By parents:
By children:	By friends:
By grandchildren:	By others:
Best Friends	
In childhood:	As adult:
In high school:	Retirement:
In college:	Other:
Activities	
Hobbies:	Sports to play:
Memberships:	Sports to watch:
Favorites	
Scriptures:	Books:
Poems:	Movies:
Hymns:	Songs:
Clothes, jewelry, etc.	Musical instruments:
Animals:	Color:
Foods and drinks:	Restaurants:
Vacation places:	Retreat places:
Sayings/quotes:	



Your Medical History/Information Worksheet

Name _____ Birthdate _____ Date _____

List any allergies you have to drugs, food or other items:

Current Medications

<u>Current Medication</u>	<u>Prescribing Doctor</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Surgical Operations

<u>Operation Performed</u>	<u>Year</u>	<u>Hospital</u>	<u>Doctor</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Overnight Hospital Admissions (except for childbirth)

<u>Reason Hospitalized</u>	<u>Year</u>	<u>Hospital</u>	<u>Doctor</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



Medical History/Information Worksheet (continued)

Please check if any relatives (parents, siblings, grandparents, children) have had any of the conditions listed below

High blood pressure: _____	Kidney Disease: _____	Asthma: _____
Stroke: _____	Bleeding Tendencies: _____	Tuberculosis: _____
Cancer: _____	Seizures: _____	Colitis: _____
Emphysema: _____	Heart Disease: _____	Anemia: _____
Ulcers: _____	Sugar Diabetes: _____	Gout: _____
Mental Illness: _____	Other Serious Illness: _____	

Have you had any of the following illnesses (Please Circle)

Measles	Diabetes	Typhoid	Rubella
Goiter, Thyroid Disease	Malaria	Chickenpox	Hives
Other Tropical Diseases	Mumps	Allergies	Hepatitis
Whooping Cough	Eczema	Venereal Disease	Scarlet Fever
Mono	Seizures	Tonsillitis	Rheumatic Fever
Meningitis	Diphtheria	Poliomyelitis	Ear Infections
Asthma	Pleurisy	Heart Murmur	Glaucoma
Bronchitis	Cancer	Influenza	Angina Pectoris
High Blood Pressure	Tuberculosis	Heart Attack	Ulcers
Low Blood Pressure	Phlebitis	Kidney Stones	Bladder Infections
Kidney Infections	Cholesterol		

Other Serious Illnesses (please explain):



Your Belief Systems Worksheet

Family Beliefs

What beliefs do you have related to parenting that you would like to pass on to younger generations?

How would you define your beliefs related to family values, ethics, and morality?

What family policies do you believe to be important to maintain strong families?



Your Belief Systems Worksheet (continued)

Beliefs and Friends

Explain your beliefs related to establishing and maintaining strong friendships.

Career Beliefs

Explain your career beliefs (career planning, education, work ethic, etc.) and how they relate to career development.

Education Beliefs

Express your beliefs and attitudes (basic knowledge/skills, educational goals, learning methods, etc.) about education.



Your Belief Systems Worksheet (continued)

Religious Beliefs

Explain your beliefs related to deity (God, Gods, Higher Power).

Define your beliefs about the origin of the Universe and life on earth.

Describe your beliefs of what happens to humans after death.

Express your beliefs related to worship and baptism.



Your Religious Activities Worksheet

Places of Worship

<u>Building or Location</u>	<u>Dates</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Religious Education

<u>Form of Education</u>	<u>Dates</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Religious Activities (prayers, sacraments, honors, blessings, religious readings, religious studies, schools and camps, volunteering, donations, etc.)

<u>Religious Activity</u>	<u>Important Memories</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



Your Schools and Education Worksheet

Schools Attended

<u>School</u>	<u>Location</u>	<u>Years Attended</u>	<u>Class Sizes</u>	<u>Favorite Subjects</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Memorable School Experiences (dances, sports, field trips, fashions, band, choir, graduation, grades/report cards, etc.)

<u>School Activity</u>	<u>Memorable Experience</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



Your Schools and Education Worksheet (continued)

Teachers and Classmates

Teachers/Classmates

Memorable Experience

Degrees, Awards, and other Accomplishments

Educational Degrees

Year

Comments

Awards/Accomplishments

Year

Comments



Your Military Service Worksheet

Service Time _____ **Age During Service** _____

Military Branch _____ **Serial Number** _____

Military Bases/Posts

Rank and Military Decorations

Injuries Sustained

Awards and Special Memories



Your Family Traditions Worksheet

Celebration Traditions (holidays, birthdays, anniversaries, etc.)

<u>Event</u>	<u>Tradition</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Special Family Traditions (vacations, camping, pizza nights, etc)

<u>Event</u>	<u>Tradition</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Day to Day Family Interactions (dinnertime, bed time, Sunday afternoons, etc.)

<u>Event</u>	<u>Tradition</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



Transferring Personal Possessions Summary Checklist

Have you?

- Identified what “things” are important to you (goals and objectives for distributing personal possessions).
- Completed an itemized list of personal possessions.
- Documented any special meanings (history, story, value) associated with personal possessions.
- Identified potential recipients of personal possessions (based on what fair means to you and the “things” that are important to you).
- Developed the “rules for distribution” (fairness).
- Selected the best distribution option(s) for transferring personal possessions.
- Shared your distribution decisions with everyone involved.
- Started gifting (if you selected gifting as a distribution method).
- Shared your story about personal history with your personal possessions.
- Confirmed that all legal documents are in order.

Section II: Intergenerational Relationships





Family Council Meetings Worksheet

Purpose of Meeting

Family members need to know and understand their family attributes, family values, and family members' expectations as they relate to the current and future management and ownership of the family farm. The purpose of the Family Council Meetings is to provide a communication forum that allows all family members to learn more about the family business and to express their views on family issues that impact the family.

Step 1: Who Should Attend

List active and non-active members of the broader family (including spouses, in-laws, children, grandparents, and grandchildren).

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Step 2: Select a Meeting Coordinator

Roll of the coordinator: Selecting and setting up the meeting (can be any active or inactive family member). Consider rotating the coordinator role among family members.

Coordinator Check-List:

- Find a comfortable setting for the meeting.
- Organize the meeting room so that it facilitates good communication.
- Prepare an agenda with input from other family members.
- Distribute agenda with other meeting materials to family members in advance of the meeting.
- Chair the meeting. Reconfirm rules and the purpose of the meeting.
- Record any decisions reached or agreed upon actions and forward to all family members.
- Conduct a brief participant evaluation on the meeting.

Step 3: Establish Meeting Rules

It is important to establish meeting rules so that participants know what is expected of them.

Sample Meeting Rules:

- The meetings are designed to keep the broader family informed of how the business is doing, where it is going, and the role of family members in it.
- The meetings are not intended to make farm business decisions.
- The selected meeting coordinator will chair the meeting and record any decisions or agreed upon actions.



Family Council Meetings Worksheet (continued)

- The meeting agenda and other meeting materials will be distributed in advance of the meeting.
- Family members will be solicited for additional agenda items.
- Participants are encouraged to ask questions and voice concerns they have.
- Participants are expected to have the spirit of cooperation, order, peace, and fair play.
- Each decision made will be based on a majority vote of the participants with each adult family member being entitled to one vote.
- All decisions and agreed upon actions will be recorded by the meeting coordinator and distributed to all family members.

Step 4: Develop an Agenda

The agenda should be tailored to meet the needs of the family at the time of the meeting. Distribution of the agenda to family members should be ten days ahead of the meeting and include a response card for them to indicate their attendance.

Sample meeting agenda:

- Review purpose of the meeting and the rules. These should be agreed upon at the first meeting.
- Highlight the history of the family business.
- Overview of how the business is performing.
- Overview of short-, mid-, and long-range plans for the business.
- Discussion of employment and career opportunities for family members.
- Discussion of community and philanthropic activities that the family and the business are involved with.
- Review and discussion of all or some of the family business rules developed by the active family members.
- Questions or concerns about the family farm in keeping with the overall objectives of the family council.
- Brief evaluation of the meeting by each of the participants.

Step 5: Conduct the Meeting

There are some general guidelines that should be followed for the meeting:

- Make sure the meeting starts and ends on time.
- The coordinator or suitable replacement should be present.
- Follow and cover the items on the agenda.
- Encourage discussion and communication between family members.
- Record any decisions reached or agreed upon actions.
- Finalize and approve time and place for the next meeting.
- Conduct a brief participant evaluation. Allow further comments in writing or in private.

Source: Canadian Farm Business Management Council, *Managing the Multi-Generational Family Farm*, CFBMC 2006.



Family Business Meetings Worksheet

Purpose of Meeting

The purpose of the Family Business Meeting is to provide active family members with a dedicated communication forum to discuss family issues that impact the management and ownership of the farm. Family Business Meetings are not intended to replace regular business/management meetings. These meetings are for family members who are working in the business to deal with the family component of the interaction between the family and business.

Step 1: Who Should Participate

List active members of the family (consider the merits of including part-time as well as children working on the farm). The overall objective on the meeting is to have honest constructive communication among active family members. Experience indicates that it is easier to discuss family component issues, at least at the beginning, when the issues are discussed with those who are actively working on the family farm. Non-active family members or non-family can be invited if it is felt the agenda item(s) would be best served with their presence

Step 2: Select the Meeting Coordinator

Roll of the coordinator: Selecting and setting up the meeting. Consider rotating the coordinator role among family members.

Coordinator Check-List:

- Establish meeting frequency.
- Set a time and location for the meeting.
- Control the tempo of the meeting.
- Keep records and notes of the outcomes of the family business meeting.

Step 3: Establish Meeting Rules

It is a good idea to establish meeting rules either before the first meeting or at the first meeting. These rules should be agreed to by all participants.

Sample Meeting Rules:

- The objectives of the Family Business Meetings are to discuss and make decisions about the role of the family in the current and future management and ownership of the family farm.
- The participants must be all active family members (define active).
- The meeting coordinator will prepare agendas and distribute in advance.
- The meeting coordinator will chair the meeting.
- Decisions will be made according to the agreed upon format (e.g. equal vote).
- What is expected from the participants.
- Attendance at all meetings and equal voice by all.
- Adhere to the rules and respect for others.
- The chair will record agreed upon decisions and distribute to all participants.
- Agree on a process to deal with major disagreements.
- Each member will provide feedback to the effectiveness of each meeting.



Family Business Meetings Worksheet (continued)

Family Business Meeting Rules

1. Meeting Objectives:

2. Who Should Participate (list names of active members)?

3. Process on How Meeting Coordinator Will Be Selected:

4. Role of the Coordinator:

5. Format/Process Used to Make Decisions:

6. Expectations of Participants:

7. Process Used to Deal With Major Disagreements:

8. Process Used to Evaluate Meeting Effectiveness:

Source: Canadian Farm Business Management Council, *Managing the Multi-Generational Family Farm*, CFBMC 2006.



Family Business "Rules and Policies" Worksheet

Brief history of the family farm

Personal & business values of current owners (ethics, innovation, work ethic, gender roles, family time, etc.)

Employment criteria of family members

Employment criteria of spouses and in-laws

Compensation for family members (benefits, perks, bonuses)

Non-family employees

Community Activities and Philanthropy



Family Business "Rules and Policies" Worksheet (continued)

Future Ownership (management succession and ownership succession)

Exit Strategy (fair and equitable)

Conflict Resolution Process

Distribution of Profits Policy

Vacation/Leaves of Absence Policies

Distribution of Profits Policies

Loans to Family Members (terms and conditions)

Source: Canadian Farm Business Management Council, *Managing the Multi-Generational Family Farm*, CFBMC 2006.



Conflict Resolution Worksheet

Step 1: Identify the Issues (people often falsely assume that everyone understands the issue, sometimes issues stated clearly eliminate the problem):

Issue(s): _____

Step 2: Describe Each Person's Motivation to Address the Issues

<u>Name</u>	<u>Motivation</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Step 3: Outline the Positions and Options Suggested by All

<u>Issue</u>	<u>Solution</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Step 4: List the characteristics of an ideal outcome (address each parties needs)

Characteristics



Conflict Resolution Worksheet (continued)

Step 5: List the Pros and Cons of Each Option

<u>Option</u>	<u>Pros</u>	<u>Cons</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Step 6: Select an Option (or some combination of options) that Best Meets the Characteristics of an Ideal Outcome

Step 7: Allow the Opportunity to Reflect on the Decision. Do Not Rush.

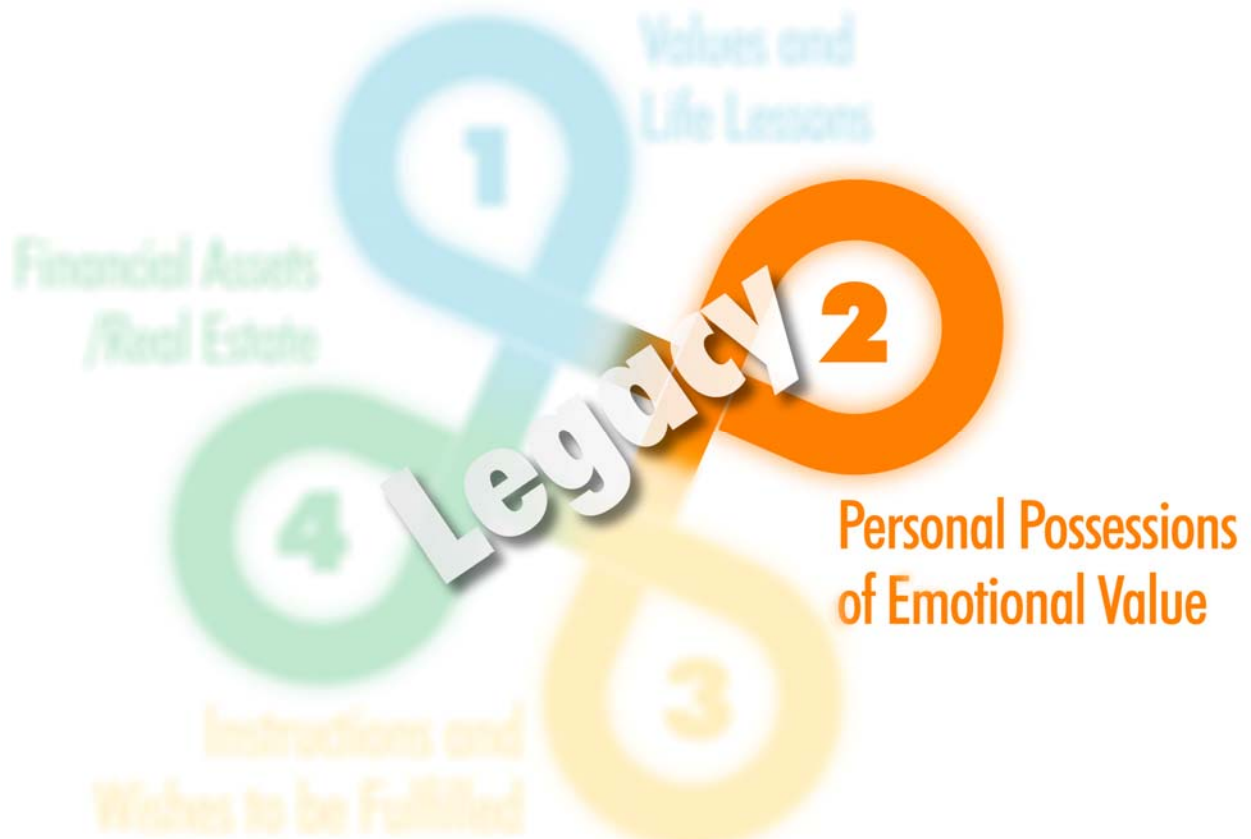
Step 8: Implement and Monitor. Evaluate how the Solution is Working and the Effectiveness of the Conflict Resolution Process.

Sources:

Resolving Conflict. Family Community Leadership Project, Washington State University Cooperative Extension.

Resolving Conflict Constructively and Respectively. HYG-5218, The Ohio State University, Family and Consumer Sciences.

Section III: Transferring Property





Selecting a Good Advisor Check List

There are a few traits common to good advisors (professional counsel). An advisor with the following traits will help you maximize the long-term value of your estate while at the same time meeting your other goals. Mark each of the traits that characterize each potential advisor you consider using.

Name	Characteristics	Knowledge
	<input type="checkbox"/> Honest & Trustworthy <input type="checkbox"/> Good Listener <input type="checkbox"/> You understand him/her <input type="checkbox"/> Knowledgeable in his/her specialty <input type="checkbox"/> Has a comprehensive understanding of your family	<input type="checkbox"/> Finances, accounting <input type="checkbox"/> Tax laws <input type="checkbox"/> Retirement Planning <input type="checkbox"/> Inheritance laws <input type="checkbox"/> Estate Planning <input type="checkbox"/> Other
	<input type="checkbox"/> Honest & Trustworthy <input type="checkbox"/> Good Listener <input type="checkbox"/> You understand him/her <input type="checkbox"/> Knowledgeable in his/her specialty <input type="checkbox"/> Has a comprehensive understanding of your family	<input type="checkbox"/> Finances, accounting <input type="checkbox"/> Tax laws <input type="checkbox"/> Retirement Planning <input type="checkbox"/> Inheritance laws <input type="checkbox"/> Estate Planning <input type="checkbox"/> Other
	<input type="checkbox"/> Honest & Trustworthy <input type="checkbox"/> Good Listener <input type="checkbox"/> You understand him/her <input type="checkbox"/> Knowledgeable in his/her specialty <input type="checkbox"/> Has a comprehensive understanding of your family	<input type="checkbox"/> Finances, accounting <input type="checkbox"/> Tax laws <input type="checkbox"/> Retirement Planning <input type="checkbox"/> Inheritance laws <input type="checkbox"/> Estate Planning <input type="checkbox"/> Other



Your Inventory of Personal Possessions Worksheet

Personal Possessions

Special Meaning

Potential Recipients



Your Inventory of Titled Property Worksheet

Your Name:		Date Completed:	
<u>Current Assets</u>	<u>Value</u>	<u>Current Liabilities</u>	<u>Amount</u>
Total Current Assets		Total Current Liabilities	
<u>Non-Current Assets</u>		<u>Non-Current Liabilities</u>	
Total Non-Current Assets		Total Non-Current Liabilities	
Total Assets		Total Liabilities	
		Net Worth	

Section IV: End of Life Information





Instructions and Last Wishes Summary Checklist

	Date				
	First Completed	Up-Dated	Up-Dated	Up-Dated	Up-Dated
Informational Documents/Worksheets					
Vital Statistics					
Care of Dependents and Pets					
Care of Livestock and Other Farm Animals					
Pre-Death Documents					
Ceremony Planning					
Final Arrangements					
Donations					
Listing Your Secure Places & Passwords					
Inventory of Titled Property (Statement of Net Worth)					
Medical and Insurance Providers					
Notification of Death					



Instructions and Last Wishes Summary Checklist (continued)

	Date				
	First Completed	Up-Dated	Up-Dated	Up-Dated	Up-Dated
Legal Documents					
Living Will					
Health Care Directive (Medical Power of Attorney)					
Other Advance Health Directives					
Power of Attorney (for _____)					
Power of Attorney (for _____)					
Estate Plan					
Body/Organ/Tissue Donation Agreements					
Statement of Net Worth					
Compliance Plans					
Other					
Other					



Your Notification of Death Worksheet

People & Entities to Notify Upon Death	Telephone Numbers
Relatives	
Friends	
Spiritual advisor	
Church/synagogue/other	
Mortuary	
Cemetery	
Doctor	
Employer	
Pallbearers	
Service participants	
Newspapers	
Social Security Administration	
Veterans Administration	
Life insurance agent	
Health insurance agent	
Clubs, unions, etc.	
Attorney	
Executor of estate	
Accountant	
Business partners	
Credit card companies	
Other	



Ceremony Planning Worksheet

Funeral, Memorial, or Other Services	
Type of Service: religious / fraternal / military / other _____	
Service Location:	Spiritual Advisor's name and telephone number:
Casket:	Urn:
Clothing, jewelry, other:	
Open casket: <input type="checkbox"/> Yes <input type="checkbox"/> No Public visitation: <input type="checkbox"/> Yes <input type="checkbox"/> No Private family viewing: <input type="checkbox"/> Yes <input type="checkbox"/> No	Witness cremation: <input type="checkbox"/> Yes <input type="checkbox"/> No Reception: <input type="checkbox"/> Yes <input type="checkbox"/> No Wake: <input type="checkbox"/> Yes <input type="checkbox"/> No
Pallbearers:	Honorary Pallbearers:
Music song titles & versions:	Singers, bands, etc:
#1 Eulogist:	#2 Eulogist:
#1 Reading:	#1 Reader:
#2 Reading:	#2 Reader:
Other participants:	
Program:	
Donations, bequests:	
Final Resting Place	
Circle one:	Location:
Ashes to Be Spread by whom and where:	
Reception:	
Flowers:	Decorations:
Pictures and memorabilia to be displayed:	
Other special reminders and activities:	Music:



Your Medical and Insurance Providers Worksheet

Your Name	Date
Medical Providers	
Doctor	Address & Telephone Number
Doctor	Address & Telephone Number
Doctor	Address & Telephone Number

Insurance Providers (Medical, Life, Other)		
Purpose & Company Name	Contact Information	Policy Number
Purpose & Company Name	Contact Information	Policy Number
Purpose & Company Name	Contact Information	Policy Number
Purpose & Company Name	Contact Information	Policy Number



Your Donations Worksheet

Description	Recipient's Name and Contact Information	Date Agreements Signed
Donations of Your Body, Organs, and/or Tissues		
Whole Body		
Any Organs or Tissues		
Specific Organs or Tissues (List)		
Donations of Your Real Estate and Other Titled Property		
Land		
Land		
House		
House		
Automobile		
Automobile		
Boat, ATVs, Snowmobiles, Etc.		
Stocks/Bonds		
Investment		
Investment		
Collections		
Other		
Other		



Listing Your Secure Places and Passwords Worksheet

You should use this worksheet to let people know where you have, store, or hide important licenses, property titles, tax information, bank and investment accounts, and other important papers. You should list the item and the location you have the item. Also, you should provide information about any keys, codes, or passwords necessary to access the documents.

