

# LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE



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## NEW PORTABILITY PROVISION SEEMS IDEAL, BUT SHOULD BE CONSIDERED WITH CAUTION

A new “Portability Provision” in The Tax Relief, Unemployment Insurance Reauthorization, and Jobs Creation Act of 2010 has some couples excited about the financial possibilities. The new provision permits surviving spouses to elect to use the unused portion of the estate tax applicable exclusion amount of their predeceased spouses. This provides the surviving spouse with a larger exclusion amount and allows married couples to transfer a collective \$10 million estate.

The new provision seems like a boon, and may very well be as good as it sounds, but as with all things that seem too good to be true, it should be considered with caution. After all, even good things may have unintended consequences. First of all, the new \$10 million exclusion amount may encourage procrastination rather than planning; and since estate planning is about far more than just tax planning, this procrastination could hurt your family more than the exclusion amount might help them. Second, complications emerge with GST taxes, remarriages, and state exclusions; all things that need to be considered when

taking advantage of the new exclusion amount. And third, the temporary nature of the act and the unpredictability of Congress make for uncertainty in estate planning for the future.

A number of planning tools and opportunities will crop up over the years, and this new portability provision is certainly one of them. However, each new strategy must be researched to determine its usefulness for your family, and then worked seamlessly into your existing estate planning goals. This is something our firm takes seriously. It is our business to research the best planning tools for your family. We consider your goals, your financial history, and your current status and help create the plan that works best for you.

If you think that this portability provision—or any other strategy you’ve heard about—might be your “silver bullet”, please call our office. We can give you the resources and information you need to make an educated and effective plan for your family.



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# BACK TO BASICS: A REVIEW OF WILLS AND TRUSTS



Every structure must have a strong foundation. In estate planning, the foundation of your plan is generally your will or trust because these are the documents which establish how your property will be distributed, how your heirs will be cared for, and how the probate process and estate taxes will be handled.

## Old Faithful: Your Last Will and Testament

A will is the most well-known of all estate planning documents, it is generally the simplest and easiest to create (although some wills can be very lengthy and complex), and in most states a will can contain within it instructions for peripheral topics such as guardianship of minor children or the final disposition of your remains.

But everybody knows that the main purpose of a will is usually to dispose of your assets and effects. In its most basic form, a will should include these important parts:

- The testator's (creator's) name and crucial information
- Nomination of an executor to carry out the wishes of the testator
- The naming of the beneficiaries
- Instructions as to how the estate should be distributed to the beneficiaries
- Signature of the testator and the date signed
- Signature of witnesses and the date signed

As mentioned above, this is a will in its most basic form, but in fact most wills will also contain instructions for probate, instructions regarding the payment of debts and taxes, the names of any organizations to receive charitable distributions, a mention of relatives who may purposefully NOT have been named, and more.

It is important to understand, however, that while a will itself can be very simple; the federal and state tax and probate laws are rarely so. If you feel your estate is small and your wishes are modest then by all means keep your will short and sweet as well. But, we strongly urge ALL of our readers (even those with small and simple estates) to have an estate planning professional at least review your will and advise you as to its validity before you sign it and tuck it away.

## Going the Extra Mile: Creating A Trust

In addition to a will many families will choose to also create a trust. It doesn't matter whether you're a billionaire business executive or a teacher with a modest salary, it doesn't matter whether you're the patriarch of a large family or a stay-at-home mom of a newborn, a revocable living trust may be exactly what your family needs to protect their assets and their best interests. This is because a trust is probably the most comprehensive and versatile tool in your estate plan, and is a key part of helping you accomplish your goals.

There are two basic kinds of trusts—revocable and irrevocable. Revocable means that it is able to be revoked or changed so long as the grantor (the person who created the trust) is still living. Logically enough, an irrevocable trust cannot be changed once it has been signed. The reason this question of revocability is so important is because a trust is not merely a set of instructions for how your wealth should be distributed, a trust actually owns the property placed within it, with the person or people serving as trustee (usually for a revocable trust this is the grantors themselves, while they are living) controlling the trust property within. It is for this very reason that a trust can be such a powerful and flexible tool for tax planning and estate planning.

