

Decisions After a Death

Practical Suggestions Regarding Financial and Legal Matters

It is difficult to make decisions or even know where to start after the death of someone close to you. When you are grieving, it is hard to think clearly. Here is a list of some of the legal and financial issues that you may have to deal with in the time ahead.

Gather Needed Documents

Make a file containing all of the documents you might need when filing for claims of any kind. You may already have these or you may need to get them from other sources. Having the documents all in one file makes it easier for you to handle business without extra stress.

- Death certificates
- Deceased person's Social Security number
- Social Security numbers for spouse and children
- Certified birth certificates or adoption papers for each family member
- Citizenship papers
- Marriage license/certificate
- Separation or divorce records
- Military service or discharge papers
- Insurance policies
- Will or trust documents
- Bank/financial institution records including safe deposit box information
- Property records including vehicle registration
- Credit card or other debt information
- Investment records
- Employment and employee benefit (pension plan) records
- Tax returns

Contact Other Sources

You may or may not know which companies or individuals the deceased person used for services. If you do know, you might be able to get needed information with a phone call. Be prepared, however, to make an appointment for a personal visit. If you don't know where to begin, search through personal and business papers (computer files, canceled checks, letters, address book) for names of people to contact.

Contact attorney

Contact the deceased person's attorney regarding any estate planning documents. This includes a will and letter of instructions, if they exist. These documents may contain information that will be necessary to carry out the wishes of the deceased person. An attorney also can answer any questions you have about probate. If appropriate, check to see if you need to change or update your own will, durable power of attorney for property and finances, and durable power of attorney for health care.

Contact financial institution officer/investment adviser

Check to see how the names are listed on accounts and if you will be able to get money from them. If you cannot, contact an attorney for help. If appropriate, close the deceased person's accounts. Decide if continuing accounts need additional names added.

Contact insurance agent(s)

File any claims to receive death benefits from life insurance. If necessary, change beneficiaries on your own life insurance. Ask for help in processing health insurance claims for the deceased person. Check on the status of your own health insurance.

This is important if you were covered through a family plan or the deceased person's employer. Review other coverage (auto, property) for needed changes. Once all settlements are complete, cancel the deceased person's life and health insurance policies.

If you don't know with which companies the deceased person held policies, go to the web page for the American Council of Life Insurers (ACLI) and read about missing policy tips.

Contact recorder

Request additional certified death certificates, if needed, from the recorder at the courthouse. This is in addition to those furnished through the funeral director. A certified (official stamp) certificate is usually required when filing claims. Also go to the recorder's office for assistance if you need certified copies of birth certificates, marriage records, or divorce record. You may be directed to order through a state office for vital records. Ask your attorney for advice about changing property ownership and registrations (auto, house, farm). This would be handled by the recorder at the courthouse.

Contact deceased person's employer

Ask about receiving the final paycheck and any payment for accrued vacation and/or sick leave. Find out what you need to do to get benefits from a pension plan, life insurance, accident insurance, etc. If you have health insurance through the deceased person's employer, ask about policy continuation and costs. Discuss this with the employer and your insurance agent. If the deceased person was a member of a labor union, ask if there are any benefits due to the survivor's family.

Contact Social Security Administration representative

Contact a representative from the Social Security Administration to see what benefits are available.

These might include a small lump-sum death benefit and survivor benefits for spouse and/or children. The toll free national number is 800-772-1213.

Contact accountant/tax attorney

Find out what needs to be done to file federal and state tax returns. The accountant can help you with matters relating to estate taxes. Talk about tax planning for subsequent years.

Contact other business entities

Cancel any credit cards of the deceased person. Determine if cell phone plans need to be adjusted. If appropriate, remove the deceased person's name from utility bills and other accounts. Collect debts owed to the deceased person by individuals.

Keep in Mind

Remember that the people you are contacting are not emotionally involved in your business. They might not always seem to be sensitive to your needs or understand how difficult it is for you to think clearly. It may help you to have a family member or friend go to appointments with you. This person can take notes, ask questions, and help you sort through the endless details.

Note: The funeral director may assist with some of the contacts and tasks listed so take note of what would be helpful.

Prepared by Donna K. Donald, Human Sciences Specialist, and Vicki W. Sickels, former Family Support Program Associate.

Iowa State University Extension and Outreach does not discriminate on the basis of age, disability, ethnicity, gender identity, genetic information, marital status, national origin, pregnancy, race, color, religion, sex, sexual orientation, socioeconomic status, or status as a U.S. veteran, or other protected classes. Direct inquiries to the Diversity Advisor, 515-294-1482, extdiversity@iastate.edu. PM 1797 October 2016



Wills and Probate: Resources to help our next generation of farmers

Photo by: Darcy Maulsby Okea/Thinkstock

A **will** is a legal document that directs the court how to distribute your assets after death. In order to create a will you must be competent enough to know the nature and extent of your estate, be able to formulate a plan of distribution, know the natural objects of your bounty and understand the relationship of the above. A will must also be signed by the testator (person for whom the will is written) and signed by two competent and disinterested witnesses in the presence of the testator and each other. Wills must be revoked and/or amended with the same formality with which they are made. Any handwritten modifications to a will have no effect.

What happens to my property if I don't have a will?