Secure Items	Location
Birth Certificate	
Marriage License	
Divorce/Separation Papers	
Tax Returns and Supporting Documentation	
Checking Accounts	
Savings/Money Market Accounts	
Investment Account_____	
Investment Account_____	
Investment Account_____	
Investment Account_____	
House Mortgage_____	
Title to House	
Titles to Other Properties	
Titles to Automobiles	
Titles to Jewelry	
Business Ownership Papers	
Livestock Ownership (Brand) Papers	



Listing Your Secure Places and Passwords Worksheet (continued)

You should use this worksheet to list the web sites you use to make purchases, obtain information, pay bills, etc. It will be helpful for you to include why or how you use the web site. List the username and password with each web site, so people may access your information upon your death.

Website	Username	Password



Care of Dependents & Pets Worksheet

This worksheet is designed to help you identify all dependents (humans and pets) livestock and other animals, the person or persons you want to care for those animals, and any instructions for feeding, providing medical treatments, etc. You should include in the special instructions section: doctor/veterinarian, special treats, allergies, etc.

Dependents		
Name	Desired Care Provider & Contract Information	Special Instructions

Pets		
Name & Description	Desired Care Provider & Contract Information	Special Instructions



Care of Livestock and Other Farm Animals Worksheet

This worksheet is designed to help you identify all livestock and other animals, where they are currently located, the person or persons you want to care for those animals, and any instructions for feeding, providing medical treatments, etc. If the animals are to be sold, you can write "to be sold" in the space allotted for desired care provider.

Animal Description and Numbers	Desired Care Provider & Telephone	Instructions

Section V: References and Other Resources



Intergenerational Relationships

Canadian Farm Business Management Council. *"Managing the Multi-Generational Family Farm"*, CFBMC, 2006.

Coughler, Peter. *"Farm Succession-Do's and Don'ts"*, Ontario Ministry of Agriculture, Food and Rural Affairs, 03-053, 2003.

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Fowler, Lynda K. *"Understanding and Strengthening Healthy Relationships Between Adult Children and Parents"*, Ohio State University, FLM-FS-4-99, 1999.

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Maguire, Terry, PhD, MPSNI. *"Barriers to Communication-How Things Go Wrong"*, The Pharmaceutical Journal (Vol. 268), February, 2002.

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Strong, B., et. al. *"The Marriage and Family Experience: Intimate Relationships in a Changing Society"*, Wadsworth/Thompson Learning, 2001.

Taylor, Bill. *"Characteristics of the Family Business"*,

Websites

<http://web.cba.neu.edu/~ewertheim/interper/commun.htm>. *"The Importance of Effective Communication"*.

<http://www.betterfarming.com/2005/bf-may05/biz.htm>. Coughler, Peter. *"How to Run an Effective Family Business Meeting"*.

http://www.familybusinessonline.org/resources/frm_chklist_farm.aspx. Frishkoff, Dr. Patricia. *"Farm Succession Risk Management Checklist Online"*, USDA, Risk Management Agency.

<http://www.celebratelove.com/forgive.htm>. James, Larry, *"Forgiveness...What's It For?"*.

Values and Life Lessons

Allianz Insurance Company of North America. “*The Allianz American Legacies Study: The Seven Myths of the American Legacy*”, 2005.

Websites

<http://www.csrees.usda.gov/nea/economics/fsll/fsll.html>. “*Financial Security in Later Life: A Cooperative Extension Initiative*”. This Cooperative Extension initiative seeks to help people improve personal finance behaviors leading to financial security in later life, enhance the capacity of local educators and their partners to deliver effective programs, and increase economic vitality and quality of life for families and communities.

Personal Possessions of Emotional Value

Marlene S. Stum, et. al. “*Who Gets Grandma’s Yellow Pie Plate? Workbook*”, University of Minnesota Extension Service, MI-6686-WG, 1999.

Instructions and Final Wishes to be Fulfilled

Cullen, Melanie. *“Get It Together: Organize Your Records So Your Family Won’t Have To”*. Nolo, 2005.

Articles

- Choosing a Guardian for Your Children
- Disinheriting Family Members
- Final Arrangements FAQ
- Financial Power of Attorney
- Funerals
- Living Wills and Powers of Attorney for Health
- PrePaid Funerals
- Secured Places
- Talking about Your Final Wishes
- Wills FAQ
- Wyoming Guide to Health Care Act of 2005

Websites

<http://www.bjm.com/cgi/content/full/320/7228/129>. *“A Good Death”*.

<http://clarkhoward.com/shownotes/category/7/128/221/390/>. *“Letter of Final Wishes”*.

<http://www.organdonor.gov>. The official U.S. Government web site for organ and tissue donation and transplantation. Maintained by the Health Resources and Services Administration (HRSA), Healthcare Systems Bureau (HSB), Division of Transplantation, an agency of the U.S. Department of Health and Human Services.

<http://www.shareyourlife.org>. A website providing information about and dedicated to inspiring people to “donate life” through organ, eye, and tissue donation.

<http://dying.about.com/>. A special topics section for survivors offering a variety of information and resources to help people cope and keep living after a death.

<http://www.aarp.org>. Official site of AARP, formerly the American Association of Retired Persons. It contains myriad articles, fact sheets, links, and other information germane to the issues discussed in the two courses.

<http://www.funeralplan.com>. Contains a large number of articles, fact sheets, and on-line calculators for funeral planning and grief support. This site is owned by the Aurora Casket Company, Inc.

<http://www.ethicalwill.com/ewwgworkbook.html>. Information about writing an ethical will.

Financial Assets/Real Estate

Doane's Agricultural Report. "Some Estate Planning Basics", Vol. 56, No. 44-5, October, 1993.

Articles

- Balance Sheet with Definitions
- Federal Estate Tax
- Glossary of Estate Planning Terms
- The Right Estate Plan for You
- Transferring The Farm 1
- Transferring The Farm 8

Websites

<http://www.nolo.com/resources.cfm/>. Provides do-it-yourself legal solutions for individuals and small businesses.

<http://www.agrisk.umn.edu/Library>. Myriad of articles and fact sheets about risk management in agriculture.

<http://www.irs.gov>. Information about taxes from the Internal Revenue Service.

Section VI: Readings



A Glossary of Estate Planning Terms

by Marsha A. Goetting, Ph.D., CFP®, CFCS, Extension Family
Economics Specialist



MontGuide

This is a glossary of some of the estate planning terms used in our Estate Planning MontGuides. Keep this glossary close by in case you come across an unfamiliar term.

MT 200202 HR Revised 07/2006

Administrator: Term formerly used for a person named in a will to carry out settlement of the estate. Under the Montana Uniform Probate Code, the term is now personal representative.

Alternate Valuation Date: A date exactly six months following the decedent's date of death that the personal representative may choose to revalue for estate tax purposes, all assets held by the estate.

Ancillary Probate: Term for probate if decedent had real property in another state.

Annual Exclusion: The amount of \$12,000 that can be given to any individual or any number of individuals gift tax free. A husband and wife together can give \$24,000 to each person.

Annuity: The periodic payment of a definite sum of money, with such payments to continue for life or for a definite number of years.

Assets: All types of property which can be made available for the payment of debts.

Attorney: Another name for a lawyer.

Beneficiary: A person (or institution) who derives benefit from the creation of a trust, proceeds of insurance policy, or property designated by a will.

Closely-Held Business: A business organization in which the ownership is held by a limited number of people often with the same family rather than owned by the public at large.

Codicil: A supplement, amendment, or addition to a will executed with all the formalities of the will itself. It may explain, modify, add to, subtract from, qualify, alter, or revoke provisions in a will.

Common Disaster Clause: A statement in a will telling how property is to be distributed if would-be devisees die from the same accident.

Conservator: A person who is appointed by a court to manage the estate of a protected person who, because of age, intellect, or health, is incapable of managing his or her own affairs.

Consideration: Something which has value, such as real or personal property or a promise given in exchange for another promise.

Contingency: The possibility of coming to pass; an event which may occur.

Corpus: Trust property; the principal sum as distinguished from interest or income.

Death Taxes: Taxes due by reason of death of an individual.

Decedent: A deceased person.

Deed: A legal instrument used to transfer title to real property in the eyes of the law.

Devise: When used as a noun, real or personal property given to another by will. When used as a verb, to dispose of real or personal property by will.

Devisee: Any person designated in a will to receive real or personal property.

Domicile: That place where a person has voluntarily fixed his/her habitation, not for a temporary or special purpose but with a present intention of making it his/her home unless and until something, which is uncertain and unexpected, shall happen to induce him/her to adopt some other permanent home.

Donee: One who receives a gift.

Donor: One who makes a gift.

Durable Power of Attorney: Allows the power of attorney to survive any disability the principal could suffer.

Escheats: When a decedent's property goes to the state because of lack of heirs.

Estate Tax (Federal): Taxes assessed by the federal government upon a decedent's right to transfer property.

Exempt Property: Property in value not exceeding \$10,000 in excess of any security interests in household furniture, automobiles, furnishings, appliances and personal effects to which a surviving spouse is entitled from the estate. This property is protected from creditors and devisee claims.

Family Allowance: The surviving spouse and minor children are entitled to a reasonable family allowance in cash from the estate for their maintenance during the period of probate administration. The personal representative may determine the family allowance in a lump sum not exceeding \$18,000, or periodic installments not exceeding \$1,500 per month for one year.

Fiduciary: Includes personal representative, guardian, conservator and trustee.

Formal Probate Proceedings: Those conducted before a judge with notice to interested persons for probate of a will or appointment of a personal representative.

Gross Estate: For federal estate tax purposes, the total value of all property—real or personal, tangible or intangible—that a decedent had owned or had control over at the time of death.

Guardian: A person legally empowered and charged with the duty of taking care of another who, because of age, intellect, or health, is incapable of managing his or her own affairs. The guardian manages the person. A conservator manages the property of a minor or incapacitated person. A person can be appointed both guardian and conservator.

Heirs: Those persons who are entitled under the statutes of intestate succession to the property of a decedent.

Holographic Will: A will in which the signature and material provisions are in the handwriting of the testator, and which needs not be witnessed.

Homestead Allowance: A surviving spouse of a decedent who was a resident of Montana is entitled to a homestead allowance of \$20,000.

Informal Probate Proceedings: Those conducted without notice to interested persons by the clerk of the court for probate of a will or appointment of a personal representative.

Inherit: To receive property from a deceased person.

Inter Vivos Trust: Legal name for a living trust. The trust is set up by the grantor during his or her lifetime.

Intestate: A term used when a person dies without leaving a valid will.

Irrevocable: A term used to describe a trust in which the trustor (maker of the trust) has, by the terms of the trust agreement, specifically given up the power to alter, amend, or terminate the trust either entirely or in part. In Montana, trusts are irrevocable unless the donor expressly reserves the power to revoke.

Joint Tenancy: A form of co-ownership in which two or more persons hold interests in the same property with right of survivorship.

Incidents of Ownership: Rights applying to ownership interest in an insurance policy. These include the right to change a beneficiary, to borrow on a policy, to change premium modes, and so on.

Life Estate: A condition created whereby a person has the right to use property only for his or her lifetime.

Lineal Descendant: One who is, by blood relationship, in the direct line of descent from an ancestor. The term includes adopted children in Montana.

Marital Deduction (Gift): Allows married persons to make lifetime gifts to each other and claim a marital deduction for any amount without a gift tax.

Marital Deduction (Estate): There is no monetary ceiling on the estate marital deduction.

Pay on Death (POD): Designation is the naming of a beneficiary to receive an account balance on a party's death.

Per Capita: Equal shares to all who inherit.

Personal Representative: A person named in a will or appointed by the district court to administer the estate of a decedent. Formerly referred to as executor, administrator.

Personal Property: Assets whose ownership arises either out of physical possession of the property, or as the result of a document showing ownership. Examples: livestock, machinery, stored grain, bank deposits, stocks and bonds, checking and savings accounts, automobiles and other transportation and recreational vehicles. In Montana, all property other than real estate.

Power of Attorney: A written, notarized document in which one person gives another the power to conduct certain acts on his or her behalf.

Pretermitted Child: One who may, under certain circumstances, become an heir by birth or adoption subsequent to the date of execution of a testator's will.

Private Annuity: A means of transferring property from one owner to another by "selling" it for an unsecured promise to pay the original owner an income for life. The sale price is based on fair market value at the time of sale.

Probate: Probate is the process of the personal representative gathering all the property of someone who died, paying all just debts and taxes, and distributing the balance to the devisees designated in the will or to the heirs as prescribed by the legislature where there is no will or the will is defective.

Real Property: Real estate, minerals and royalty interests, growing timber, land and buildings attached to the land.

Remainderman: One entitled to the remainder of a life estate after a particular reserved right or interest has expired.

Revocable: A trust in which the trustor (maker of the trust) has, by the terms of the trust agreement, reserved the power to alter, amend or terminate the trust and to receive the property back from the trustee.

Right of Election: The surviving spouse's right to a share of the augmented estate rather than accepting the amount provided by will or intestate succession statutes. The percentage is based on the length of marriage.

Right of Representation: Term used by a testator to describe the division of property among different degrees of kinship. For example: A had children B and C. B had one child B1 and C had two children C1 and C2. If A had in his will that his property be divided per stirpes, and B and children of C were survivors, then B would receive one-half and the children C1 and C2 would split the other half (1/4 to each). If the property had been divided per capita, than all would have received equal shares of one-third each.

Separate Listing of Tangible Personal Property: A list separate from the will that identifies both the items and persons to receive them.

Sole Ownership: Title to property in one name.

Spouse: A person's wife or husband.

Succession Law: Law which governs the disposition of one's estate if there is no will.

Tenancy in Common: A type of co-ownership between two or more persons who hold undivided interests in the same property with no right of survivorship for the surviving tenant in common. When one dies, his or her share becomes part of his or her estate. The property goes to his or her heirs and not to the other tenants in common unless they are also his/her heirs or, if there is a will, to his/her devisees.

Testamentary: Pertaining to a will.

Testamentary Trust: A trust, set up in a will, which does not become effective until the death of the testator.

Testator: A person making a will.

Transfer on Death (TOD): Designation on securities that allows the naming of a beneficiary to receive them upon death of a party.

Trust: The legal relationship created by virtue of one party holding legal title to property, whether real or personal, for the benefit of another.

Trustee: The person, or corporate body holding title to the trust property, appointed to execute, administer, and carry out the terms of a trust for the benefit of the beneficiary.

Trustor: Maker of a trust.

Will: The legal instrument expressing a person's wishes and directions as to the disposition and distribution of his/her property after death.

Witness: A person who observes the signing of a will and attests to the signature.



<http://www.montana.edu/wwwpb/pubs/mt200202.html>

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File under: Consumer Education

D-26 (Estate Planning)

**Revised July 2006
500-06/06JM**

Make Your Wishes Known:

A guide to the Wyoming Health Care Decisions Act of 2005, and the Wyoming Advance Health Care Directive form

Brought to you by AARP Wyoming; Quality Health Care Foundation of Wyoming; United Medical Center Hospice; Wyoming Department of Family Services, Adult Protective Services Division; Wyoming Department of Health, Aging Division; the Wyoming Hospital Association; Wyoming Legal Services, Inc.; and the Wyoming Medical Society

Make Your Wishes Known:

A guide to the Wyoming Health Care Decisions Act of 2005

Let them know now

Advances in medical treatment allow us to prolong life like never before. But along with that power comes responsibility.

Imagine lying in a hospital bed, unable to communicate or breathe on your own. Your family stands above you, wondering what to do.

Decisions on whether to prolong life can involve great turmoil and debate. Questions over the quality of a loved one's life and what that person would have or would not have wanted done under the circumstances conjure up emotional and personal feelings that have been known to tear even close families apart.

Now there is a tool available to all Wyoming residents that can help alleviate some of the difficult debate that accompanies health-care decisions. The Wyoming Health Care Decisions Act of 2005 provides a simple and comprehensive form for residents to record their personal wishes. The form is universally accepted by doctors, hospitals and lawyers within the state and in many other states too.

Please use this guide to walk you through completing the attached Wyoming Advance Health Care Directive.

Recent well publicized end-of-life cases have shown that every adult, no matter how young or old – or how sick or well – should have an advance health-care directive in place, just in case. Think of it as a gift to your loved ones. Save them the angst of worrying whether they are making the decisions that you would have wanted. Let them know now.

What is the Wyoming Advance Health Care Directive?

The power of an advance health-care directive is that it speaks when you cannot. It is your opportunity to control your wishes for health-care treatment by using a legal document that must be honored by health-care providers in Wyoming.

Under the Wyoming Health Care Decisions Act of 2005, the Wyoming Legislature authorized a combined advance health-care directive. Before this law was enacted, three separate forms often were required, and there were many different versions of these forms available, which often led to confusion.

You may now use the Wyoming Advance Health Care Directive to express your wishes about all forms of health-care decisions, plus it allows you to designate another person to make health-care decisions on your behalf when you are no longer able to do so yourself.

This document also allows you to nominate a person for the court to consider as an option if it determines that you need a court-appointed guardian to take responsibility for your needs and overall care.

What does it do?

The Wyoming Advance Health Care Directive is a legal document that allows you to:

- name an agent to make health-care decisions for you if you become incapable of communicating or making your own decisions
- name an alternate agent in case your first choice is not able, willing or reasonably available to make decisions on your behalf
- designate the level of decision-making power of your agent(s)
- nominate a person to act as your guardian if a court determines that you need one
- give specific instructions on whether to continue or withhold or withdraw treatment, including nutrition or hydration, as well as pain relief
- express whether you wish for your bodily organs and/or tissue to be donated upon your death
- designate a supervising primary health-care provider to have primary responsibility for your care

What does this replace?

The Wyoming Advance Health Care Directive has the potential to take the place of a living will, a durable power of attorney and an organ donation designation.

If you have completed these forms already, you may still want to fill out the Wyoming Advance Health Care Directive to ensure that your wishes are adequately recorded and will be honored while you are in the state of Wyoming.

Documents completed and properly executed before the Wyoming Advance Health Care Directive became available on July 1, 2005, will remain valid. But this may be a good time to review the documents you already have in place. You might want to ask yourself the following questions:

Do the executed documents adequately represent my wishes? Have my desires changed since I completed the forms?

Is there anything missing from my forms that this new document provides? For example: Does your form include the designation of a supervising health-care provider or your desire to make an anatomical gift?

If you choose to complete the Wyoming Advance Health Care Directive, please destroy any old documents to avoid confusion. And, notify your designated agent, family, friends, your primary physician and your local hospital of your new advance directive.

How do I prepare my advance health-care directive?

You can complete the attached Wyoming Advance Health Care Directive form yourself. As you complete the form, you may wish to seek advice from your physician, particularly if you have a chronic or potentially life-threatening condition.

Also, you may have an attorney draft an advance health-care directive to meet your unique needs. Many estate-planning or elder-law attorneys prepare such documents as part of estate planning.

You may modify the form to suit your particular situation or even use a different format, so long as you meet the following requirements:

1. The document must be dated.
2. It must be signed by you or the person the advance directive applies to.
3. You may not designate as your agent the owner, operator or employee of a residential long-term care facility where you are receiving care, unless that person is related to you.
4. It must be either notarized OR signed by two witnesses. To avoid the appearance of impropriety, at least one of those witnesses should not be related to you or entitled to inherit any portion of your estate.

Who can witness my advance health-care directive?

Wyoming law states that no matter what form you use for an advance directive, a witness may not be any of the following:

A health-care provider; the agent or agents designated in your advance directive; and an employee of a health-care provider or a health-care facility.

If you do not have it notarized, the advance directive should be witnessed by two people who can attest to your mental capacity. The witnesses must sign the witness declaration already included in the Wyoming Advance Health Care Directive (see page 15).

When does my advance health-care directive take effect?

Once your signed advance directive is witnessed or notarized in compliance with the law, it is a legally-binding document.

Advance directives normally go into effect once you are no longer able to communicate with a health-care provider or if your primary attending physician determines that you do not have the capacity to make your own decisions. The primary attending physician usually makes the determination whether such decision-making capacity has been restored.

This new directive allows you to designate a different way to determine incapacity, and it also allows you to put the directive into effect immediately upon completion if you wish to have someone else take over as your agent now.

Your advance directive is suspended during emergency medical care, whether provided by an emergency medical technician, an emergency room physician or by a similar health-care provider. Emergency responders in Wyoming are required to provide cardio-pulmonary resuscitation (CPR) unless they are given a specific written Do Not Resuscitate order (DNR) that states otherwise and is signed by a physician. Once you are in the care of a primary attending physician, your advance directive resumes.

The attached form does not include a DNR. If you wish to complete a DNR you should contact your primary health-care provider or the Wyoming Department of Health for the appropriate documentation.

What if I change my mind?

As long as you have the capacity to do so, you may change or revoke your advance health-care directive at any time.

The 2005 Act requires that the power of attorney portion of the directive can be revoked by signing a written notification to the designated agent or by personally notifying the designated supervising primary health-care provider. In the event of a legal separation, annulment or divorce, a power of attorney that designates a spouse as agent is automatically revoked.

Other portions of the directive may be changed or revoked in any manner that communicates your wishes.

Your most recent valid advance directive automatically revokes earlier directives. To avoid confusion, you may want to notify anyone who has a copy of your previous advance directive.