(cont.)

The specifics of your trust will vary greatly depending on what you hope to accomplish. Parents of young children may wish to include a general trust for the benefit of all the children, with distributions made to the guardians as necessary. This general trust can be split into separate individual trusts when all of the children have reached a certain age or graduated from college. Parents (and often grandparents) may want to include education trusts under the umbrella of their revocable living trust. Many families feel it is important to include instructions for charitable giving in their estate plan, and may choose to set up a charitable trust with their children or grandchildren as trustees. Pet owners often

create pet trusts to ensure that their animals will be well cared for after the owner has died.

A trust, much more than a simple will, allows the grantor far greater control over their assets—and for a longer period of time—which is why trusts are particularly useful for anybody entering into a second or third marriage, or for any parent who worries about the choices a child might make once they come into their inheritance. Unlike a simple will, trusts are designed to withstand the test of time, allowing you to leave a legacy that can last for decades.

## HOW TO PROTECT AND PASS ON ARTWORK AND OTHER VALUABLE ASSETS

Some assets—such as real property, stocks and savings—are fairly straightforward when it comes to bequeathal to heirs; other assets—such as valuable artwork or antiques—are not so easy. How do you will an asset to a loved one when there is no deed of ownership? And just as importantly, how do these paperless assets figure into the size and administration of your “taxable estate”?

How you dispose of these paperless assets can be extremely important to the administration and taxation of your estate. One particularly dangerous method is referred to as “the empty hook” method, referred to as such because when the collector dies, the beneficiaries simply remove the artwork from hooks in accordance with name tags on the items for the intended recipients. Thus, the estate is left with “empty hooks” instead of valuable artwork.

The problem that arises with the “empty hook” method is that wealthy families who collect artwork

or antiques as investments often have records of their purchases and sales, as well as a list of valuable items for insurance purposes. Any of these documents and records would be reviewed during probate or administration of the estate. If the value of your art collection isn’t fully disclosed, or you haven’t properly planned to gift art in compliance with estate tax rules and regulations, your beneficiaries may be left with tax fraud instead of valuable works of art.



One of the best ways to hold and legally dispose of art or antiques upon death is to transfer ownership of these valuable assets into a trust. Trusts are private documents and, although the tax reporting remains the same for trust assets, trusts protect the privacy of an art collector or artist, which can be an emotional protection for the beneficiaries. Additionally, keeping valuable artwork in trust provides an extra layer of protection from divorce or frivolous lawsuits during your lifetime.



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## A PERSONAL NOTE FROM KIRSTEN HOWE

Dear Clients and Other Friends:

The Tax Relief, Unemployment Insurance Reauthorization, and Jobs Creation Act of 2010 contained changes to many of our tax laws, not just our estate tax laws, but changes to the estate tax laws naturally tend to get more space in Lawyer for Life. One of the more interesting changes, in my opinion, was the implementation of “portability” for married couples. Of course, it is not simple, it is only the law for a short time, at this point, and there are lots of caveats that go along with it. But I think you will find it interesting to read about in our feature article.

Along with a primer on wills and trusts, this issue contains a discussion of works of art and how we do planning with them. Many times it is the personal possessions, such as the antique sideboard or the china, that cause the most family disharmony when someone dies. Works of art are unique in that they are

personal possessions, with their emotional component, and they can also be very valuable. Planning carefully for these types of assets is very important.

My boys are home from college, at least some of the time, so I am busy (and happy) shopping and cooking. If I’m real lucky we’ll work in a camping trip before school starts in the fall. I hope you are also enjoying your summer.

Warmly,

*Kirsten Howe*  
Attorney at Law

P.S. Please recycle or pass this newsletter on to a friend.