What should I do once the form is complete?

Keep your original, signed advance health-care directive in a safe, but accessible place. It is an important legal document.

Talk to your designated agents, physician, family, close friends, clergy, attorney and anyone else who might become involved in your health-care decisions, and give them and your local hospital a photocopy of your advance directive.

If you enter a hospital or nursing home, have photocopies of your directive placed in your medical records.

Remember, you may always change your advance directive, but you must complete a new document and have it either witnessed or notarized for the changes to take effect. If you wish to revoke your advance directive, you must express that in writing and should notify anyone who may have a copy of your advance directive.

What if I have more questions?

Many places offer information about advance health-care directives. Here are a few:

Local resources

AARP Wyoming 1-866-663-3290 or www.AARP.org/wy

Wyoming Bar Association WyomingBar.org

Wyoming Department of Health, Aging Division 1-800-442-2766 or wdhfs.state.wy.us/aging

Wyoming Legal Services 1-800-442-6170 or WyomingLawHelp.org

Wyoming Senior Citizens, Inc. 1-800-856-4398 or WyomingSeniors.com

United Medical Center Hospice (in Cheyenne) 1-307-633-7016

Internet resources

AARP Legal Services Network www.AARP.org

National Hospice and Palliative Care Organization 1-800-658-8898 or NHPCO.org

End of Life Choices 1-800-247-7421 or CompassionInDying.org

Aging with Dignity 1-888-5-WISHES or AgingWithDignity.org

National Academy for Elder Law Attorneys 1-520-881-4005 or NAELA.com

This guide is not intended to provide legal advice, but meant to help you navigate the document. It is a collaborative effort between AARP Wyoming; Quality Health Care Foundation of Wyoming; United Medical Center Hospice; Wyoming Department of Family Services, Adult Protective Services Division; Wyoming Department of Health, Aging Division; the Wyoming Hospital Association; Wyoming Legal Services, Inc.; and the Wyoming Medical Society.

Wyoming Advance Health Care Directive Form

(This form is substantially the same as prescribed by Wyoming Statute 35-22-405 with minor changes.)

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your supervising health-care provider.

If you use this form, you may choose whether to complete all or any part of it or you may modify all or any part of it. You also are free to use a different form, but please note that certain provisions must be included in the form for it to be a legal document in Wyoming. (See page 3 for a list of requirements.)

Part 1

The first section of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable.

You also may name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential or community care facility at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
- b) Select or discharge health care providers and institutions;
- c) Approve or disapprove diagnostic tests, surgical procedures, medication and orders not to resuscitate; and

d) Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2

The second section of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3

The third section of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4

The final section of this form lets you designate a supervising health care provider to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. This form must either be signed before a notary public or, in the alternative, be witnessed by two (2) witnesses.

Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time. (See page 5.)

PART 1: POWER OF ATTORNEY FOR HEALTH CARE

(1) **Designation of agent:** I designate the following individual as my agent to make health care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) **Agent's authority:** My agent is authorized to make all health care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(3) **When agent's authority becomes effective:** My agent's authority becomes effective when my supervising health care provider determines that I lack the capacity to make my own health-care decisions unless I initial the following box. If I initial this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) **Agent's obligation:** My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent that my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) **Nomination of a guardian:** If a guardian needs to be appointed for me by a court, (please initial one):

[] I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

[] I nominate the following to be guardian in the order designated:

1.

2.

3.

[] I do not nominate anyone to be guardian.

PART 2: INSTRUCTIONS FOR HEALTH CARE

Please strike any wording that you do not want.

(6) **End-of-Life decisions:** I direct that my health care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have initialed below:

[] (a) **Choice Not To Prolong Life:** I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

[] (b) **Choice To Prolong Life:** I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) **Artificial nutrition and hydration:** Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I initial the following box. If I initial this box [], artificial nutrition must be provided regardless of my condition and regardless of the choice I have made in paragraph (6). If I initial this box [], artificial hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) **Relief from pain:** Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times:

(9) **Other wishes:** (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3: **DONATION OF ORGANS AT DEATH** (Optional)

(10) **Upon my death** (initial applicable box):

- (a) I give my body, or;
- (b) I give any needed organs, tissues or parts, or;
- (c) I will give the following organs, tissues or parts only:

(Add additional sheets if needed.)

(d) My gift is for the following purposes (strike any of the following you do not want):

- (i) Any purpose authorized by law;
- (ii) Transplantation;
- (iii) Therapy;
- (iv) Research;
- (v) Medical education.

PART 4: DESIGNATION OF SUPERVISING HEALTH CARE PROVIDER

(11) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(12) Effect of copy: A copy of this form has the same effect as the original.

(13) Signatures: Sign and date the form here:

(sign your name) (date)

(print your name)

(address) (city) (state) (zip code)

SIGNATURES OF WITNESSES or NOTARY PUBLIC:

I declare under penalty of perjury under the laws of Wyoming that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this document in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document and that I am not a treating health-care provider, an employee of a treating health-care provider, the operator or employee of a community care or residential care facility.

First witness

(print name) (address)

(signature of witness) (date)

Second witness

(print name) (address)

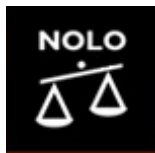
(signature of witness) (date)

Notary

Subscribed and sworn to and acknowledged before me by _____ the Principal, this _____ day of _____, _____.

My commission expires:

Notary Public



Choosing a Guardian for Your Children

If you have children, you should choose a personal guardian -- someone to raise them in the unlikely event you can't.

If your children are young, you've probably thought about who would raise them if for some reason you and the other parent couldn't. It's not an easy thing to consider. But you can make some simple arrangements now that will allay some of your fears, knowing that in the extremely unlikely event you can't raise your kids, they will be well cared for.

All you need to do is use your will to name the person you want to be the "personal guardian" of your children if one is ever needed. Then, if a court ever needs to step in and appoint a guardian, the judge will appoint the person you nominated in your will -- unless it is not in the best interests of your children for some reason.

If you don't name a guardian in your will, anyone who is interested can ask for the position. The judge then must decide, without the benefit of your opinion, who will do the best job of raising your kids.

Naming a Personal Guardian

You should name one personal guardian (and one alternate, in case your first choice can't serve) for each of your children.

Legally, you may name more than one guardian, but it's generally not a good idea because of the possibility that the co-guardians will later disagree. On the other hand, if you prefer that two people care for your child -- for example, a stable couple who would act as co-parents -- name both of them, so that they each have the legal power to make important decisions on behalf of your child.

Here are some factors to consider when choosing a personal guardian:

- Is the prospective guardian old enough? (You must choose an adult -- 18 years old in most states.)
- Does the prospective guardian have a genuine concern for your children's welfare?
- Is the prospective guardian physically able to handle the job?
- Does he or she have the time?
- Does he or she have kids of an age close to that of your children?
- Can you provide enough assets to raise the children? If not, can your prospective guardian afford to bring them up?
- Does the prospective guardian share your moral beliefs?
- Would your children have to move?

If you're having a hard time choosing someone, take some time to talk with the person you're considering. One or more of your candidates may not be willing or able to accept the responsibility, or their feelings about acting as guardian may help you decide.

Naming the Guardian

When you've made your decision, all you need to do is put your choice of guardian, and an alternate in case your first choice isn't available, in your will. If you haven't made a will yet, but you have children, now is the time. [Quicken WillMaker Plus](#) (Nolo) will create a will for you and allow you add a guardian for your children, as well as an alternate.


Choosing Different Guardians for Different Children

Most people want their children to stay together; if you do, name the same personal guardian for all of your kids.

You can, however, name different personal guardians for different children. Parents may do this, for example, if their children are not close in age and have strong attachments to different adults outside of the immediate family. For instance, one child may spend a lot of time with a grandparent while another child may be close to an aunt and uncle. Or, if you have children from different marriages, they may be close to different adults. In every situation, you want to choose the personal guardian you believe would be best able to care for each child.

Choosing a Different Person to Watch the Checkbook

Some parents name one person to be the children's personal guardian and a different person to look after financial matters. Often this is because the person who would be the best surrogate parent would not be the best person to handle the money.

 What if my child's appointed guardian can't handle the money? For example, you might feel that your brother-in-law would provide the most stable, loving home for your kids, but not have much faith in his abilities as a financial manager. Perhaps you have a close friend who cares about your kids and would be better at dealing with the economic aspects of bringing them up. Provided that your brother-in-law and your friend agree, you can name one as personal guardian and the other as [custodian](#) or [trustee](#) to manage your children's inheritance. (See [Leaving more > Property to Young Children.](#))

If You and the Other Parent Can't Agree

When you and your child's other parent make your wills, you should name the same person as personal guardian. If you don't agree on whom to name, there could be a court fight if both of you die while the child is still a minor. Faced with conflicting wishes, a judge would have to make a choice based on the evidence of what's in the best interests of your child.

Again, talk with the people you'd each like to name. Candid discussions with your potential guardians may bring new information to light and help you reach an agreement.

Making Your Wishes Known to the Guardian

Most people have strong feelings about how they want their children to be raised. Your concerns may cover anything from religious teachings to what college you'd like a particular child to attend.

One option is to write a letter to the personal guardian, outlining thoughts and feelings about how the children should be raised. Try not to put in too much detail, though; it could cause your nominee much guilt and frustration later if unexpected circumstances thwart his or her attempts to carry out your plans to the letter.

The best guarantee of an upbringing you would approve of is simply to choose someone who knows you and your children well, and whom you trust to navigate life's complexities on your children's behalf.

If You Don't Want the Other Parent to Raise Your Child

If one of a child's parents dies, the other parent usually takes responsibility for raising the child. This is what most people want.

If you are separated or divorced, however, you may feel strongly that the child's other parent shouldn't have custody if something should happen to you. But a judge will grant custody to someone else only if the surviving parent:

- has legally abandoned the child by not providing for or visiting the child for an extended period, or
- is clearly unfit as a parent.

In most cases, it is difficult to prove that a parent is unfit, unless he or she has serious problems such as chronic drug or alcohol abuse, mental illness, or a history of child abuse.

If you honestly believe the other parent is incapable of caring for your children properly, or simply won't assume the responsibility, you should write a letter explaining why, and attach it to your will. The judge may take it into account. Judges are always required to act in the child's best interests. In choosing a guardian, a judge commonly considers a number of factors; you may want to address them if you write a letter explaining your choice for personal guardian. Here are the big ones:

- the child's preference, to the extent it can be ascertained
- who will provide the greatest stability and continuity of care
- who will best meet the child's needs
- the relationships between the child and the adults being considered for guardian, and
- the moral fitness and conduct of the proposed guardians.



Disinheriting Family Members

Your closest relatives may have a right to claim part of your estate.

Only very close relatives -- surviving spouses and sometimes children or grandchildren -- have the right to claim an inheritance from a deceased relative. Here's how it works:

A Spouse's Right to Inherit

In most circumstances, a surviving spouse cannot be completely cut out of a will.

Community property states

The community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin, and Alaska -- if spouses sign an agreement creating community property) have their own rules about what spouses own and can claim. Basically, each spouse automatically owns half of what either one earned during the marriage, unless they have a written agreement to the contrary. Each spouse can do whatever he or she likes with his or her own half-share of the community property and with his or her separate property. (For help sorting out what's community property and what's separate property, see [Married Couples: Who Owns What.](#))

Other states

In all other states, there is no rule that property acquired during marriage is owned by both spouses. But to protect spouses from being [disinherited](#), most of these states give a surviving spouse the right to claim one-third to one-half of the deceased spouse's estate, no matter what the will provides. In some states, the amount the surviving spouse can claim depends on how long the couple was married.

These provisions kick in only if the survivor goes to court and claims the share allowed by law. If a surviving spouse doesn't object to receiving less, the will is honored as written.

Example:

Johanna's will leaves \$80,000 to her fourth husband, Fred, and divides the rest of her property, totaling almost \$500,000, among her three sons from previous marriages. If Fred is happy with his inheritance, everything will go according to Johanna's plan. But if Fred wants more, he can claim a share of Johanna's estate--and get substantially more than \$80,000. If he does, Johanna's three sons will take what's left.

If you don't plan to leave at least half of your property to your spouse in your will, and have not provided for him or her generously outside your will, you should consult a lawyer unless your spouse willingly consents, in writing, to your plan.

Ex-Spouses' Rights

In most states, getting divorced automatically revokes gifts made to a former spouse in your will. But to be on the safe side, if you get divorced, make a new will that revokes the old one. Then you can simply leave your former spouse out of your new will.

Children's Right to Inherit

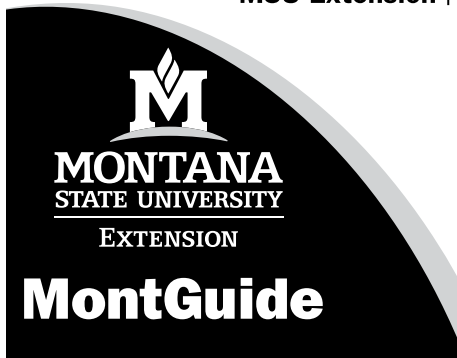
Generally, children have no right to inherit anything from their parents. In certain limited circumstances, however, children may be entitled to claim a share of a deceased parent's property. For example, the Florida constitution prohibits the head of a family from leaving his or her residence to anyone other than a spouse or minor child if either is alive.

Most states do have laws to protect against accidental disinheritance. These laws usually kick in if a child is born after the parent made a will that leaves property to siblings, and the parent never revises the will to include that child. The law presumes that the parent didn't intend to freeze out the newest child, but just didn't get around to revising the will. In that situation, the overlooked child may have a right to a significant part of the parent's assets.

In some states, these laws apply not only to children, but also to any grandchildren of a child who has died.

If you decide to disinherit a child, or the child of a deceased child, your will should clearly state your intention. And if you have a new child after you've made your will, remember to make a new will.

To start planning your estate today, see [Quicken Willmaker Plus](#), software meticulously designed by Nolo's lawyers to help you make wills, trusts, health care directives, and other vital estate planning documents without the high cost of hiring an attorney.



by Marsha A. Goetting, Ph.D., CFP®, CFCS, Professor and Extension Family Economics Specialist; Joel Schumacher, Extension Assistant, Department of Agricultural Economics & Economics.

This publication analyzes how federal tax laws affect individual estates, including changes resulting from the Economic Growth and Tax Relief Reconciliation Act of 2001. In many cases, the federal estate tax can be reduced significantly by careful planning during life.

MT199104 HR Revised 7/06

THE FEDERAL ESTATE TAX IS A TAX AGAINST

the estate of a deceased person for the privilege of transferring property. The amount of the estate tax depends upon the value of the assets the decedent (the person who died) held at death and taxable transfers during life, how the assets are held, and deductions and credits available. In many cases, the potential estate tax can be reduced significantly by careful planning during life.

This MontGuide presents a general explanation of the federal estate tax provisions resulting from the *Economic Growth and Tax Relief Reconciliation Act of 2001*. One significant provision is that the repeal of the federal estate tax was postponed until Jan. 1, 2010. Another change is a gradual reduction in the highest tax rate from 50% to 45% by 2008. Also, there is an increase in the value of property that may be transferred free of the federal estate tax during the years 2006-2009 (see Table 1). During 2006 - 2008, the exclusion is \$2 million and in 2009 the amount increases to \$3.5 million.

The Gross Estate

Calculation of the federal estate tax begins with the determination of a deceased person's gross estate. The gross estate includes: the fair market value of all real and personal property owned at death, transfers with retained life estate, transfers taking effect at death, revocable transfers, annuities, joint interests, certain powers of appointment, certain proceeds of life insurance, certain transfers occurring within three years of death, and future payments that were owed to the decedent at the time of death. An explanation of each follows.

Real and personal property owned by the deceased person

Property owned by the decedent includes real estate, stocks, bonds, checking and savings accounts, and promissory notes or other evidences of indebtedness held by the decedent. Also included in the gross estate are miscellaneous personal property (furniture, jewelry, personal effects), collections (works of art, coins, stamps, guns), and the decedent's business interests in a partnership or family corporation.

Transfers with retained life estate

Generally, the value of the gross estate includes property transferred during life by the decedent if he or she retained possession, enjoyment of, or reserved certain rights or interests in the property. However, if the transfer was made for full consideration in money or money's worth at the time of the transfer, the value will not be included in the decedent's gross estate.

Interests that an individual could reserve for life include the use, possession, or other enjoyment of the transferred property; the right to receive income; or the right to designate persons who may receive income from the transferred property. This provision will bring back into the gross estate, for federal estate tax computation purposes, the full date-of-death value of closely held corporation stock if a decedent transferred the stock but retained voting rights in the transferred stock.

This provision will also bring back into the gross estate, for federal estate tax computation purposes, the value of property a decedent transferred but retained the right to income or retained the right to live on the property. This is true even though the property is validly transferred according to Montana law.

Example A: Jack deeded his ranch to his son and daughter-in-law. However, Jack continued to live on the ranch, made management decisions, and received income from the operation. In this case, the Internal Revenue Service concluded that he had retained a life interest in the property. The value of the ranch at the time of Jack's death was included as a part of his gross estate.

Transfers taking effect at death (reversionary interests)

If a transfer was not made for full consideration in money or money's worth (reversionary interests), the gross estate includes the value of property interests transferred at death if all of the following conditions exist:

1. Only by surviving the decedent could the beneficiaries obtain possession or enjoyment of the property transferred.

2. A right to have the property to oneself (reversionary interest) was retained by the decedent.
3. The value of the reversionary interest immediately before the decedent's death exceeded 5% of the value of the entire property.

Example B: John transferred property to a trust with the income payable to his wife for life and the remainder payable to himself or, if he is not living at his wife's death, to their child or the child's estate. John held a reversionary interest by the terms of the trust. He had expressly retained the right to have the property returned to him in the event he survived his wife, a right he possessed up to the moment of death. If the value of the reversionary interest was greater than 5% of the trust value, the value of the trust will be included in John's gross estate.

The value of the reversionary interest is based on actuarial tables. In other words, calculating the value of the reversion depends on the likelihood that the person establishing the trust will survive his or her beneficiaries.

Revocable transfers

The gross estate includes the value of property interests transferred by a decedent unless the transfer was made for full consideration in money or money's worth if the enjoyment of the property transferred was subject, on the date of death, to any power of the decedent to alter, amend, revoke or terminate the transfer.

An example of a revocable transfer is a revocable living trust. While one purpose of revocable living trusts is to reduce or eliminate probate costs, the assets in a revocable living trust are still included in the gross estate and subject to federal estate taxes. The power to change beneficiaries and/or the power to increase any beneficiary's enjoyment of the property are other examples of revocable transfers.

Annuities

The gross estate includes the value of an annuity or other payment that a beneficiary is due to receive because he or she survives the decedent. The amount included is proportionate to the purchase price contributed by the decedent or by the decedent's employer. A single life annuity contract that provided periodic payments to the decedent for life and ceased at his/her death is not included in the gross estate for federal estate tax computation purposes. The amount included is proportionate to the purchase price contributed by the decedent or the decedent's employer.

Joint tenancy interests

If property is titled by a husband and wife as joint tenants with rights of survivorship, then the estate of the first spouse to die includes one-half of the value of property regardless of which spouse paid for purchase of the property. This rule applies as long as the decedent and the surviving spouse are the only joint tenants on the property title.

Example C: A husband purchased a farm for \$200,000 with his own funds and titled it in joint tenancy with right of survivorship with his wife. When the husband died, the farm had increased in value to \$1.4 million. Because the farm was in joint tenancy between husband and wife, one-half the value of the farm (\$700,000) was included in the husband's gross estate for determining the federal estate tax.

When property is jointly owned by a decedent and someone other than the decedent's spouse, the entire value of the property, only a portion of it or none of it may be included in the gross estate of the first joint tenant to die. The entire value is included if the tenant furnished all the consideration. None is included if the joint tenant contributed nothing. And, a prorated share is included if each owner contributed to the cost of the acquisition of the jointly held property.

Example D: A father placed his ranch valued at \$2.5 million in joint tenancy with right of survivorship with his son. Upon the father's death, the son could not prove he contributed funds to the purchase price. As a result, the entire value of the ranch (\$2.5 million) was included in the father's gross estate for determining the federal estate tax.

An exception is allowed, if the personal representative of the estate (the person who carries out your plan for the settlement of your estate; formerly called "executor" or "administrator") can prove the surviving joint owner provided part or all of the money when the property was acquired or when the mortgage was paid off.

Example E: A father and his son bought a farm for \$300,000. Each provided half the funds for the purchase. When the father died, the farm was valued at \$5 million. The amount included in the father's gross estate for federal estate tax purposes was half of the value (\$2.5 million) because he had contributed half of the original purchase price.

The burden of proof is on the decedent's estate to prove the amount and source of contribution on the part of the surviving joint owner or owners unless the decedent and surviving joint owner is a spouse. Records are needed to document when the property was acquired, what consideration was furnished and by whom. In the absence of such records, the full value of the property will be subject to the federal estate tax.

Powers of appointment

The gross estate includes the value of property interests over which the decedent had a general power of appointment at death. A power of appointment is the power to determine who will own or enjoy a property, presently or in the future. In essence, if the decedent retained the "right to direct" the property, the value will be included in the gross estate.

A general power of appointment is one under which the holder could appoint the property to himself, his creditors, his estate, or his estate's creditors. A general power of appointment also includes the unlimited power to consume, invade, or appropriate either income or principal, or both for the benefit of the decedent prior to his/her death.

Proceeds of life insurance

The face value of life insurance on the decedent is included in the gross estate, if any one of the following conditions exists:

- The proceeds are receivable by the estate.
- The proceeds are receivable by another for the benefit of the estate subject to a legal obligation to benefit the estate.
- The decedent possessed incidents of ownership in the policy (such as the power to change beneficiaries, to revoke an assignment, to pledge the policy for a loan, or to surrender or cancel the policy).

Example F: A mother owns a \$500,000 life insurance policy. Her son is the beneficiary. When she dies, the \$500,000 will be included in her gross estate, which also includes a ranch valued at \$2 million. The federal estate tax on her estate of \$2.5 million in 2006 is \$230,000.

Example G: A mother transfers ownership of her \$500,000 life insurance policy to her son. Her son is the beneficiary. When the mother dies, the \$500,000 is not included in her estate because she is not the owner. The federal estate tax is computed on the \$2 million ranch. The federal estate tax in 2006 is zero. The mother's ownership of the life insurance policy (Example F) cost her estate an additional \$230,000 in federal estate taxes.

Insurance on the life of another, owned by the decedent at his or her death, is also included in the gross estate. The amount included is the replacement value of the policy, which can be obtained from the life insurance company.

Transactions within three years of death

Generally, the value of gifts (other than gifts of life insurance) made by a decedent is not included in the gross estate. However, interests in property otherwise included in the gross estate under the so-called "strings attached" provisions (or that would have been included had the interest been retained by the decedent) are included in the gross estate if transferred within three years of death. In addition, any gift tax paid by the decedent or his or her spouse within three years of death will be included in the gross estate for federal estate tax computation purposes.

Valuation of Gross Estate

Generally, the value of the decedent's property interest for federal estate tax purposes is its fair market value at the date of death. The IRS defines the fair market value as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all relevant facts.

The personal representative may elect an alternative valuation of the assets as of six months after the decedent's death. If the alternate valuation is elected, then all assets must be valued as of the alternate date, or as of the date of their distribution, sale, exchange, or other disposition, if any of those events occurs

before the alternate valuation date. The alternate valuation can be elected only if the valuation reduces the size of the gross estate and also reduces the amount of tax due.

Basis of property

All property (real estate, stocks, and bonds) that a person owns has a basis for tax purposes. For example, a home purchased in 1977 for \$47,000 has a basis of \$47,000 even though its current value is \$163,500.

Property received by a donee as a gift from a donor during life has a *carryover basis* value. This means that the value basis in the hands of the donee is the same as it was in the hands of the donor.

Example H: A father gifts land to his daughter that is currently worth \$1 million. The father paid \$100,000 for the land. The daughter assumes her father's \$100,000 basis in the property. If she sells the property for \$1 million, she is responsible for a capital gains tax on the difference between the basis (\$100,000) and the fair market value (\$1 million). Thus, the daughter would owe a federal capital gains tax of \$135,000 on the \$900,000 profit (Assuming a tax rate of 15%).

Property that is received by a beneficiary from a decedent has a *stepped-up basis*. This means the value of the property is stepped up to the fair market value at the date of death of the owner.

Example I: If the father in Example H had died and willed the property to his daughter, she would have received a stepped-up basis on the property. This means the value in the property will be stepped-up from the father's \$100,000 basis to \$1 million. If the daughter sold the property for \$1 million after her father's death, there would be no capital gains tax because she sold it at the stepped-up basis value.

Special use valuation on real property

If the personal representative has an agreement signed by those receiving an interest in real property to assume personal liability for recapture of taxes, he or she may elect to value qualified real property as a farm or as its use in the closely held business, rather than at its fair market value.

The special use valuation cannot reduce the decedent's gross estate by more than \$900,000 in 2006 (indexed for inflation in subsequent years). For property to qualify for special use valuation, certain requirements must be met. The real property subject to special use valuation must comprise at least 25% of the gross estate and the property must pass to qualified heirs (a lineal descendant of the decedent's grandfather). Also, the real property, and other farm or business assets must comprise 50% of the gross estate.

The Taxable Estate

Adjusted taxable gifts (total taxable gifts beyond the annual exclusion of \$12,000 for each person) made by the decedent after December 31, 1976 are also included in the federal estate tax computation on the 706 United States Estate Tax Return.

The taxable estate is reduced by subtracting the allowable expenses and deductions from the gross estate. Allowable expenses include such items as: administration and funeral expenses, claims against the estate, obligations, and casualty and theft losses. Allowable deductions include the marital deduction and the charitable deduction.

Allowable expenses

Administration and funeral expenses. Deductible administration expenses include compensation to the personal representative who is responsible for settling the estate, fees to the attorney for handling legal aspects of the estate, and miscellaneous costs such as accountant's fees, court costs and expenses for selling estate property (if the sale is necessary to settle the estate). These deductions may be taken either on the estate tax return or the fiduciary income tax return, but not on both.

Funeral expenses are also deductible. Medical expenses for the decedent, only if deducted on the estate tax return and not on the decedent's income tax return, are fully deductible.

Claims against the estate. All debts of the decedent, such as property taxes accrued before death, unpaid income taxes on income received by the decedent during life, and unpaid gift taxes on gifts made by the decedent during life are deductible from the gross estate.

Obligations. Unpaid mortgages and other charges against property, including the interest accrued to the date of the decedent's death, are deductible if the value of the property is included in the gross estate without reduction for mortgage or other indebtedness.

Casualty and theft loss. Deductions are allowed for losses incurred during the settlement of the estate that arise from theft or casualties, such as storms or fires. However, the deduction allowed is only to the extent that the losses are not compensated for by insurance and if they are not deducted on the estate's income tax return.

Allowable deductions

Marital deduction. Generally, unlimited amounts of property can be transferred at death to a U. S. citizen spouse without a federal estate tax. However, fully utilizing the unlimited marital deduction at the death of the first spouse may result in higher taxes at the death of the second spouse. By taking advantage of the exclusion amount for the first deceased spouse, federal estate taxes can be minimized at the death of the second spouse.

Example J: Assume a husband has a taxable estate valued at \$2.5 million in 2006 and that his wife has zero assets. If he leaves his estate all to his wife, there is no estate tax at his death, because the total amount qualifies for the unlimited marital deduction. However, if the wife dies in 2008, the federal estate tax will be \$225,000.

Example K: The couple could have developed an estate plan that utilizes a partial marital deduction. The husband's written will could have provided that \$2 million of his \$2.5 million estate pass directly to his children and the balance

of \$500,000 pass to his wife. There is no tax on the estate at the death of the husband because of his exclusion of \$2 million. At the wife's death, only the \$500,000 left to her is included in her taxable estate. All of it is sheltered by the wife's applicable exclusion of \$2 million. The result is no federal estate tax at the death of either parent and a \$225,000 tax savings for the children.

Example L: Assume that the husband has a ranch valued at \$4 million, that he has children from a prior marriage and that the ranch land has been in the family for several generations. If he leaves his estate all to his wife, there is no estate tax at his death, because the total amount qualifies for the unlimited marital deduction. However, if the wife dies in 2008, the federal estate tax will be \$900,000.

While the husband wants to provide for his wife, he also wants to be sure his children ultimately inherit the land. His plan would be identical to the one in Example K, except the section of land valued at \$2 million would not be left outright to his wife, but would instead be placed in a *qualified terminable interest property trust* (QTIP).

The terms of the QTIP trust require all income to be distributed to the wife for life, with the assets to pass to the husband's children at the death of the wife. With an appropriate election by the personal representative, the QTIP trust will qualify for the marital deduction at the death of the husband. While the property is subject to the federal estate tax at the death of the wife, there is no tax because the amount is equal to the wife's applicable exclusion of \$2 million.

The husband will be assured that his assets will pass to his children from a prior marriage following the death of his present wife because of the terms of the QTIP trust.

Another alternative is for the father to create a by-pass or credit shelter trust to hold the assets equal to Dad's applicable exclusion (\$2 million in 2006-2008, Example L above). The assets in the credit shelter trust could pass directly to his children upon his death.

The law is very, very complex in this area. Contact an attorney or a certified public accountant for a full discussion of the factors to be considered to achieve family objectives and minimize taxes.

Pre-June 2001 wills. All married couples who have written wills dated before of June 2001 should have them reviewed by an attorney to determine if the marital deduction clause overfunds the credit shelter trust and does not provide adequately for the surviving spouse.

Example M: Assume that a father has a \$2 million estate and a will written before June 2001 that states that the credit shelter trust should be funded at his death to the maximum amount of the applicable exclusion. If he died in 2006, \$2 million (the maximum applicable exclusion) would pass to the credit shelter trust and nothing would pass to his wife. That is not the result the father wants. He needs to change the terms of the credit shelter trust to adequately provide for his spouse. The father needs to contact his attorney to change the marital deduction clause in his will.

Charitable deduction. An unlimited deduction is allowed for the value of property in the decedent's gross estate that was transferred by will to or for the use of a "qualified" 501(c)(3) charitable, religious, educational or governmental organization.

Example N: In his will, a 4-H leader has left land valued at \$2 million to the Montana 4-H Foundation. The amount would qualify as a charitable deduction because the Montana 4-H Foundation has a 501(c)(3) designation.

Federal Estate Tax Rates

Once the taxable estate is determined and any gift tax payable on gifts made by the decedent after December 31, 1976 subtracted, the federal estate tax rate is applied. The rates for 2006 through 2011 are provided in Table 2. The highest tax rates are reduced to 45% in 2007 through 2009. In 2010, the estate tax is repealed and in 2011, the highest tax rate returns to the old rate of 55% on estates of \$3 million. This sunset provision repealing all of the 2001 changes at the end of 2010 was included to comply with the requirement of a Congressional Budget Act that changes do not increase the budget deficit for a fiscal year.

Credits Against the Estate Tax

The following credits are deducted from the tentative estate tax: the applicable credit (applicable exclusion), credit for state death taxes and credit for tax on prior transfers.

Applicable credit. The applicable credit is a credit against the federal estate tax due or the federal gift tax due. The applicable credit amount in 2006 is \$780,800. However, if a decedent had made taxable gifts of \$1 million during life he would have used up \$345,800 of his applicable credit so he would only have \$435,000 of his credit remaining ($\$780,800 - \$345,800 = \$435,000$). In 2011, the applicable credit returns to \$345,800 (Table 1).

The applicable credit translates into a dollar value that can be transferred during life without a federal gift tax or at death without a federal estate tax. The applicable exclusion increases from \$2 million in 2006-2008 to \$3.5 million in 2009. In 2010, the federal estate tax is repealed. In 2011, the applicable exclusion returns to \$1 million.

The applicable credit is applied against the gift or estate taxes otherwise payable. The actual value of an estate that may pass without an estate tax due during 2006-2008 is \$2 million. In other words, during 2006-2008, the \$780,800 applicable credit is equal to \$2 million in assets that can be transferred without being taxed at death. However, the applicable credit is reduced by any taxable gifts made by the decedent.

Example O: Jack, who made no prior taxable gifts to his children, has an estate valued at \$2.8 million in 2006. The tax on \$2,500,000 is \$1,010,800 (Table 2). The federal estate tax on the remaining \$300,000 ($\$2,800,000 - \$2,500,000 = \$300,000$) is computed at a 46% rate which is equal to \$138,000. The tentative tax totals \$1,148,800

($\$1,010,800 + \$138,000 = \$1,148,800$). From the tentative tax, the applicable credit of \$780,800 is subtracted (Table 1). The tax due is \$368,000 ($\$1,148,800$ tentative tax - $\$780,800$ applicable credit = $\$368,000$).

Example P: George gave his son \$12,000 in 2006 which qualified for the annual gift exclusion. George then made a gift of shares in his ranch corporation valued at \$1 million to his son in 2006. George did not have to pay a gift tax because the amount was equal to the applicable gift tax exclusion of \$1 million which translated to the applicable credit of \$345,800. Assume George dies in 2008 with remaining stock valued at \$2 million. In 2008 the applicable credit is \$780,000 but because George already used \$345,800 of his available credit in 2006, the estate only has a \$435,000 applicable credit remaining.

The applicable credits and applicable exclusions for both the federal estate tax and federal gift tax are listed in Table 1. A federal estate tax return (form 706) is required only when a taxable estate is valued at more than the exclusion amount. A federal gift tax is payable only when a gift is valued at more than the applicable exclusion amount.

Credit for state death taxes. In 2005, the state death tax credit was repealed and replaced with a deduction for any death taxes actually paid to a state on the estate. Because Montana does not have an inheritance tax, a state death tax credit will not be allowed on the estate of a Montana decedent.

Credit for tax on prior transfers. Partial credit is allowed against the tax for federal estate taxes paid on the transfer of property to the present decedent from a decedent who died within ten years before, or within two years after, the present decedent's death.

Filing of estate tax return

If the gross estate of a decedent is more than the applicable exclusion amount (\$2 million in 2006 plus taxable gifts made during life), Form 706, United States Estate Tax Return, is due nine months after the date of death.

Extension of time to pay the tax

A reasonable extension of time (not to exceed six months) to file the estate tax return, or related statements or documents, may be granted if it is impossible or impractical to complete the return within the normal nine-month period beginning at the decedent's date of death. However, an extension of time to file the return is not an extension of time to pay the tax.

One-year extension. The personal representative may request an extension of time to pay the estate tax. A period not to exceed 12 months from the date fixed for the payment may be granted by the IRS when there is reasonable cause. However, interest accrues from the original due date.

Reasonable cause extension. In addition, the personal representative, when showing reasonable cause, may be granted an extension of time for paying taxes for up to 10 years from the due date of the original payment of the tax liability.

However, interest accrues from the original due date.

Fifteen-year installments. The estate tax can be paid in installments (of up to 15 years) if the value of the decedent's interest in a closely held business exceeds 35 percent of the decedent's gross estate. The estate makes an annual interest payment for a period not to exceed four years. Thereafter, the balance is paid in up to 10 annual installments of principal and interest.

A special 2% interest rate is provided for deferred tax attributed to the first \$1 million in value of the closely held business interest. The interest rate on deferred taxes on the remaining amount is 45% of the underpayment rate (federal short-term rate plus three percentage points). The rate has varied between seven and 11 percent since 1990.

The Economic Growth and Tax Relief Reconciliation Act of 2001 expands the availability of installment payment of estate tax for the closely held business by increasing the number of shareholders or partners from 15 to 45. The provision has also been expanded to include qualified lending and finance business interests. The tax on these interests must be paid in five installments of principal and interest. This provision applies to estates of decedents dying after Dec. 31, 2001.

Changing Regulations

The Economic Growth and Tax Relief Reconciliation Act of 2001 made substantial changes in federal estate tax laws. While this MontGuide discusses several of the major changes, you are encouraged to consult competent professionals such as an attorney or certified public accountant to keep abreast of regulations as they develop. Also, consult these professionals for estate tax planning for your individual situation.

Further Information

The Internal Revenue Service provides in-depth publications on Federal Estate and Gift Taxation. They can be ordered from the IRS (1-800-829-3676) or downloaded from the web at <http://www.irs.ustreas.gov>.

Additional information about major changes in the regulations on *gifting* as a result of the Economic Growth and Tax Relief Conciliation Act of 2001 are explained in MontGuide 199105. The publication is available free from your local MSU Extension Office. Or, send \$1 for handling to MSU Extension Publications, P.O. Box 172040, MSU, Bozeman, MT 59717-2040. The MontGuide can also be downloaded from the web at <http://www.montana.edu/wwwpb/pubs/mt9105.html>

Acknowledgments

Representatives from the following reviewed this MontGuide and recommend its reading by all Montanans who are in the process of estate planning.

- Business, Estates, Trusts, Tax and Real Property Section—
State Bar of Montana
- Montana Society of Certified Public Accountants
- Montana Association of Insurance and Financial Advisors

Disclaimer

This publication is not a substitute for legal advice. Rather it is designed to help inform persons about the basic provisions of the federal estate tax law and to create an awareness of the need for planning if a goal is to minimize the tax. There are numerous exceptions and conditions to some of the concepts discussed. Future changes in laws cannot be predicted and statements in the MontGuide are based solely on the laws in force on the date of publication.

Table 1: Applicable Estate and Gift Tax Credits and Applicable Exclusions 2006 - 2011*

Year of Death	Federal Estate Tax*		Federal Gift Tax	
	Applicable Credit	Applicable Exclusion	Applicable Credit	Applicable Exclusion
2006	780,800	2,000,000	345,800	1,000,000
2007	780,800	2,000,000	345,800	1,000,000
2008	780,800	2,000,000	345,800	1,000,000
2009	1,455,800	3,500,000	345,800	1,000,000
2010	Repealed	Repealed	345,800	1,000,000
2011	345,800	1,000,000	345,800	1,000,000

*Note: There is only one applicable tax credit. If the applicable credit (\$345,800) is used up for gifting during 2006, only \$435,000 remains available to offset the federal estate tax in 2006 ($780,800 - \$345,800 = \$435,000$).

Table 2: Federal Estate and Gift Tax Rate Schedule, 2006-2011

TAXABLE ESTATE BRACKETS		TAX ON COLUMN 1					FEDERAL ESTATE AND GIFT TAX RATES ON AMOUNT OVER COLUMN 1				
COLUMN 1	COLUMN 2	2006	2007-2009	2010	2011	2006	2007-2009	2010	2011	2010	2011
FROM	TO										
0	9,999	0	0	0	0	18%	18%	0%	0	0%	18%
10,000	19,999	1,800	1,800	0	1,800	20%	20%	0%	1,800	0%	20%
20,000	39,999	3,800	3,800	0	3,800	22%	22%	0%	3,800	0%	22%
40,000	59,999	8,200	8,200	0	8,200	24%	24%	0%	8,200	0%	24%
60,000	79,999	13,000	13,000	0	13,000	26%	26%	0%	13,000	0%	26%
80,000	99,999	18,200	18,200	0	18,200	28%	28%	0%	18,200	0%	28%
100,000	149,999	23,800	23,800	0	23,800	30%	30%	0%	23,800	0%	30%
150,000	249,999	38,800	38,800	0	38,800	32%	32%	0%	38,800	0%	32%
250,000	499,999	70,800	70,800	0	70,800	34%	34%	0%	70,800	0%	34%
500,000	749,999	155,800	155,800	0	155,800	37%	37%	0%	155,800	0%	37%
750,000	999,999	248,300	248,300	0	248,300	39%	39%	0%	248,300	0%	39%
1,000,000	1,249,999	345,800	345,800	0	345,800	41%	41%	0%	345,800	0%	41%
1,250,000	1,499,999	448,300	448,300	0	448,300	43%	43%	0%	448,300	0%	43%
1,500,000	1,999,999	555,800	555,800	0	555,800	45%	45%	0%	555,800	0%	45%
2,000,000	2,499,999	780,800	780,800	0	780,800	46%	46%	0%	780,800	0%	49%
2,500,000	2,999,999			0	1,025,800	46%	46%	0%	1,025,800	0%	53%
3,000,000	UNLIMITED			0	1,290,800	46%	46%	0%	1,290,800	0%	55%

Estate tax computation example: Jack has an estate valued at \$2.1 Million. The tax on the first \$2,000,000 is \$780,800. The remaining \$100,000 is taxed at a 46% rate resulting in additional taxes of \$46,000. The tentative tax of \$826,800 ($780,800 + \$46,000$) is then reduced by the applicable credit amount of \$780,800 for 2006 (From table 1). The taxes due on Jack's estate are \$46,000.



<http://www.montana.edu/wwwpb/pubs/mt9104.html>

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File under: Consumer Education

D-11 (Estate Planning)

**Revised July 2006
3000 7.06JM**



Final Arrangements FAQ

Planning some of the details of your burial or cremation -- and your memorial services -- can be a great relief to your survivors.

What's Below:

[Why should I leave written instructions about my final ceremonies and the disposition of my body?](#)

[Why not leave instructions for my final ceremonies and the disposition of my body in my will?](#)

[Where is the best place to leave written instructions for my final arrangements?](#)

[What happens if I don't leave written instructions for my final ceremonies and the disposition of my body?](#)

[What details should I include in a final arrangements document?](#)

[What services can I expect from a mortuary?](#)

[Where can I turn for help in choosing cost-effective mortuary services and burial arrangements?](#)

Why should I leave written instructions about my final ceremonies and the disposition of my body?

Letting your survivors know your wishes spares them the difficulty of making these decisions at a painful time. And many family members and friends find that discussing these matters ahead of time is great relief -- especially if a person is elderly or in poor health and death is expected soon.

Making plans can also save money. For many people, death goods and services cost more than anything they bought during their lives except homes and cars. Some wise comparison shopping in advance can ensure that costs will be controlled.

Why not leave instructions for my final ceremonies and the disposition of my body in my will?

A will is not a good place to express your death and burial preferences for one simple reason: Your will might not be located and read until several weeks after you die -- long after decisions must be made.

A will should be reserved for directions on how to divide and distribute your property and, if applicable, who should get care and custody of your children if you die while they're still young.

Where is the best place to leave written instructions for my final arrangements?

You have many options for writing down your wishes and plans. If you like, you can write a simple letter to your executor and other loved ones that spells out the details of your final arrangements. If you need help organizing your thoughts, Nolo offers two resources that can help:

- [Quicken WillMaker Plus](#) can create a final arrangements document for you. The software program asks you questions about your wishes and then produces a detailed letter you can give to others.
- [Get It Together: Organize Your Records So Your Family Won't Have To](#), by Melanie Cullen with Shae Irving, J.D., is a workbook with CD-ROM that provides a complete system for documenting information for your executor and family members, including your wishes for final arrangements.

Whatever method you choose, be certain to talk to your loved ones about your plans. If you write down what you want, let them know where the information is stored and how to get to it when the time comes.

Finally, it's a good idea to review your plans every year or two to be sure they still reflect your wishes. Update your letter or other instructions if you change any of the details of your arrangements.

What happens if I don't leave written instructions for my final ceremonies and the disposition of my body?

If you die without leaving written instructions about your preferences, state law will usually determine who will have the right to decide how your remains will be handled. In most states, the right -- and the responsibility to pay for the reasonable costs of disposing of remains -- rests with the following people, in order:

- spouse or registered domestic partner
- child or children
- parent or parents
- the next of kin, or
- a public administrator, who is appointed by a court.

Disputes may arise if two or more people -- the deceased person's children, for example -- share responsibility for a fundamental decision, such as whether the body of a parent should be buried or cremated. But such disputes can be avoided if you are willing to do some planning and to put your wishes in writing.

In an increasing number of states, if you make a health care power of attorney, you can give the person you name to make health care decisions for you (your "agent") the power to make decisions about your remains. But, even if you do this, you may want to leave written instructions about your wishes. Your health care agent will be legally required to follow your directions, though he or she is not required to pay for the arrangements -- the money will come from your assets or family members who are legally required to pay. (For more information about making a health care power of attorney, see [Living Wills and Powers of Attorney for Health Care: How They Work.](#))

What details should I include in a final arrangements document?

What you choose to include is a personal matter, likely to be dictated by custom, religious preference, or simply your own whims. A typical final arrangements document might include:

- whether you want your remains to be buried or cremated
- the name of the mortuary or other institution that will handle burial or cremation
- whether or not you want your body to be embalmed
- the type of casket or container in which your remains will be buried or cremated, including whether you want it present at any after-death ceremony
- the details of any ceremony you want before the burial or cremation
- who your pallbearers will be if you wish to have some
- how your remains will be transported to the cemetery and gravesite
- where your remains will be buried, stored, or scattered
- the details of any ceremony you want to accompany your burial, interment, or scattering, and
- the details of any marker you want to show where your remains are buried or interred.

For more guidance, see [Planning Your Funeral or Memorial Services](#).

What services can I expect from a mortuary?

Most mortuaries or funeral homes are equipped to handle many of the details related to disposing of a person's remains. These include:

- collecting the body from the place of death
- storing the body until it is buried or cremated
- making burial or cremation arrangements
- conducting ceremonies related to the burial or cremation
- preparing the body for burial or cremation, and
- arranging to have the body transported for burial or cremation.

Note that the costs of these services vary dramatically, however. It is essential that you shop around if cost is an important part of your decision.

Where can I turn for help in choosing cost-effective mortuary services and burial arrangements?

From an economic standpoint, choosing the institution to handle your burial is probably the most important final arrangement that you can make. For this reason, many people join memorial or funeral societies, which help them find local mortuaries that will deal honestly with their survivors and charge reasonable prices.

Society members are free to choose whatever final arrangements they wish. Most societies, however, emphasize simple arrangements over the costly services often promoted by the funeral industry. The services offered by each society differ, but most societies distribute information on options and explain the legal rules that apply to final arrangements.

If you join a society, you will receive a form that allows you to plan for the goods and services you want -- and to get them for a predetermined cost. Many societies also serve as watchdogs, making sure that you get and pay for only the services you choose.

The cost for joining these organizations is low -- usually from \$20 to \$40 for a lifetime membership, although some societies periodically charge a small renewal fee.

To find a funeral or memorial society near you, look in the Yellow Pages of your telephone book under Funeral Information and Advisory Services, or contact the Funeral Consumers Alliance at 800-765-0107, or online at www.funerals.org.

If you don't want to join a society, you can look for a mortuary or funeral home on your own. You'll have to shop around to find the institution that best meets your needs in terms of style, location, and cost. But beware of plans that require you to pay in advance; it's better to set aside your own fund to cover funeral goods and services. (For more information, see [The Perils of Funeral Prepayment Plans.](#))



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End of Life

Financial Powers of Attorney

National Edition

What is a Power of Attorney?

A power of attorney is a written document in which you (called the principal) appoint someone else (called the agent or attorney-in-fact) to act for you. Your agent can do any legal act you ask your agent to do.

Why is a Power of Attorney Important?

Everyone should think about having a power of attorney. Having one can be more important to your personal well-being than a will. It allows you to pick someone you trust to handle your affairs if you cannot do so yourself. It gives you peace of mind, knowing that in an emergency someone you choose will have the authority to act for you. If you don't have a power of attorney and you are suddenly incapacitated, your family may have to go through an expensive and time-consuming court action to appoint a guardian or conservator.

Are There Different Types of Powers of Attorney?

Yes. Powers of attorney can differ depending on when you want the powers to begin and end, and how much responsibility you want to give to your agent.

Time

A conventional power of attorney begins when you sign it and continues until you become mentally incapacitated.

A durable power of attorney also begins when you sign it, but it stays in effect for your lifetime, unless you cancel it. You must put specific words in the document stating that you want your agent's power to stay in effect even if you become incapacitated. If you want this feature, it's very important that you have these words in your document.

A springing power of attorney begins only when a specific event happens, such as when you become incapacitated. Your attorney must carefully draft a springing power of attorney to

avoid any difficulty in determining exactly when the "springing" event has happened.

All powers of attorney come to an end at your death. Your agent will have no power to make any decisions after you die.

Responsibility

You can select the responsibilities, or powers, you want your agent to have. You can authorize your agent to do one thing, such as sell your car. Or you can give your agent the authority to do any legal act you could do yourself. You can give a wide range of powers, such as having access to bank accounts, selling stocks, and managing real estate. You may want your agent to sign your income tax return, apply for benefits, and make gifts. You should design your power of attorney to fit your anticipated needs.

What Type of Power of Attorney is Best?

In most cases, durable power of attorney is best. Conventional powers of attorney become useless just when you may need them the most--when you are unable to make decisions on your own. Springing powers of attorney can create problems in determining when they become effective.

The best way to draft a power of attorney is to state the broadest range of powers you feel comfortable giving to your agent. This will allow your agent to take care of all matters, even those you cannot foresee now.

Will My Agent Be Able to do My Banking?

If you want your agent to have access to your bank account, be certain to get your bank's authorization form and a signature card for your agent. Usually a bank uses its own form to give your agent access to a particular account. If you don't contact the bank before you become incapacitated, the bank may not want to honor checks and withdrawals your agent signs. It doesn't give your agent broader powers. Giving your agent the authority to have access to your bank account is not the same thing as making a friend or relative a joint owner of the account.

Are There Any Risks Associated with Power of Attorney?

The risks of appointing an agent are small. The most important way to reduce any risk is to carefully choose your agent. Select someone you trust completely. The power of attorney doesn't mean that your agent owns any of your property. It allows your agent to make financial decisions when you can't. You can withdraw a power of attorney whenever you want as long as you are competent. Appointing someone as agent doesn't mean you give up your right to manage your own affairs.

Who Should I Choose as My Agent?

No one can tell you whom to choose as your agent. The person you choose needs to be someone you trust, as well as someone who can do the job. Many people select their spouse as their first choice, and a child or other relative as a substitute. But, if your spouse is ill, inexperienced in financial matters, or for some other reason wouldn't be able to handle the responsibilities, pick someone else. Pick the one you trust the most. Between two equally qualified persons, the one who lives closest to you is generally the best choice.

Can I Name My Two Children as Co-Agents?

The law permits you to appoint co-agents. However, it may not be a good idea. To make decisions, both must agree. If they disagree, they may have to go to court. This is really expensive, time-consuming and defeats the major reason for having a power of attorney. If you have two equally qualified persons to choose between, you may want to name one as your agent and the other as a substitute to step in if your first choice cannot serve. You could also appoint one to make financial decisions and the other to make health care decisions. This is your choice. Don't be talked into selecting anyone other than the person you want.

I Already Have a Will. Can't My Executor Handle My Affairs?

No! Your will determines how your property will be distributed after you die. Your executor has no authority to act before your death. Your power of attorney deals with how to manage your property during your life. Your agent has no authority to act after you die.

I Own Everything Jointly with My Spouse (or Adult Child). Why do I Need a Durable Power of Attorney?

Many people think their spouses or other relatives are automatically authorized to make decisions for them if they become incapacitated. A joint account-holder on certain types of joint bank accounts has access to joint funds. Close relatives may be allowed to make ordinary medical decisions for you if you can't make them yourself. However, this is not enough.

If you become incapacitated, a spouse or joint owner may not have authority to handle certain transactions, especially those involving real estate and stocks (even if they are jointly held). You need a financial power of attorney so someone has clear authority to act for you in all situations.

Can I Still Manage My Own Affairs If I Sign a Power of Attorney?

Even if you sign a power of attorney, you can still manage your own affairs. You are not giving up anything. Instead, you are taking steps today so your agent will be able to act when and how you have directed, when it becomes necessary.

Can I Cancel a Power of Attorney After I Sign It?

Yes. You can cancel, or revoke, a power of attorney at any time by tearing it up, signing a new one, or writing that you want to cancel it. You don't have to give any reason. If you do cancel, it's a good idea to let your agent and anyone your agent has been dealing with know that you have canceled the agent's authority.

How Do I Prepare a Power of Attorney?

This guide [offers a work sheet](#) to help you get ready to talk to your lawyer about powers of attorney. The worksheet guides you through some of the questions you need to answer before the lawyer can draft your document. Your LSN lawyer may have other questions for you. Fill out the worksheet and then get in touch with your AARP Legal Services Network (LSN) attorney. Your lawyer will answer your questions and draft the document for you.

Other Questions?

If you have any other questions, call your AARP Legal Services Network (LSN) attorney. For a complete list of LSN attorneys, call 800-424-3410, or check the LSN section of AARP's website at www.aarp.org/lbn. To locate other local support resources for older persons, contact the Eldercare Locator at 800-677-1116 or visit their website at www.eldercare.gov.

Other Self-Help Guides

You can request copies of these Self-Help Guides from your Legal Services Network attorney.

Consumer:

A Credit Card is a Loan Card

A Mistake in Your Bill

Before You Buy Anything, Stop and Think

Buying a Home

Having Problems with a Loan?

Home Modification

How to Deal with Mail Order Problems

Selling a Home

What to do When You Can't Pay Debts

You Can Get Out of Home Improvement Contracts - Here's How to Do It

Estates:

Financial Powers of Attorney

Personal Bank Accounts, What's Best for You?

Support for Widows and Widowers

What is a Will?

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Financial Exploitation

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Health Care:

Health Insurance Portability & Accountability Act of 1996 (Group Plans)

Hiring a Home Health Care Worker

Is a Life Care Contract for You?

Paying for Long-term Nursing Home Care

Landlord and Tenant:

Renters, Know Your Security Deposit Facts

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Funerals: A Consumer Guide

June 2000

When a loved one dies, grieving family members and friends often are confronted with dozens of decisions about the funeral - all of which must be made quickly and often under great emotional duress. What kind of funeral should it be? What funeral provider should you use? Should you bury or cremate the body, or donate it to science? What are you legally required to buy? What other arrangements should you plan? And, as callous as it may sound, how much is it all going to cost?

Each year, Americans grapple with these and many other questions as they spend billions of dollars arranging more than 2 million funerals for family members and friends. The increasing trend toward pre-need planning - when people make funeral arrangements in advance - suggests that many consumers want to compare prices and services so that ultimately, the funeral reflects a wise and well-informed purchasing decision, as well as a meaningful one.

A Consumer Product

Funerals rank among the most expensive purchases many consumers will ever make. A traditional funeral, including a casket and vault, costs about \$6,000, although "extras" like flowers, obituary notices, acknowledgment cards or limousines can add thousands of dollars to the bottom line. Many funerals run well over \$10,000.

Yet even if you're the kind of person who might haggle with a dozen dealers to get the best price on a new car, you're likely to feel uncomfortable comparing prices or negotiating over the details and cost of a funeral, pre-need or at need. Compounding this discomfort is the fact that some people "overspend" on a funeral or burial because they think of it as a reflection of their feelings for the deceased.

Pre-Need

To help relieve their families of some of these decisions, an increasing number of people are planning their own funerals, designating their funeral preferences, and sometimes even paying for them in advance. They see funeral planning as an extension of will and estate planning.

Planning

Thinking ahead can help you make informed and thoughtful decisions about funeral arrangements. It allows you to choose the specific items you want and need and compare the prices offered by several funeral providers. It also spares your survivors the stress of making these decisions under the pressure of time and strong emotions.

You can make arrangements directly with a funeral establishment or through a funeral planning or memorial society - a nonprofit organization that provides information about funerals and disposition but doesn't offer funeral services. If you choose to contact such a group, recognize that while some funeral homes may include the word "society" in their

names, they are not nonprofit organizations.

One other important consideration when planning a funeral pre-need is where the remains will be buried, entombed or scattered. In the short time between the death and burial of a loved one, many family members find themselves rushing to buy a cemetery plot or grave - often without careful thought or a personal visit to the site. That's why it's in the family's best interest to buy cemetery plots before you need them.

You may wish to make decisions about your arrangements in advance, but not pay for them in advance. Keep in mind that over time, prices may go up and businesses may close or change ownership. However, in some areas with increased competition, prices may go *down* over time. It's a good idea to review and revise your decisions every few years, and to make sure your family is aware of your wishes.

**It's a good idea
to review and revise
your decision
every few years.**

Put your preferences in writing, give copies to family members and your attorney, and keep a copy in a handy place. Don't designate your preferences in your will, because a will often is not found or read until after the funeral. And avoid putting the only copy of your preferences in a safe deposit box. That's because your family may have to make arrangements on a weekend or holiday, before the box can be opened.

Prepaying

Millions of Americans have entered into contracts to prearrange their funerals and prepay some or all of the expenses involved. Laws of individual states govern the prepayment of funeral goods and services; various states have laws to help ensure that these advance payments are available to pay for the funeral products and services when they're needed. But protections vary widely from state to state, and some state laws offer little or no effective protection. Some state laws require the funeral home or cemetery to place a percentage of the prepayment in a state-regulated trust or to purchase a life insurance policy with the death benefits assigned to the funeral home or cemetery.

If you're thinking about prepaying for funeral goods and services, it's important to consider these issues before putting down any money:

- What are you are paying for? Are you buying only merchandise, like a casket and vault, or are you purchasing funeral services as well?
- What happens to the money you've prepaid? States have different requirements for handling funds paid for prearranged funeral services.
- What happens to the interest income on money that is prepaid and put into a trust account?
- Are you protected if the firm you dealt with goes out of business?
- Can you cancel the contract and get a full refund if you change your mind?
- What happens if you move to a different area or die while away from home? Some prepaid funeral plans can be transferred, but often at an added cost.

Be sure to tell your family about the plans you've made; let them know where the documents are filed. If your family isn't aware that you've made plans, your wishes may not be carried

out. And if family members don't know that you've prepaid the funeral costs, they could end up paying for the same arrangements. You may wish to consult an attorney on the best way to ensure that your wishes are followed.

The Funeral Rule

Most funeral providers are professionals who strive to serve their clients' needs and best interests. But some aren't. They may take advantage of their clients through inflated prices, overcharges, double charges or unnecessary services. Fortunately, there's a federal law that makes it easier for you to choose only those goods and services you want or need and to pay only for those you select, whether you are making arrangements pre-need or at need.

The Funeral Rule, enforced by the Federal Trade Commission, requires funeral directors to give you itemized prices in person and, if you ask, over the phone. The Rule also requires funeral directors to give you other information about their goods and services. For example, if you ask about funeral arrangements in person, the funeral home must give you a written price list to keep that shows the goods and services the home offers. If you want to buy a casket or outer burial container, the funeral provider must show you descriptions of the available selections and the prices before actually showing you the caskets.

Many funeral providers offer various "packages" of commonly selected goods and services that make up a funeral. But when you arrange for a funeral, you have the right to buy individual goods and services. That is, you do not have to accept a package that may include items you do not want.

According to the Funeral Rule:

- you have the right to choose the funeral goods and services you want (with some exceptions).
- the funeral provider must state this right in writing on the general price list.
- if state or local law requires you to buy any particular item, the funeral provider must disclose it on the price list, with a reference to the specific law.
- the funeral provider may not refuse, or charge a fee, to handle a casket you bought elsewhere.
- a funeral provider that offers cremations must make alternative containers available.

What Kind of Funeral Do You Want?

Every family is different, and not everyone wants the same type of funeral. Funeral practices are influenced by religious and cultural traditions, costs and personal preferences. These factors help determine whether the funeral will be elaborate or simple, public or private, religious or secular, and where it will be held. They also influence whether the body will be present at the funeral, if there will be a viewing or visitation, and if so, whether the casket will be open or closed, and whether the remains will be buried or cremated.

Among the choices you'll need to make are whether you want one of these basic types of funerals, or something in between.

"Traditional," full-service funeral

This type of funeral, often referred to by funeral providers as a "traditional" funeral, usually includes a viewing or visitation and formal funeral service, use of a hearse to transport the body to the funeral site and cemetery, and burial, entombment or cremation

of the remains.

It is generally the most expensive type of funeral. In addition to the funeral home's basic services fee, costs often include embalming and dressing the body; rental of the funeral home for the viewing or service; and use of vehicles to transport the family if they don't use their own. The costs of a casket, cemetery plot or crypt and other funeral goods and services also must be factored in.

Every family is different, and not everyone wants the same type of funeral.

Direct burial

The body is buried shortly after death, usually in a simple container. No viewing or visitation is involved, so no embalming is necessary. A memorial service may be held at the graveside or later. Direct burial usually costs less than the "traditional," full-service funeral. Costs include the funeral home's basic services fee, as well as transportation and care of the body, the purchase of a casket or burial container and a cemetery plot or crypt. If the family chooses to be at the cemetery for the burial, the funeral home often charges an additional fee for a graveside service.

Direct cremation

The body is cremated shortly after death, without embalming. The cremated remains are placed in an urn or other container. No viewing or visitation is involved, although a memorial service may be held, with or without the cremated remains present. The remains can be kept in the home, buried or placed in a crypt or niche in a cemetery, or buried or scattered in a favorite spot. Direct cremation usually costs less than the "traditional," full-service funeral. Costs include the funeral home's basic services fee, as well as transportation and care of the body. A crematory fee may be included or, if the funeral home does not own the crematory, the fee may be added on. There also will be a charge for an urn or other container. The cost of a cemetery plot or crypt is included only if the remains are buried or entombed.

Funeral providers who offer direct cremations also must offer to provide an alternative container that can be used in place of a casket.

Choosing a Funeral Provider

Many people don't realize that they are not legally required to use a funeral home to plan and conduct a funeral. However, because they have little experience with the many details and legal requirements involved and may be emotionally distraught when it's time to make the plans, many people find the services of a professional funeral home to be a comfort.

Consumers often select a funeral home or cemetery because it's close to home, has served the family in the past, or has been recommended by someone they trust. But people who limit their search to just one funeral home may risk paying more than necessary for the funeral or narrowing their choice of goods and services.

Comparison shopping need not be difficult, especially if it's done before the need for a funeral arises. If you visit a funeral home in person, the funeral provider is required by law to give you a general price list itemizing the cost of the items and services the home offers. If

the general price list does not include specific prices of caskets or outer burial containers, the law requires the funeral director to show you the price lists for those items before showing you the items.

Sometimes it's more convenient and less stressful to "price shop" funeral homes by telephone. The Funeral Rule requires funeral directors to provide price information over the phone to any caller who asks for it. In addition, many funeral homes are happy to mail you their price lists, although that is not required by law.

When comparing prices, be sure to consider the total cost of all the items together, in addition to the costs of single items. Every funeral home should have price lists that include all the items essential for the different types of arrangements it offers. Many funeral homes offer package funerals that may cost less than purchasing individual items or services. Offering package funerals is permitted by law, as long as an itemized price list also is provided. But only by using the price lists can you accurately compare total costs.

**Be sure to consider
the total cost
of all the items.**

In addition, there's a growing trend toward consolidation in the funeral home industry, and many neighborhood funeral homes are thought to be locally owned when in fact, they're owned by a national corporation. If this issue is important to you, you may want to ask if the funeral home is locally owned.

Funeral Costs

Funeral costs include:

1. Basic services fee for the funeral director and staff

The Funeral Rule allows funeral providers to charge a basic services fee that customers cannot decline to pay. The basic services fee includes services that are common to all funerals, regardless of the specific arrangement. These include funeral planning, securing the necessary permits and copies of death certificates, preparing the notices, sheltering the remains, and coordinating the arrangements with the cemetery, crematory or other third parties. The fee does not include charges for optional services or merchandise.

2. Charges for other services and merchandise

These are costs for optional goods and services such as transporting the remains; embalming and other preparation; use of the funeral home for the viewing, ceremony or memorial service; use of equipment and staff for a graveside service; use of a hearse or limousine; a casket, outer burial container or alternate container; and cremation or interment.

3. Cash advances

These are fees charged by the funeral home for goods and services it buys from outside vendors on your behalf, including flowers, obituary notices, pallbearers, officiating clergy,

and organists and soloists. Some funeral providers charge you their cost for the items they buy on your behalf. Others add a service fee to their cost. The Funeral Rule requires those who charge an extra fee to disclose that fact in writing, although it doesn't require them to specify the amount of their markup. The Rule also requires funeral providers to tell you if there are refunds, discounts or rebates from the supplier on any cash advance item.

Calculating the Actual Cost

The funeral provider must give you an itemized statement of the total cost of the funeral goods and services you have selected when you are making the arrangements. If the funeral provider doesn't know the cost of the cash advance items at the time, he or she is required to give you a written "good faith estimate." This statement also must disclose any legal, cemetery or crematory requirements that you purchase any specific funeral goods or services.

The Funeral Rule does not require any specific format for this information. Funeral providers may include it in any document they give you at the end of your discussion about funeral arrangements.

Services and Products

Embalming

Many funeral homes require embalming if you're planning a viewing or visitation. But embalming generally is not necessary or legally required if the body is buried or cremated shortly after death. Eliminating this service can save you hundreds of dollars. Under the Funeral Rule, a funeral provider:

- may not provide embalming services without permission.
- may not falsely state that embalming is required by law.
- must disclose in writing that embalming is not required by law, except in certain special cases.
- may not charge a fee for unauthorized embalming unless embalming is required by state law.
- must disclose in writing that you usually have the right to choose a disposition, such as direct cremation or immediate burial, that does not require embalming if you do not want this service.
- must disclose in writing that some funeral arrangements, such as a funeral with viewing, may make embalming a practical necessity and, if so, a required purchase.

Caskets

For a "traditional," full-service funeral:

A casket often is the single most expensive item you'll buy if you plan a "traditional," full-service funeral. Caskets vary widely in style and price and are sold primarily for their visual appeal. Typically, they're constructed of metal, wood, fiberboard, fiberglass or plastic. Although an average casket costs slightly more than \$2,000, some mahogany, bronze or copper caskets sell for as much as \$10,000.

When you visit a funeral home or showroom to shop for a casket, the Funeral Rule requires the funeral director to show you a list of caskets the company sells, with descriptions and prices, before showing you

**Caskets vary
widely in style
and price.**

the caskets. Industry studies show that the average casket shopper buys one of the first three models shown, generally the middle-priced of the three.

So it's in the seller's best interest to start out by showing you higher-end models. If you haven't seen some of the lower-priced models on the price list, ask to see them - but don't be surprised if they're not prominently displayed, or not on display at all.

Traditionally, caskets have been sold only by funeral homes. But with increasing frequency, showrooms and websites operated by "third-party" dealers are selling caskets. You can buy a casket from one of these dealers and have it shipped directly to the funeral home. The Funeral Rule requires funeral homes to agree to use a casket you bought elsewhere, and doesn't allow them to charge you a fee for using it.

No matter where or when you're buying a casket, it's important to remember that its purpose is to provide a dignified way to move the body before burial or cremation. No casket, regardless of its qualities or cost, will preserve a body forever. Metal caskets frequently are described as "gasketed," "protective" or "sealer" caskets. These terms mean that the casket has a rubber gasket or some other feature that is designed to delay the penetration of water into the casket and prevent rust. The Funeral Rule forbids claims that these features help preserve the remains indefinitely because they don't. They just add to the cost of the casket.

Most metal caskets are made from rolled steel of varying gauges - the lower the gauge, the thicker the steel. Some metal caskets come with a warranty for longevity. Wooden caskets generally are not gasketed and don't have a warranty for longevity. They can be hardwood like mahogany, walnut, cherry or oak, or softwood like pine. Pine caskets are a less expensive option, but funeral homes rarely display them. Manufacturers of both wooden and metal caskets usually warrant workmanship and materials.

For cremation:

Many families that opt to have their loved ones cremated rent a casket from the funeral home for the visitation and funeral, eliminating the cost of buying a casket. If you opt for visitation and cremation, ask about the rental option. For those who choose a direct cremation without a viewing or other ceremony where the body is present, the funeral provider must offer an inexpensive unfinished wood box or alternative container, a non-metal enclosure - pressboard, cardboard or canvas - that is cremated with the body.

Under the Funeral Rule, funeral directors who offer direct cremations:

- may not tell you that state or local law requires a casket for direct cremations, because none do;
- must disclose in writing your right to buy an unfinished wood box or an alternative container for a direct cremation; and
- must make an unfinished wood box or other alternative container available for direct cremations.

Burial Vaults or Grave Liners

Burial vaults or grave liners, also known as burial containers, are commonly used in "traditional," full-service funerals. The vault or liner is placed in the ground before burial, and the casket is lowered into it at burial. The purpose is to prevent the ground from caving in as the casket deteriorates over time. A grave liner is made of reinforced concrete and will

satisfy any cemetery requirement. Grave liners cover only the top and sides of the casket. A burial vault is more substantial and expensive than a grave liner. It surrounds the casket in concrete or another material and may be sold with a warranty of protective strength.

State laws do not require a vault or liner, and funeral providers may not tell you otherwise. However, keep in mind that many cemeteries require some type of outer burial container to prevent the grave from sinking in the future. Neither grave liners nor burial vaults are designed to prevent the eventual decomposition of human remains. It is illegal for funeral providers to claim that a vault will keep water, dirt or other debris from penetrating into the casket if that's not true.

Before showing you any outer burial containers, a funeral provider is required to give you a list of prices and descriptions. It may be less expensive to buy an outer burial container from a third-party dealer than from a funeral home or cemetery. Compare prices from several sources before you select a model.

Preservative Processes and Products

As far back as the ancient Egyptians, people have used oils, herbs and special body preparations to help preserve the bodies of their dead. Yet, no process or products have been devised to preserve a body in the grave indefinitely. The Funeral Rule prohibits funeral providers from telling you that it can be done. For example, funeral providers may not claim that either embalming or a particular type of casket will preserve the body of the deceased for an unlimited time.

Cemetery Sites

When you are purchasing a cemetery plot, consider the location of the cemetery and whether it meets the requirements of your family's religion. Other considerations include what, if any, restrictions the cemetery places on burial vaults purchased elsewhere, the type of monuments or memorials it allows, and whether flowers or other remembrances may be placed on graves.

Cost is another consideration. Cemetery plots can be expensive, especially in metropolitan areas. Most, but not all, cemeteries require you to purchase a grave liner, which will cost several hundred dollars. Note that there are charges - usually hundreds of dollars - to open a grave for interment and additional charges to fill it in. Perpetual care on a cemetery plot sometimes is included in the purchase price, but it's important to clarify that point before you buy the site or service. If it's not included, look for a separate endowment care fee for maintenance and groundskeeping.

If you plan to bury your loved one's cremated remains in a mausoleum or columbarium, you can expect to purchase a crypt and pay opening and closing fees, as well as charges for endowment care and other services. The FTC's Funeral Rule does not cover cemeteries and mausoleums unless they sell both funeral goods and funeral services, so be cautious in making your purchase to ensure that you receive all pertinent price and other information, and that you're being dealt with fairly.

Veterans Cemeteries

All veterans are entitled to a free burial in a national cemetery and a grave marker. This eligibility also extends to some civilians who have provided military-related service and some Public Health Service personnel. Spouses and dependent children also are entitled to a lot and marker when buried in a national cemetery. There are no charges for opening or

closing the grave, for a vault or liner, or for setting the marker in a national cemetery. The family generally is responsible for other expenses, including transportation to the cemetery. For more information, visit the Department of Veterans Affairs' website at www.cem.va.gov. To reach the regional Veterans office in your area, call 1-800-827-1000.

In addition, many states have established state veterans cemeteries. Eligibility requirements and other details vary. Contact your state for more information.

Beware of commercial cemeteries that advertise so-called "veterans' specials." These cemeteries sometimes offer a free plot for the veteran, but charge exorbitant rates for an adjoining plot for the spouse, as well as high fees for opening and closing each grave. Evaluate the bottom-line cost to be sure the special is as special as you may be led to believe.

For More Information

Most states have a licensing board that regulates the funeral industry. You may contact the board in your state for information or help. If you want additional information about making funeral arrangements and the options available, you may want to contact interested business, professional and consumer groups. Some of the biggest are:

AARP Fulfillment

601 E Street, NW
Washington, DC 20049
1-800-424-3410

www.aarp.org

AARP is a nonprofit, nonpartisan organization dedicated to helping older Americans achieve lives of independence, dignity and purpose. Its publications, *Funeral Goods and Services* and *Pre-Paying for Your Funeral*, are available free by writing to the above address. This and other funeral-related information is posted on the AARP website.

Council of Better Business Bureaus, Inc.

4200 Wilson Blvd., Suite 800
Arlington, VA 22203-1838

<http://www.bbb.org/alerts/article.asp?ID=162>

Better Business Bureaus are private, nonprofit organizations that promote ethical business standards and voluntary self-regulation of business practices. The BBB's website offers information about pre-need funeral planning.

Funeral Consumers Alliance

PO Box 10
Hinesburg, VT 05461
1-800-458-5563

www.funerals.org

FCA, a nonprofit, educational organization that supports increased funeral consumer protection, is affiliated with the Funeral and Memorial Society of America (FAMSA).

Cremation Association of North America

401 North Michigan Avenue
Chicago, IL 60611
(312) 321-6806

www.cremationassociation.org

CANA is an association of crematories, cemeteries and funeral homes that offer cremation.

International Cemetery and Funeral Association
1895 Preston White Drive, Suite 220
Reston, VA 20191 1-800-645-7700

www.icfa.org

ICFA is a nonprofit association of cemeteries, funeral homes, crematories and monument retailers that offers informal mediation of consumer complaints through its Cemetery Consumer Service Council. Its website provides information and advice under "Consumer Resources."

International Order of the Golden Rule
13523 Lakefront Drive
St. Louis, MO 63045
1-800-637-8030

www.ogr.org

OGR is an international association of about 1,300 independent funeral homes.

Jewish Funeral Directors of America Seaport Landing
150 Lynnway, Suite 506
Lynn, MA 01902
(781) 477-9300

www.jfda.org

JFDA is an international association of funeral homes serving the Jewish community.

National Funeral Directors Association
13625 Bishop's Drive
Brookfield, WI 53005
1-800-228-6332

www.nfda.org/resources

NFDA is the largest educational and professional association of funeral directors.

National Funeral Directors and Morticians Association
3951 Snapfinger Parkway, Suite 570
Decatur, GA 30035
1-800-434-0958

www.nfdma.com

NFDMA is a national association primarily of African-American funeral providers.

National Selected Morticians
5 Revere Drive, Suite 340
Northbrook, IL 60062-8009
1-800-323-4219

www.nsm.org

NSM is a national association of funeral firms that have agreed to comply with its Code of Good Funeral Practice. Consumers may request a variety of publications through NSM's affiliate, the Consumer Information Bureau, Inc.

Funeral Service Consumer Assistance Program
PO Box 486
Elm Grove, WI 53122-0486
1-800-662-7666

FSCAP is a nonprofit consumer service designed to help people understand funeral service

and related topics and to help them resolve funeral service concerns. FSCAP service representatives and an intervener assist consumers in identifying needs, addressing complaints and resolving problems. Free brochures on funeral related topics are available.

Funeral Service Educational Foundation
13625 Bishop's Drive
Brookfield, WI 53005
1-877-402-5900

FSEF is a nonprofit foundation dedicated to advancing professionalism in funeral service and to enhancing public knowledge and understanding through education and research.

Solving Problems

If you have a problem concerning funeral matters, it's best to try to resolve it first with the funeral director. If you are dissatisfied, the Funeral Consumer's Alliance may be able to advise you on how best to resolve your issue. You also can contact your state or local consumer protection agencies listed in your telephone book, or the Funeral Service Consumer Assistance Program.

You can file a complaint with the FTC by contacting the Consumer Response Center by phone, toll-free, at 1-877-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580; or on the Internet at www.ftc.gov, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

Planning for a Funeral

1. **Shop around in advance.** Compare prices from at least two funeral homes. Remember that you can supply your own casket or urn.
2. **Ask for a price list.** The law requires funeral homes to give you written price lists for products and services.
3. **Resist pressure** to buy goods and services you don't really want or need.
4. **Avoid emotional overspending.** It's not necessary to have the fanciest casket or the most elaborate funeral to properly honor a loved one.
5. **Recognize your rights.** Laws regarding funerals and burials vary from state to state. It's a smart move to know which goods or services the law requires you to purchase and which are optional.
6. **Apply the same smart shopping techniques** you use for other major purchases. You can cut costs by limiting the viewing to one day or one hour before the funeral, and by dressing your loved one in a favorite outfit instead of costly burial clothing.
7. **Plan ahead.** It allows you to comparison shop without time

constraints, creates an opportunity for family discussion, and lifts some of the burden from your family.

Prices to Check

Make copies of this page and check with several funeral homes to compare costs.

"Simple" disposition of the remains:

Immediate burial _____
 Immediate cremation _____
 If the cremation process is extra, how much is it? _____
 Donation of the body to a medical school or hospital _____

"Traditional," full-service burial or cremation:

Basic services fee for the funeral director and staff _____
 Pickup of body _____
 Embalming _____
 Other preparation of body _____
 Least expensive casket _____
 Description, including model # _____
 Outer Burial Container (vault) _____
 Description _____
 Visitation/viewing - staff and facilities _____
 Funeral or memorial service - staff and facilities _____
 Graveside service, including staff and equipment _____
 Hearse _____
 Other vehicles _____
 Total _____

Other Services:

Forwarding body to another funeral home _____
 Receiving body from another funeral home _____

Cemetery/Mausoleum Costs:

Cost of lot or crypt (if you don't already own one) _____
 Perpetual care _____
 Opening and closing the grave or crypt _____
 Grave liner, if required _____

Glossary of Terms

Courtesy of the California Department of Consumer Affairs, Cemetery and Funeral Bureau

Alternative Container

An unfinished wood box or other non-metal receptacle without ornamentation, often made of fiberboard, pressed wood or composition materials, and generally lower in cost than caskets.

Casket/Coffin

A box or chest for burying remains.

Cemetery Property

A grave, crypt or niche.

Cemetery Services

Opening and closing graves, crypts or niches; setting grave liners and vaults; setting markers; and long-term maintenance of cemetery grounds and facilities.

Columbarium

A structure with niches (small spaces) for placing cremated remains in urns or other approved containers. It may be outdoors or part of a mausoleum.

Cremation

Exposing remains and the container encasing them to extreme heat and flame and processing the resulting bone fragments to a uniform size and consistency.

Crypt

A space in a mausoleum or other building to hold cremated or whole remains.

Disposition

The placement of cremated or whole remains in their final resting place.

Endowment Care Fund

Money collected from cemetery property purchasers and placed in trust for the maintenance and upkeep of the cemetery.

Entombment

Burial in a mausoleum.

Funeral Ceremony

A service commemorating the deceased, with the body present.

Funeral Services

Services provided by a funeral director and staff, which may include consulting with the family on funeral planning; transportation, shelter, refrigeration and embalming of remains; preparing and filing notices; obtaining authorizations and permits; and coordinating with the cemetery, crematory or other third parties.

Funeral Planning Society

See Memorial Society.

Grave

A space in the ground in a cemetery for the burial of remains.

Grave Liner or Outer Container

A concrete cover that fits over a casket in a grave. Some liners cover tops and sides of the casket. Others, referred to as vaults, completely enclose the casket. Grave liners minimize ground settling.

Graveside Service

A service to commemorate the deceased held at the cemetery before burial.

Interment

Burial in the ground, inurnment or entombment.

Inurnment

The placing of cremated remains in an urn.

Mausoleum

A building in which remains are buried or entombed.

Memorial Service

A ceremony commemorating the deceased, without the body present.

Memorial Society

An organization that provides information about funerals and disposition, but is not part of the state-regulated funeral industry.

Niche

A space in a columbarium, mausoleum or niche wall to hold an urn.

Urn

A container to hold cremated remains. It can be placed in a columbarium or mausoleum, or buried in the ground.

Vault

A grave liner that completely encloses a casket.

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: toll-free 1-877-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the [online complaint form](#). Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a [complete list of publications](#), write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or call toll-free 1-877-FTC-HELP (382-4357), TDD 202-326-2502.

[Return to Federal Citizen Information Center Home Page](#)

Keeping Track of Secured Places and Passwords¹ by Melanie Cullen

Does your executor know how to find the things you've hidden?

When it's time to wind up your affairs, your executor will need to find important places and items that may be hidden away or protected by passwords. These may include everything from your electronic banking records to your email accounts, from your safe deposit box to a home alarm.

For each locked place, product, or service, you can provide essential directions for your executor. Here are some tips to get you started.

Services and Products

Make a list of each service and product for which you have a user name and password or personal identification number (PIN). Common items include:

- computers
- Internet service providers or web hosting services
- email accounts
- online services
- software applications
- cell phones and pagers, and
- personal digital assistants (PDAs).

For each item on your list, note your account name or number and any password or PIN that you use.

Home and Vehicle Security

List all the ways you protect your home, vehicles, or other property. Be sure to include the following:

- vehicle and home alarm systems
- home safes
- mailboxes or gates, and
- locked boxes, drawers, or cabinets.

For each item, note passwords, combinations, or the locations of keys.

Safe Deposit Boxes

If you have a safe deposit box, you'll want to be certain that your executor knows where it is. But you should also think carefully about what you put in your box. Your executor may not have access to the box immediately after your death, so it's usually not the best place to store information your executor will need right away, such as your wishes for burial or cremation, or your will.

¹This article was copied from the web site www.nolo.com. The only changes made were to formatting.

When you're comfortable with your safe deposit box arrangements, make a list of each box you currently rent. You'll want to include the following:

- contact information for the bank or other financial institution
- a list of the people who have authorized access to the box
- the box number
- the location of the box keys, and
- a brief description of what the box contains.

Other Assets, Other Locations

Think about any other property you may have safely hidden away. What little-known arrangements should you map out for your executor? Be sure to make a list of:

- financial assets that are not stored at a financial institution
- valuable items that your survivors may not find without direction, and
- other information known only to you -- such as special recipes or a map to buried treasure.

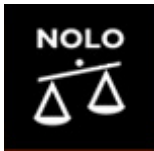
Describe each item, its location, and the location of any documents related to the item -- such as appraisal records or a storage agreement.

Keeping Your Information Safe

You can keep this sensitive information away from prying eyes by making sure that only your executor and others you choose will have access to it. Store your list of protected products, services, and places in a secure location, such as a waterproof, fireproof home safe. Then be certain to tell your executor -- and any other loved ones who may need the information to care for you or your property -- how to get to it.

tip Erase sensitive information. If you make your list of passwords and other information on a computer, remember to delete the files from your hard drive when you're finished. You can store the list on a disk or CD that you keep with the list itself.

Remember to update your information periodically, listing new protected products, services, or places, and noting any changes to existing arrangements.



Living Wills and Powers of Attorney for Health Care: How They Work

by [Shae Irving](#), J.D.

It's smart to make documents setting out your wishes for health care in case you are ever unable to speak for yourself.

If you're like most people, you aren't eager to spend time thinking about what would happen if you became unable to direct your own medical care because of illness, an accident, or advanced age. But if you don't do at least a little bit of planning -- writing down your wishes about the kinds of treatment you do or don't want to receive and naming someone you trust to oversee your care -- these important matters could wind up in the hands of estranged family members, doctors, or sometimes even judges, who may know very little about what you would prefer.

Types of Health Care Documents

Should I put There are two basic documents that allow you to set out your wishes for medical my health care: a living will and a durable power of attorney for health care. It's wise to prepare care wishes both. In some states, the living will and the power of attorney are combined into a in my will? single form -- often often called an advance directive. (In fact, both of these [more](#) documents are types of health care directives -- that is, documents that let you specify your wishes for health care in the event that you become unable to speak for yourself.)

Living Wills

First, you need a written statement that details the type of care you want (or don't want) if you become incapacitated. This document is most often called a living will, though it may go by a different name in your state. A living will bears no relation to the conventional will or living trust used to leave property at death; it's strictly a place to spell out your health care preferences.

You can use your living will to say as much or as little as you wish about the kind of health care you want to receive. (For more details, see [What You Can Cover in Your Health Care Documents](#).)

Powers of Attorney for Health Care

You'll also want what's usually called a durable power of attorney for health care. In this document, you appoint someone you trust to be your health care agent (sometimes called an attorney-in-fact for health care, health care proxy, or surrogate) to make any necessary health care decisions for you and to see that doctors and other health care providers give you the type of care you wish to receive.

(If you need help picking the right person for this job, see [Choosing Your Health Care Agent](#).)

Who Can Make Health Care Documents

You must legally be an adult (18 years old in most states) to make a valid document directing your health care. You must also be of sound mind -- that is, able to understand what the document means, what it contains, and how it works.

When Your Health Care Documents Take Effect

Your health care documents take effect if your doctor determines that you lack the ability -- often called the "capacity" -- to make your own health care decisions. Lacking capacity usually means that:

- you can't understand the nature and consequences of the health care choices that are available to you, and
- you are unable to communicate your own wishes for care, either orally, in writing, or through gestures.

Practically speaking, this means that if you are so ill or injured that you cannot express your health care wishes in any way, your documents will spring immediately into effect. If, however, there is some question about your ability to understand your treatment choices and communicate clearly, your doctor (with the input of your health care agent or close relatives) will decide whether it is time for your health care documents to become operative.

In some states, it is possible to give your health care agent the authority to manage your medical care immediately. If your state allows this option, you may prefer to make an immediately effective document so that your agent can step in to act for you at any time, without the need to involve a doctor in the question of whether or not your health care document should take effect.

Making your document effective immediately will not give your agent the authority to override what you want in terms of treatment; you will always be able to dictate your own medical care if you have the ability to do so. And even when you are no longer capable of making your own decisions, your health care agent must always act in your best interests and diligently try to follow any health care wishes you've expressed in your health care declaration or otherwise.

When Your Health Care Documents End

Your written wishes for health care remain effective as long as you are alive, unless you specifically revoke your documents or a court steps in (but court involvement is very rare). Here are a few specifics about when your health care documents are no longer effective:

- **You revoke your document.** You can change or revoke a health care document at any time. Just be sure that your health care providers and your agent know of your intention to cancel the document.
- **A court invalidates your document.** Most judges recognize that a court is normally not the right place to make health care decisions. However, if your health care is the subject of a dispute and someone questions the validity of your health care directives, the matter may end up before a judge.

If someone doubts that you had the mental capacity to prepare a legally valid health care document, that person can ask a court to invalidate your document. Such lawsuits are rare, but

they do sometimes occur. The burden of proving that you were not of sound mind when you made your document falls on the person who challenges its validity. (In other words, the law presumes that you had the mental capacity to make your health care documents.)

It is also possible that a court could invalidate your document if it wasn't properly completed -- for example, if you did not meet your state's requirements for having the document notarized or witnessed. If this happens, however, it is still likely that any wishes for health care you set out in the document will be followed -- as long as they are clearly expressed and you were of sound mind when you wrote them down. In the famous case of *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990), the U.S. Supreme Court said that any strong evidence of someone's wishes for care should be honored. Your directions won't be ignored simply because of a technical error.

- **A court revokes your agent's authority.** If, after your health care documents take effect, someone believes that your health care agent is not acting according to your wishes or in your best interests, the concerned person can go to court and ask for an investigation of your agent's behavior. If a court finds that your agent is acting improperly and revokes his or her authority, the job will go first to an alternate agent you named in your document. If there is no available alternate -- or if the court invalidates your entire document for one of the reasons discussed just above -- a conservator or guardian will be appointed to make health care decisions for you.
- **You get a divorce.** Getting divorced has no effect on your written directions for health care (your health care declaration). But if you named your spouse as your health care agent, his or her authority is automatically revoked in a number of states. In that case, if you named an alternate agent, that person will take over.

If you get a divorce before your health care directives take effect, it's wise to eliminate confusion by starting over. Even if you named an alternate agent, make a new document and name someone else as your agent.

- **After your death.** Generally, your health care documents are no longer necessary when you die. In some states, however, your health care directives remain effective after your death for some very limited purposes. Your agent may be permitted to supervise the disposition of your body, including authorizing an autopsy or organ donation, unless you specifically withheld these powers when you made your health care documents.

For more information, see [What You Can Cover in Your Health Care Documents](#).

Position Statement of the Funeral Consumers Alliance Concerning Prepaid Funerals

This position statement about prepaid funeral contracts is intended to ensure that consumers who purchase funeral services in advance of need make informed decisions, deal only with licensed funeral directors, and have the right to cancel contracts or transfer prepaid funds from one funeral service provider to another as they determine.

General provisions

1. Prepaid funeral contracts shall be in writing on forms promulgated or approved by the state licensing agency, identify all of the parties, and identify all of the funeral goods and services provided for in the contract so that a third party with no knowledge of the goods and services purchased would be able to understand what goods and services have been purchased without the need for additional information.
2. Consumers should always have a choice of the financing method used with a prepaid funeral contract. Consumers must be told in writing, in a plain language disclosure, the cost of each method of funding using the example of a hypothetical \$5,000 funeral, including the amount of funds returned to the consumer in the event of cancellation after one year, three years, five years, ten years, and the amounts of funds paid that are transferred from the proceeds of the transaction to any party.
3. All prepaid funeral contracts must guarantee the prices included in the contract and no goods may be delivered until time of need. This would specifically prohibit constructive delivery, or warehousing by the funeral provider.
4. The prepaid funeral contract must prominently disclose a list of at least 15 goods and services that cannot be included in the contract because the items cannot be anticipated in advance (such as charges for preparation of the body after an autopsy) or because the items are provided by third parties and the cost cannot be determined in advance of need (such as the cost of a police escort or a crematory fee), and this disclosure must be initialed by the consumer to indicate acknowledgment of potential funeral costs not included.
5. No prepaid funeral contract may be made irrevocable as a condition of the contract and under no circumstances can it be made irrevocable until 15 days have elapsed from the date of its execution and a consumer has signed an addendum or amendment to the original contract making it irrevocable.

Financing methods

6. If funds are used to purchase insurance, a copy of the policy written in a plain language

format should be attached to the contract so that a consumer can have it reviewed by advisers of the consumer's choice during a 15-day period following the contract conference.

7. If funds are to be trusted, 100% of all funds paid by the consumer must be placed in the trust and the contract shall disclose the institution receiving the trust funds, when the funds will be deposited, the name of the trustee, and that reports will be given annually to the consumer about the trust earnings.

8. If funds are to be trusted, trustee fees or other administrative costs that will be deducted from the trust shall not exceed 25% of net annual interest earned.

9. If funds are placed in trust, the contract must prominently disclose who will be responsible for paying taxes on earnings of the trust account.

10. No trust-funded prepaid contract may be converted to an insurance or annuity funding vehicle without the express written consent of the consumer, which consent may not be given until after the foregoing requirements have been satisfied just as though the consumer was originally purchasing a prepaid contract that is insurance or annuity funded.

Portability, cancellation, and substitutions

11. Cancellation of a revocable prepaid funeral contract must be permitted, with 100% of principal and interest returned to the purchaser.

12. After the contract conference, when all terms of the contract are determined and disclosed, the consumer shall have a non-waivable right to consult with advisers of the consumer's choice and a right to cancel the contract for a minimum 15-day period.

13. At the purchaser's or disposition agent's request, a prepaid funeral contract must be transferred to another funeral provider at any time before it is completely performed. If the charges for the goods and services provided for in the contract are less at the funeral service transferred to than those charges provided in the contract, the deceased's estate shall receive a refund of the difference.

14. In order to provide for a fair substitution for prepaid funeral contract merchandise that is not available at the time of need, a substitution of merchandise shall be subject to approval by the deceased's disposition agent and shall be approved by the agent if it is of the same general description and quality as that included in the prepaid funeral contract.

Marketing

15. Prepaid funeral sellers and their sales agents must be licensed by the state as funeral directors.

16. Written proof of licensing as a funeral director must be provided to a consumer at a contract conference at the same time the General Price List is provided, which must be prior to the time prices of funeral goods or services are discussed.

17. Consumers may be solicited by telephone, fax, or email communications only if they have elected in writing to receive such solicitations.

18. The direct or indirect solicitation of a consumer in a hospital, retirement facility, nursing home, group home, or health care facility, without having been expressly requested to do so by that consumer or a representative of that consumer is prohibited.

Adopted by the Board of Directors of the Funeral Consumers Alliance on June 13, 2004

Preparing a Balance Sheet

Quick Notes...

All businesses (including agriculture) should prepare a balance sheet each year based on a recommended set of guidelines to insure uniformity of reporting.

A balance sheet or net worth statement is a summary of the assets and liabilities, and owners equity (net worth) as of a specific time.

Introduction

The critical need for enhanced financial management skills and techniques in production agriculture became apparent in the 1980s. The decade of the 1980s, particularly the period 1981 through 1987, saw the financial position and conditions of many operations deteriorate. Many producers were faced with insufficient cash flow, declining asset values, rationing of capital by agricultural lenders, voluntary or forced liquidation, foreclosure (total or partial), and bankruptcy. The stress of the financial situation was felt throughout the agricultural sector - including lenders, retail trade and the service sector. The financial stress was documented by loan delinquencies and losses, inadequate securities for loans, reduced business

volume, and other income flows within the rural/regional economies.

The financial distress was a consequence of a number of factors which were in place during the 1970s, but reversed direction in the early 1980s. These factors include but are not limited to:

1. Inflation (increasing land values primarily).
2. Favorable foreign exchange rates.
3. Strong export market (strong international market).
4. Low "real" interest rates (negative real rate in 1974 and 1975).
5. Increased commodity supplies (capacity was expanded by 20 percent in the 1970s).

The financial distress among farmers/ranchers and agricultural lenders was rooted in the inflationary decade of the 1970s, and subsequent adjustments from that period to sharply different economic conditions in the 1980s. Throughout the 1970s, farmers and ranchers faced rapidly expanding exports, accelerating inflation, and low to negative real interest rates (the nominal interest rate minus the inflation rate). Farmers and ranchers responded by borrowing heavily to invest in new equipment, adopt

new production technologies, and purchase increasingly expensive land. Farm debt rose an average of more than 10 percent a year. Yet land values rose even faster, providing the economic incentive for producers and lenders to expand and roll over debt. Debt/asset ratios of farms declined over the 1970s.

By the early 1980s, the factors that had given rise to the expansion had reversed direction. Worldwide recession weakened international markets; the value of the dollar rose rapidly against major foreign currencies, further dampening export demand; and inflation was slowed by stringent control of monetary growth. Real interest rates, which had been low or negative throughout the 1970s, jumped to unprecedented levels of 8 to 10 percent. Agricultural commodities in foreign and domestic markets were too plentiful to sustain the prices that had prevailed during the 1970s, causing commodity prices and producer incomes to drop significantly. Land values, which depend on both current farm income and prospects for future income growth, also began to decline. The debt levels that some producers had assumed over the 1970s were no longer sustainable. Agricultural operations whose solvency depended on continuously rising land values or who pursued an aggressive expansion strategy were pushed toward insolvency. Moreover, even those producers who pursued more cautious financial strategies in the 1970s, but suffered from the 1980 or 1983 droughts or other natural disasters, faced financial stress for a different reason.

The need for enhanced financial management skills and techniques became critical to many agricultural producers. Many efforts were undertaken in the public and private sector in an attempt to fulfill this need. This need, coupled with the growth and development of the micro computer, resulted in many products that were helpful but often incompatible. In the following section, discussion related to the standardization of financial reporting and

analysis and its evolution through efforts of the Farm Financial Standards Task Force (FFSTF) is presented.

History of The Farm Financial Standards Task Force

The following paragraphs, selected from the publication Recommendations of the Farm Financial Standards Task Force, clearly outline the need for standardization of financial reporting in agriculture (2). Since this chapter adheres to the recommendations of this document, it is important that the background be established.

"During the decade of the 1980s, forces were set in motion that substantially changed the methods of analyzing financial strengths and providing credit to production agriculture. Through most of that decade the farm financial industry was in turmoil caused by an unforeseen run-up in interest rates, record levels of farm debt, large fluctuations in farm income, a rapid decline in the value of farm assets, and insufficient or under-utilized methods for analyzing the true profitability of various farm enterprises.

This environment created an increased interest in farm financial education and sophisticated financial analysis techniques. The demand brought about a rapid expansion in the number of products and services available for this analysis. Because each new system utilized its own specific method for analyzing farm operations, it was often difficult for agricultural producers, lenders, or farm financial experts to conduct comparative analysis between farming operations.

The lack of standardization in farm financial analysis caused problems in understanding and using data for decisions, and was often cited as a substantial barrier to the accessibility of funds from capital markets. The magnitude of the problem was underscored when Congress passed the 1987 Agricultural Credit Act. During the debate on

this legislation, experts testified that the lack of uniformity in analyzing farm operations would prohibit the establishment of privatized secondary markets for agriculture. Thus, when the legislation was enacted, it contained provisions for the government to sponsor a secondary market for agricultural real estate loans.

At the same time that Congress was working on the 1987 Agricultural Credit Act, the National Commission on Agricultural Finance, appointed by President Reagan, was examining the farm financial industry. This Commission cited a need for standardization of agricultural credit analysis and farm financial statements. Their report claimed that, without standardization nationwide, the agricultural industry would have difficulty learning how to analyze the financial strength of their operations, and agricultural producers would probably pay a premium for borrowed funds as a result.

Thus, the overwhelming evidence from all sectors seemed to indicate that agricultural producers, lenders, financial analysts, and agricultural economists could make better financial management decisions by uniformly defining the data, criteria, and measures that are most useful in addressing specific farm financial questions. In response to this issue, the Executive Committee of the Agricultural Bankers Division of the American Bankers Association (ABA) formed the Farm Financial Standards Task Force (FFSTF)."

The following discussion provides an overview of the recommendations of the FFSTF. The minimum set of financial statements are discussed as well as the recommended financial measures of performance analysis. Each financial statement is presented and discussed briefly. It is recommended that the reader acquire a copy of the FFSTF recommendations to gain further detail.

The minimum set of financial statements recommended by the FFSTF include:

- Balance Sheet
- Income Statement
- Statement of Cash Flows
- Statement of Owner Equity

Further, it is extremely important that the statements be prepared on a consistent basis, i.e. cover identical time periods. The task force did not develop specific formats for these financial statements; only recommended general guidelines to ensure uniformity of reporting. As such, financial analyses (ratio and comparative analyses) is more uniform. The following is a brief description of each of the financial statements and the type of management decisions for which each of the statements can be used.

Balance Sheet

In this section, the foundation of the balance sheet will be laid. The balance sheet can be derived from the fundamental accounting equation:

$$\begin{aligned} \text{Assets} &= \text{Owner's Liabilities} + \text{Owner Equity} \\ &\text{OR} \\ \text{Owner Equity} &= \text{Assets} - \text{Liabilities} \end{aligned}$$

Traditionally, the balance sheet is arranged such that assets are listed on the left side and liabilities and owner's equity on the right side.

The balance sheet has historically been the primary (and often only) financial statement used for agricultural lending. Until the events of 1980s demonstrated the necessity of more financial information for proper financial management, the balance sheet was relied upon as the means to evaluate potential borrowers.

The balance sheet must balance, hence the name balance sheet--total assets equal to total liabilities and net worth (owner equity).

What items fall under each of these categories? The following definitions aid in classifying both assets and liabilities.

Current assets: Items that are held for sale, cash on hand, savings, inventory of products that could be sold, and financial instruments that are readily convertible to cash (e.g., shares in IBM).

Current liabilities: Items that are due and must be paid within the next year. This would include outstanding feed, fertilizer, wages, fuel bills, etc.

Also included are accrued interest and principal payments on operating notes, machinery, livestock loans, real estate mortgage payments and lease payments due during the next year.

Intermediate assets: Tend to be the working assets in the business: machinery, equipment and breeding stock are valued in this category. Others include stock in Farm Credit Services or other similar entities that have value but are not readily marketable. Often life insurance policies with cash value are placed in this category. Recreational and personal assets may or may not be listed.

Intermediate Liabilities: Account for the loans for machinery, equipment, or livestock and other financial obligations that have a term of 10 years or less. Thus, any liabilities that have been amortized for more than one year but no more than ten years would be listed in this section.

The balance sheet is structured as follows:

Assets		Liabilities	
Current:	_____	Current:	_____
Intermediate:	_____	Intermediate:	_____
Long term:	_____	Long term:	_____
		Net Worth:	_____
Total Assets:	_____	Total Liabilities and Net Worth:	=====

Long-term Assets: Real estate (including buildings and improvements) are accounted for. Other assets listed could include a residential home or vacation home. In areas where irrigation water rights are transferrable as in many western states, water rights may appear as a separate asset if a value can be determined separately from the land.

Long-term Liabilities: Real estate loans are primary items in this category. Others include land purchase contracts or personal notes that have been termed over 10 years. Typically any loan or note with an amortization period greater than 10 years would appear in this category.

In the future, if the recommendations of the Farm Financial Statements Task Force (FFSTF) are accepted by the agricultural lending industry and others, there will be only two categories of assets and liabilities -- current and non-current categories. The current category will remain as defined but the non-current category will combine the intermediate and long-term categories into one.

There are arguments supporting both approaches, but if agricultural finance is to evolve to a level observed in other sectors of the economy, the recommendations of the FFSTF should be followed. Arguments that agriculture (production sector) is unique and working assets need to be separated from long-term assets is valid. However, firms in other sectors face the same issue. Separating working assets for the purpose of determining debt structure and debt balance is a reasonable request. However, utilizing the non-current category (assuming sufficient attention is directed at listing such assets) will not deter such analyses from being accomplished.

Balance sheets are normally prepared for separate entities even in a sole proprietorship. GAAP guidelines in traditional accounting support that the business be reported separately from its owner. The exception is agriculture where producers and lenders prefer a consolidated or combined statement. A combined statement includes both personal and business assets and liabilities.

Notes... (For More Information) Contact: **Norm Dalsted & Paul Gutierrez, Dept. of Ag. & Resource Economics, Colorado State University, Ft. Collins, CO 80523 (970)-491-6325**

Transferring The Farm Series # 1

PREPARING TO TRANSFER THE FARM BUSINESS



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11/2003

Introduction:

Transferring the farm business to the next generation is seldom an abrupt process. The transfer generally takes place over a number of years. The succeeding generation needs to establish a firm financial footing as well as learn to manage the business. The retiring generation has to be willing to turn over control of the business and trust that the successor will do well.

Farming is a capital intensive business. Farms are made up of several classes of assets. Current assets include stored and growing crops as well as feed inventories. Intermediate assets include breeding and market livestock, machinery, and equipment. Farmland and buildings make up long-term assets. The total of all these assets can be well in excess of \$1 million.

The transfer process must be well thought out and implemented prudently, given the potential financial consequences to all involved. The following information will help you with this process.

Factors to Consider Before Transferring the Farm Business:

Your Financial Security in Retirement:

Complete a projection of your anticipated retirement income and anticipated living expenses. Will you and your spouse have sufficient annual income to get you through the retirement years? Have you made provisions for higher than normal medical expenses or nursing home expenses? Remember, people are living longer and this requires more financial planning.

Financial Position of The Entering Farmer:

Give serious thought and planning to the financial position of the succeeding generation. Do they have some equity to put into the farm business? Can they afford the payments to you and to other creditors? Will they have a business of sufficient size and efficiency to generate an adequate living for themselves. If the answer to these questions is "no", you may want to delay transferring the business. The succeeding generation needs to improve their financial position or you need to plan on making major concessions to get them started in the business.

Your Social Security (SS) Position:

Every individual is different regarding their SS contributions and status. Changes in SS rules may affect your plan to transfer out of the farm business. Contact your local social security office about your contributions and benefits before making any decisions about when to retire or how to sellout.

Your Willingness to Let Go:

Transferring assets and management of the farm to someone else means you no longer will be in control of the farm business. If you cannot let go or stand to see someone else in the decision making role, do not retire until you can accept this change in role.

Your Emotional Readiness to Transfer the Farm:

If the farm has been your whole life and you have spent nearly every day building and working on this farm - expect some challenges. Leaving the farm under these circumstances should be planned for well in advance.

If you can view the following statements positively you may be ready to leave farming.

"I have plenty of ways to use my time after I retire. I can golf, fish, travel, socialize and finally get at some of my hobbies."

"I can continue to feel fulfilled as a contributing human being by volunteering or helping my children after I retire."

"Although we will do many things together, I plan to let my spouse have her/his own space. I will establish my own friends and time independently of hers/his at times."

"I am willing to move off the farm and out of my home, so that the younger family can work and live at the center of the farm business."

Your Health:

Transferring your farm to someone else can afford you time to do the things you have always wanted to do. Retiring early while your health is good may give you more time to travel, pursue hobbies, spend more time with family, etc.

Successful retirees are usually committed to good physical and mental health. They eat right, exercise regularly and keep mentally fit by reading, thinking and conversing. Are you ready to do the same?

Key Questions You Need To Ask Yourself:

Transferring the farm to the next generation is a complex and serious undertaking. If not done properly, there can be serious financial and family relationship consequences.

Answer the following questions honestly before you start the transfer process:

1. Is the farm, in its current format, generating enough income to support an additional family?
2. If not, are there farm income expansion possibilities or viable off-farm income possibilities available to support the entering family?
3. Is there a way to transfer the farm and keep everyone in the family happy? That includes exiting and entering families as well as non-farm heirs and in-laws.
4. Can the parents afford to give some financial assistance to the entering family while still maintaining an adequate retirement income?
5. Is the exiting manager willing to transfer management skills and management decisions to the entering manager?
6. Have the parties involved in the transfer had a positive, respectful and considerate attitude toward one another in the years before entering a transfer agreement?
7. Does the entering manager have the ability, desire and willingness to learn farm management skills needed to manage a high risk, low margin, highly competitive business?
8. Can the involved parties communicate openly and freely with one another?
9. Are all parties involved, willing to develop a written plan of transfer and a business agreement prior to starting the transfer process?
10. Are housing facilities available which will provide **acceptable, yet independent** lives for each family involved?
11. Are all participants, including spouses, willing to be involved in decision making regarding work tasks, hours, vacation, finances, and family expectations?
12. Are all parties willing to start with a trial period of working together, through a wage agreement or farming independently while sharing resources, for a year or two before starting a formal arrangement?
13. Are the parents willing to provide security to the entering parties by agreeing to a buy/sell agreement, allowing the entering party the right to purchase assets in the future? The agreement should be binding on the heirs.
14. Are the parents willing to sell, lease, gift or otherwise transfer assets to the entering party at perhaps less than current market values?
15. Are the parents willing to eventually move to town or to a residence off the farm to allow the new manager to be nearer the center of farm operations?
16. Can and will both parties put together a tax plan which will be acceptable to everyone as they transfer assets?
17. Are the parents insurable and will they permit the younger generation to carry life insurance on them for financial protection in case of premature death?
18. Are all parties willing to provide protection from premature pay out to off-farm heirs by establishing purchase options with installment terms for sale of assets in their will or living trust?
19. Are all parties willing to pledge that they will **not** try to control any aspect of the other parties' business and personal lives?
20. Are entering children willing to pay parents adequately for work done on the farm after retirement?
21. Are entering parties willing to sacrifice standard of living and go the "extra mile" with work to get started farming?
22. Are entering parties appreciative of the farming opportunity given to them by their parents? Are they willing to "give and take" to make the transfer process successful?
23. Do the entrants wish to farm because they have prepared for it educationally and feel it is their chosen field? This is in contrast to those who enter farming because they can't find anything else to do, or nothing else worked out, or it is an expectation of their parents.
24. Do the entering parties have a realistic grasp of agriculture in the 21st century and what it takes to put together a profitable, competitive business.

If you can answer "Yes" to nearly all of these questions, you have a good chance for a successful transfer of the farm. If you answered "No" to any question, you may wish to evaluate the situation before you proceed.

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End of Life

Talking about Your Final Wishes

Death is a natural part of life - but for most of us, talking about it isn't. Most people are uncomfortable talking, or even thinking, about what will happen when they or a loved one dies.

But, avoiding the topic doesn't stop death from happening. Not talking about it doesn't ease the pain associated with loss. Many people avoid talking about end of life because of their fears: suffering, pain, separation from loved ones and the unknown. These fears keep them from dealing with life's final lesson and make it harder to plan their lives as they wish. Not talking can make it harder for those left behind.

Why is it so important?

Most of us hope that we will die quickly, but the fact is that many of us will die after a long, slow decline. That's why talking and planning for your death is so important to your well-being and your loved ones' peace of mind.

Facing our fears is the first step towards planning for the future. Talking and planning for your death is the best way to ensure that your wishes will be fulfilled. It can ensure you will be able to live your life to the fullest until the end and live it the way you want.

Making decisions about how you want to spend your final days is not simple. There are many factors and options available today that may influence your care at the end of life. Where do I want to die? Who will take care of me? What do I have to do to achieve a "good death?" These questions raise just a few of the issues to be considered in deciding your care at the end of life.

Another focus is on what kind of treatment you want during your final days. While some of the issues related to end-of-life care haven't changed for generations, new issues make decisions even more challenging. Also, health care has changed so quickly that there are new medical technologies and treatments that can extend your life well beyond its natural course.

When you were born, your parents spent nine months preparing for your birth. This same kind of planning should be applied at the end of life. Talking and planning for death are the very acts that may allow you to live a fuller and more comfortable life in your final days.

How to Begin

The first conversation you must have is with yourself, to find out what your feelings are

regarding your own death.

- Where do you want to die? At home? In a hospital or medical facility? Do you want to move to be closer to relatives, friends or other loved ones?
- What kind of medical treatment do you want? What don't you want?
- Who do you want to take care of you?
- What do you think is a "good death?"
- What kind of funeral services do you want?
- Where do you want to be buried?

Once you have decided on what you want, use advance directives to write your wishes down. Advance directives are formal documents that explicitly describe your wishes for care near the end. There are two kinds of advance directives:

- **A Living Will.** This document specifies your wishes regarding medical treatment, generally the refusal of life-prolonging treatment when death is imminent.
- **A Health Care Power of Attorney.** This document allows you to appoint someone you trust to act for you and to make decisions about your medical treatment if you are unable to do so.

Now tell your loved ones and doctor what you want. By beginning the conversation with them, you are giving them comfort and peace of mind to follow your wishes.

AARP Resources

[AARP on Caregiving](#)

If you caring for an older parent or loved one, this series of articles can help.

[Final Details](#)

The basic actions you need to take after the death of a loved one.

[States Get Low Marks for End of Life Care](#)

The findings of "Means to a Better End: A Report on Dying in America Today," a study grading states on policy and quality of care for the dying.

Additional Resources

[Making Decisions: Thinking Through Your Wishes](#)

The National Coalition for Cancer Survivorship, a survivor-led advocacy organization, discusses decisions to make for end of life care.

[Communicating Your End of Life Wishes](#)

The National Hospice Foundation discusses ways you can talk to your family about your end of life wishes.

Books

Find these books online at [Barnes & Noble.com](#)

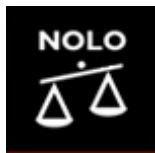
["Dying Well: Peace and Possibilities at the End of Life,"](#) Ira Byock, Riverhead Trade, 1998.

["What Dying People Want: Practical Wisdom for the End of Life,"](#) David Kuhl, Public Affairs, 2002.

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The Right Estate Plan for You

Is your estate plan in good shape? Here's what to consider.

Most Americans haven't made even a simple [will](#), to say nothing of a more comprehensive plan to avoid [probate](#) or save on [estate taxes](#). No surprise there -- we all have things we'd rather do.

The good news is that depending on your age, health, wealth and innate level of caution, you may not need to do much at all in the way of estate planning. And even if you do decide you need a will or a trust, you probably won't need a lawyer. Especially if you aren't dripping with Picassos or fat investment accounts, it is easy and safe to prepare most basic estate planning documents yourself. Just learn what you're doing by using good self-help materials.

We've sorted our tips into broad categories of family situation and age. But keep in mind that age is an imprecise proxy for life expectancy, which is affected by all sorts of other factors -- heavy smoking while participating in extreme sports and driving a motorcycle, for example. It's up to you to add or subtract a few years, based on your health and lifestyle.

You're 25 and Single

What are you doing reading about estate planning? You're supposed to be dancing until dawn. But you might as well keep reading; this won't take long.

At your age, there's not much point in putting a lot of energy into estate planning. Unless your lifestyle is unusually risky or you have a serious illness, you're very unlikely to die for a long, long time.

If you're an uncommonly rich 25-year-old, though, write a will. (Bricks can fall on anyone.) That way you can leave your possessions to any recipient you choose -- your boyfriend, your favorite cause, the nephew who thinks you're cool. If you don't write a will, whatever you leave behind will probably go to your parents. Think about it.

You're Paired Up, But Not Married

If you've got a life partner but no marriage certificate, a will is almost a must-have document. Without a will, state law will dictate where your property goes after your death, and unmarried partners get nothing. (The only exceptions are California, Hawaii, Maine, and Vermont, where surviving registered domestic partners can inherit just like surviving spouses.) Instead, your closest relatives will inherit everything.

Another option to make sure that your partner isn't left out in the cold after your death is to own big-ticket items, such as houses and cars, together in "joint tenancy" with right of survivorship. Then,

when one of you dies, the survivor will automatically own 100% of the property.

You Have Young Children

Having children complicates life -- but then, you already know that. Estate planning is no exception. Here's what to think about.

First, write a will. Nothing fancy, just a document that leaves your property to whomever you choose and names a guardian for your children. The guardian will take over if both you and the other parent are unavailable. That's an unlikely situation, but one that's worth addressing just in case. If you fail to name a guardian, a court will appoint someone, possibly one of your parents.

The other big reason to write a will is that if you don't, some of your property may go not to your spouse, but directly to your children. The problem with the children inheriting directly is that the surviving parent may need to get court permission to spend or invest the money -- a waste of time and money in most families.

Second, think about buying life insurance to replace your earnings if that damn brick chooses you. Term life insurance is relatively cheap, especially if you're young and don't smoke. You can shop for the best bargain online, by consulting free services that compare the rates of lots of companies.

You're Middle-Aged and Know the Names of at Least Three Mutual Funds

If you've made it to a comfortable time in life -- you've accumulated some material wealth and enough wisdom to know that other things matter, too -- you will probably want to take some time to reflect on what you will eventually leave behind.

But given that you may well live another 30 or 40 years, there is no need to obsess about it. Chances are your conclusions will be different in ten or 20 years, and your estate plan will change accordingly.

To save your family the cost (and hassles) of probate court proceedings after your death, think about creating a revocable [living trust](#). It's hardly more trouble than writing a will, and lets everything go directly to your heirs after your death without taking a circuitous and expensive detour through probate court.

While you're alive, the trust has no effect, and you can revoke it or change its terms at any time. But after your death, trust property can be transferred quickly, according to the directions you left in the trust document.

There are other, even easier ways to avoid probate: You can turn any bank account into a "payable-on-death" account simply by signing a form (the bank will supply it) and naming someone to inherit whatever funds are in the account at your death. You can do the same thing, in almost every state, with securities.

If you have enough property to worry about federal estate taxes, think about tax avoidance as well. Currently, estates worth more than \$2 million are taxed; that amount is scheduled to increase in future years. (The estate tax is being phased out, but its future is uncertain; see [The Estate Tax Is Dead \(Maybe\)](#).) If estate tax does take a bite, it can be a big one; the marginal rate tops out at 46% for the largest estates.

One way to reduce these taxes is to give away property before your death. After all, if you don't own

it, it can't be taxed. Gifts larger than \$12,000 per year per recipient are subject to gift tax, at the same rate as estate tax. Still, an annual gift-giving plan can reduce the size of even a big estate, especially if you have a covey of kids and grandkids. Gifts to your spouse (as long as he or she is a U.S. citizen), direct payment of tuition or medical bills and gifts to a tax-exempt organization are exempt from gift tax.

Another way to cut taxes is with trusts. Many older couples use an [AB trust](#) to leave property to each other for life, and then to their children. The surviving spouse can spend trust income and, in some circumstances, principal. An AB trust can shield up to twice the exempt amount from estate tax.

Charitable trusts, which involve making a gift to a charity and getting some payments back, can also save on both estate and income tax. There are many other complex trusts; learn about them on your own and then have an experienced estate planning lawyer draw up the documents you want.

You're Elderly or Ill

Now is the time to take concrete steps to establish an estate plan, pronto. First, the basics: Consider a probate-avoidance living trust and, if you're concerned about estate taxes, a tax-saving trust. (These devices are discussed just above.) Write a will, or update an old one.

Then, although no one wants to do it, take a minute to think about the possibility that at some time, you might become unable to handle day-to-day financial matters or make healthcare decisions. If you don't do anything to prepare for this unpleasant possibility, a judge may have to appoint someone to make these decisions for you. No one wants a court's intervention in such personal matters, but someone must have legal authority to act on your behalf.

You can choose that person yourself, and give him or her legal authority to act for you, by creating documents called durable powers of attorney. You'll need one for your financial matters and one for healthcare. You choose someone to act for you (called your agent or attorney-in-fact) and spell out his or her authority. You can even state that the document won't have any effect unless and until you become incapacitated. Once signed and notarized, it's legally valid, and your mind can be at ease.

TREATMENT OF THE HEIRS IN THE TRANSFER PROCESS

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11/2003

Protecting the On-Farm Heirs:

The farm business can be a fragile structure. The high risk nature of farming coupled with huge start up costs and narrow margins, dictate the need for safeguards to protect the farming heirs.

In today's economy, it usually takes a great deal of parental help to get a young person started in farming. This help is usually provided through reduced charges for housing, lower machinery and land rents, lower interest rates, gifting of assets, financial supplements, and various other types of help. Unless the young person starts out with a handsome nest egg, parental concessions are needed if the young farmer is to get started successfully.

Farming children can protect themselves by carrying life insurance on the parents, by carrying risk insurance on their assets and by seeking continued education to upgrade farm management skills. However, the parents also have to play a key role in protecting the financial vulnerability of the farming children.

It is not enough to say "You'll be taken care of when we are gone". You need to take written action to make the transfer happen. Farming heirs who are insecure as to their future in the business are unhappy, often indifferent and easily alienated from farming.

There are several steps that can be taken to insure a successful transfer while at the same time providing for non-farm heirs. These steps are outlined in this information piece.

How Parents Can Help Secure the Financial Future of Farming Heirs:

1. Develop a transfer plan:

Formulate a detailed written transfer plan with the help and input of all parties involved, especially spouses and in-laws. Discuss it, sign it and work from it, so everyone knows what's ahead. Then execute it and transfer some assets soon so farming heirs can begin business and feel some pride of ownership.

2. Offer a purchase agreement:

If you haven't made any commitments as to the sale of assets, a purchase option may be useful. The purchase option gives the buyer the right, but not the obligation, to buy farm property at a later date. The agreement can involve land, buildings, livestock or machinery. It should state price, terms of payment and date of execution. It is binding on the spouse and off-farm heirs, so the agreement gives the farming heirs a definite and reasonable purchase price and terms for buying farm assets. This may prevent the farming heirs from having to buy out off-farm heirs in an unsatisfactory lump sum after your death.

3. Provide Protection in Your Will or Living Trust:

When writing your will or living trust, make sensible provisions for your farming heirs. You might wish to establish provisions as to how, when, at what price, terms, etc. the farming heirs can buy out the other heirs.

Example 1: Farm site and adjoining land and equipment to farming heirs, but cash or non-farm assets to non-farm heirs.

Example 2: Enact a provision allowing your son to buy the land from your trust over a 15-year period at a stated interest rate with specified principal payments per year.

Example 3: Pass farm property to all children equally but establish reasonable terms as to how the farming heirs might buy out the other heirs.

4. Life insurance planning:

Parents have several options regarding insurance:

- Carry enough insurance on yourself to provide adequate dollars at your death to pay off the non-farm heirs, leaving farm assets to the farming heirs.
- Gift some money to the farm heirs during your life time which they would use to purchase life insurance on you. This would provide money to help buy out off-farm heirs at your death.

- If you are in debt, a life insurance policy on yourself can provide money for debt repayments and for estate tax obligations. This can relieve heirs of having to liquidate vital farm assets to pay off those expenses.

5. Passing on your farming know-how:

A key to protecting your farming successor is to spend some quality time with them during the transition years. This time should be devoted to the transfer of management and farm operation skills.

- Show them how to do the physical things. Pass on your electrical, carpentry, mechanical, and equipment operation skills.
- Teach them to handle the management of the farm business. Share how you make decisions, who you listen to for advice and how you make the best use of your resources. Pay particular attention to successes you've had in terms of financial matters.
- Pass on your wisdom. Share your "rules of thumb" and "things that went bad" and "what has always worked" philosophy.

The younger generation may not always be receptive to your ideas. However, whatever you can do to transfer your knowledge and know-how to your successor can give them a competitive edge on others. It can also help insure their success in running the farm business.

How To Be Fair With Off-Farm Heirs:

One of the most difficult questions many retiring farm families face is how to get a young son or daughter started farming while being fair to the off-farm non-farming heirs.

Non-farming heirs often leave the farm in their late teens for careers elsewhere. Most parents are concerned with being fair to all of their children at estate settlement time. Fairness, however, may not mean equal treatment of heirs.

Many farm families have reasons for unequal treatment of heirs. Some of those reasons include:

- Off-farm children received a college education, a down payment on a house or other compensation, so they may get less at estate settlement time.
- The farming heir helped create part of the final estate of the parents by actively contributing to the parents' business over the years, so may be entitled to more.
- Parents want the farm to "stay in the family". Consequently they are willing to give more to the heir whose goal it is to stay on the farm.
- Farming heirs are getting delayed compensation for work performed in years when they were underpaid.

- Farming heirs have or will attend to the physical and business needs of the parents in their declining years. Non-farm heirs may not have helped.

There are several methods farm families can use to transfer assets unequally but, in their minds, fairly to their heirs. They include but are not limited to the following:

- Parents write buy/sell agreements with farming heirs, committing to exact sale prices, terms, and timing of payments on farm properties. These agreements are binding on off-farm heirs, provide the farm heirs a guarantee of property purchase at an acceptable pace and price, and guarantee off-farm heirs a fair price.
- Life insurance on the parents has sometimes been purchased and paid for by the farming heirs. This method provides money to buy out off-farm heirs at the time of the parent's death.
- Parents purchase life insurance on themselves and list the off-farm heirs as the beneficiaries. In this case, farm heirs get farm assets and off-farm heirs get the cash generated by the insurance.
- Parents establish a living or testamentary trust. It states that the farm heirs have the right to purchase farm assets from the trust at predetermined prices, terms and conditions over a number of years. This guarantees the off-farm heirs their percentage of the estate over time.
- The parent's will has been used to equalize or to make fair any previous distributions to heirs. The will may make special provisions to fit the situation. If the farming heirs or any heir has received earlier compensation, they may now get less than other heirs. Off-farm heirs may be willed cash, non-farm assets or remote land holdings. Farm assets are willed to the farming heirs.

It is a good practice to involve all heirs in the transfer process and to communicate to all heirs the final plans for distribution and transfer of assets. This communication should be done prior to your death so farming heirs are not left in the embarrassing position of trying to explain your actions. Doing this can avoid catastrophic family controversy.

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Caution: This publication is offered as educational information. It does not offer legal advice. If you have questions on this information, contact an attorney.



Wills FAQ

What you need to know about the most basic estate planning document.

What's Below:

[What happens if I die without a will?](#)

[What makes a will legal? Do I need a lawyer to make my will?](#)

[I don't have much property. Can't I just make a handwritten will?](#)

[Can I use my will to name a guardian to care for my young children and manage their property?](#)

[Must I leave something to my spouse and children?](#)

[Can someone challenge my will after I die?](#)

[How do I choose the right product to help me make a will?](#)

What happens if I die without a will?

If you don't make a will or use some other legal method to transfer your property when you die, state law will determine what happens to your property. Generally, it will go to your spouse and children or, if you have neither, to your other closest relatives. If no relatives can be found to inherit your property, it will go to the state.

In addition, in the absence of a will, a court will determine who will care for your young children and their property if the other parent is unavailable or unfit.

If you are part of an unmarried same-sex couple, your surviving partner will not inherit anything unless you live in one of the few states that allows registered domestic partners to inherit like spouses: California, Connecticut, Maine, New Jersey, and Vermont.

For more information, see [Making a No-Frills Will](#).

What makes a will legal? Do I need a lawyer to make my will?

Any adult of sound mind is entitled to make a will. Beyond that, there are just a few technical requirements a will must fulfill:

- The will must be signed by at least two, or in Vermont, three, witnesses. The witnesses must watch you sign the will, though they don't need to read it. Your witnesses, in most states, must

be people who won't inherit anything under the will. (If your state allows "holographic" wills, you don't need witnesses.)

- You must date and sign the will.

You don't have to have your will notarized. In many states, though, if you and your witnesses sign an affidavit (sworn statement) before a notary public, you can help simplify the court procedures required to prove the validity of the will after you die.

You do not have to record or file your will with any government agency, although it can be recorded or filed in a few states. Just keep your will in a safe, accessible place and be sure the person in charge of winding up your affairs (your executor) knows where it is.

You are not required to have lawyer draft a will for you, and most people do not need a lawyer's help to make a basic will -- one that leaves a home, investments, and personal items to your loved ones, and, if you have young children, that names a guardian to take care of them. Creating a basic will rarely involves complicated legal rules, and most people can create their own will with the aid of a good software program or book. But if you have questions that aren't answered by the resource you're relying on, or your situation is unusual, it may be worth it to see a good lawyer. For more information, see [Do I Need a Lawyer to Make My Will?](#)

I don't have much property. Can't I just make a handwritten will?

Handwritten, unwitnessed wills, called "holographic" wills, are legal in about 25 states. To be valid, a holographic will must be written and signed in the handwriting of the person making the will; in some states it must also be dated. Some states allow you to use a fill-in-the-blanks form if the rest of the will is handwritten and the will is properly dated and signed.

A holographic will is better than nothing if it's valid in your state. But a will signed in front of witnesses is better. If a holographic will goes before a probate court, the court may be unusually strict when examining it to be sure it's legitimate. And if you don't have guidance -- from a good self-help resource or a good lawyer -- it's easy to write something that turns out to be ambiguous or even contrary to what you intended.

For information on making a valid but simple will, see [Making a No-Frills Will](#).

Can I use my will to name a guardian to care for my young children and manage their property?

Yes. If both parents of a child die or become otherwise unable to care for a minor child, another adult -- called a "personal guardian" -- must step in. The personal guardian will be responsible for raising your children until they become legal adults. You and the child's other parent can use your wills to nominate someone to fill this position. To avert conflicts, you should both name the same person. For more information, see [Choosing a Guardian for Your Children](#).

You can choose that same guardian to manage property that you leave to your minor children or you can name someone different. You can name a "property guardian," a "custodian", or a "trustee" to manage the property:

- **Name a property guardian.** You can simply name a property guardian to manage whatever property the child inherits, if there's no other mechanism (a trust, for example) to handle it. The guardian will manage the property until the child reaches the age of 18.

- **Name a custodian under the Uniform Transfers to Minors Act (UTMA).** In every state except South Carolina and Vermont, you can choose a custodian to manage property you are leaving to a child. The custodian will step in to manage the property until the child reaches the age specified by your state's law -- 18 in a few states, 21 in most, 25 in several others.
- **Set up a trust for each child.** You can use your will to create a trust for any property the child inherits and to name a trustee to handle the trust property until the child reaches the age you specify.
- **Set up a "pot trust."** If you have more than one child, you may want to set up just one trust for all of them. This arrangement is usually called a pot trust. You name a trustee to decide what each child needs and to spend money accordingly.

For more information, see [Leaving Property to Young Children](#).

Must I leave something to my spouse and children?

Disinheriting spouses. The law protects surviving spouses from being left with nothing. If you live in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin -- or Alaska if you have made a written community property agreement), your spouse automatically owns half of all the property and earnings (with a few exceptions) acquired by either of you during your marriage. You can leave your half of the community property, and your separate property, to anyone you choose.

In all other states, a surviving spouse has a legal right to claim a portion of your estate, no matter what your will provides. But these provisions kick in only if your spouse goes to court and claims that share.

If you don't plan to leave at least half of your property to your spouse, either through your will or outside it, you should consult a lawyer -- unless your spouse willingly consents in writing to your plan.

Disinheriting children. Generally, it's perfectly legal to disinherit a child. If, however, it appears that you didn't mean to disinherit a child -- the most common example is a child born after you made your will -- then the child has the right to claim part of your property. For more information, see [Disinheriting Family Members](#).

Can someone challenge my will after I die?

Very few wills are ever challenged in court. When they are, it's usually by a close relative who feels somehow cheated out of a share of the deceased person's property. To get an entire will invalidated, someone must go to court and prove that it suffers from a fatal flaw: the signature was forged, you weren't of sound mind when you made the will, or you were unduly influenced by someone.

How do I choose the right product to help me make a will?

Nolo offers several products to help you make your will. Which one you should use depends on the size of your estate, how you want to leave your property, and whether you prefer to use software or a good old-fashioned book.

[Quicken WillMaker Plus](#) is ideal for nearly any size estate and almost any estate plan. Use this product if you are comfortable using computer software and if you also need other estate planning documents, such as trusts, health care directives, or powers of attorney -- *Willmaker* comes with all

of those as well as many other useful forms.

[*Nolo's Simple Will Book*](#) is better for those who prefer to use a book with word-processing documents on CD-ROM. *Nolo's Simple Will Book* allows you to customize a will to your circumstances and is appropriate for those with small to moderately sized estates and simple estate planning goals.

The [*Quick and Legal Will Book*](#) is best if you have a small estate, if you have simple estate planning goals, and if you prefer to use a book with word processing documents on CD-ROM. The *Quick and Legal Will Book* offers a choice of five basic will forms.

For a side-by-side comparison of these products, see Nolo's [Will-Making Product Chooser](#).