- If there is a surviving spouse and the children of the deceased are all children of the surviving spouse, the surviving spouse receives all property.
- If there is a surviving spouse and some children of the deceased are not children of the surviving spouse, the spouse gets half real property, all household property, and half of all other personal property not necessary for the repayment of debt. The other half of all property is distributed equally to the children of the decedent.
- If there is no spouse, all property goes to the children in equal shares.
- When there is no surviving spouse or children, the order of inheritance is: parents of the decedent, then children of the decedent's parents, including half brothers and sisters.


Can I disinherit my family in my will?

If a surviving spouse is not happy with property given by will, the spouse can elect to take against the will and receive the statutory amount instead. Generally the surviving spouse will receive one third of all real property (including the homestead) and one third of all personal property not necessary for the payment of debts. There is no statutory provision in Iowa protecting disinherited children; therefore, children will only receive property bequeathed by will.

What will happen to my estate after I die?

The probate process is the legal process for proving the validity of a will and distributing your assets according to that will. The person who is named in the will as executor will be in charge of the probate process with your lawyer. The process can be lengthy and costly and usually lasts several months. With the supervision of the courts, the executor must identify and inventory property of the deceased, have the property appraised, pay all debts and taxes and finally distribute remaining property as the will directs. If you die intestate (without a will), the same process will take place except the court will appoint an administrator of its choosing to carry out the probate process and remaining property will be distributed according to Iowa law instead of as directed by a will.

Probate is a public process and the proceedings will be available in public records. The property may also be tied up in the process for several months and will not be readily available to the heirs. For these reasons, many people try to avoid extensive probate proceedings. Property held in living trusts, joint bank accounts or pay on death accounts, real estate held in joint tenancy, and some life insurance proceeds are not subject to probate.



Power of Attorney: Resources to help our next generation of farmers

Photo by Darcy Maulsby Oke/Thinkstock

Power of attorney (POA) is a grant of authority to another person to manage your affairs on your behalf. A POA expires when your ability to manage your affairs expires unless it is a “durable POA,” which survives your incapacities. Having a durable POA avoids the need for the court to appoint a guardian to manage your affairs if or when you become unable to manage your own affairs.

A POA may be contingent and become effective only upon your inability to manage your own affairs, or it may be present and become effective immediately upon execution. A POA may be revoked as long as you are competent enough to revoke it.

Powers can be plenary (complete and unqualified) or express (specific and limited). Some important powers to think about when creating a POA include express powers for:

- Health care decisions
- Life insurance matters
- Tax returns
- Making gifts
- Transferring property into a trust
- Accessing a safe deposit box
- Signing checks
- Retirement plans
- Social Security benefits



Trusts: Resources to help our next generation of farmers

Photo by: Darcy Maulsby Okea/Thinkstock

A **trust** is a legal entity that separates the management of property from the enjoyment of property. A settlor, the creator of a trust, transfers title of his or her assets into the name of the trust; this is called funding the trust. This property, which is held in trust, is called corpus, principal, or the trust estate. A trust instrument is the set of documents creating and detailing the terms of the trust. The instrument names a trustee to manage the trust property, and sometimes a backup trustee as well. It also names the beneficiaries who will receive proceeds from the trust during the life of the trust and the beneficiaries who will receive the corpus when the trust is dissolved.

Reasons for establishing trusts include: to avoid or minimize probate costs, guard against will contests, protect privacy in property transfers, protect assets from beneficiaries, allow for someone else to manage your property when you no longer wish to or are no longer able to, allow someone else to manage property for minors, and, in limited cases, save estate tax. Trust options today are limited only by the creativity of the settlors and may serve very different purposes depending on the terms. Outlined below are several of the more common types of trusts.

A **revocable living trust** is created by the settlor during his/her lifetime, and the settlor retains the power to destroy (revoke) the trust at any time during his/her life. Only at the death of the settlor does the trust become permanent (irrevocable).

A revocable living trust is sometimes referred to as a substitute for a will because its main purpose is to avoid probate of trust assets. Probate is avoided because the assets are no longer property of the deceased, but are owned by the trust, even though the deceased may have been both the trustee and the beneficiary. These trusts are particularly useful when property is held in several states and therefore would have to be probated in each respective state.

Although probate costs are avoided, trusts cost more to create than a will because they are much more complicated to draft and fees may be associated with changing the title of assets. In addition to avoiding probate, trusts are less susceptible to attack than a will, because the trust has been in existence for some time before death. The court accepts the fact that the settlor could have changed the terms of the trust during their lifetime as proof that the trust will operate in accordance to their wishes.

Because the settlor retains control of the assets during life (settlor retains the power to revoke the trust and have the property returned), the property remains part of the taxable estate. Revocable living trusts are not useful for reducing the value of the estate for estate tax planning purposes, except for enabling spouses to split their estates to keep the value of their separate estates under the applicable exclusion. Heirs do receive a step-up in basis.

Revocable living trusts should be used in conjunction with a ***pour over will***. Because a will directs the court how to dispose of your assets at death, this provision will act as a catch-all and will direct property still titled under your name to "pour" into the trust.

An irrevocable ***inter vivos trust*** is a trust created during life that cannot be terminated once created. If created and managed correctly, these trusts can reduce the value of the taxable estate. The property will not be included in the value of the settlor's estate only if the settlor has permanently forfeited the property. Therefore, the settlor must not retain interest in the income or corpus of the trust; it must benefit others. Also, the settlor cannot retain the power to change or transfer the property, or the property will be included in the settlor's taxable estate.

Transferring property into an irrevocable trust is essentially a gift to the beneficiaries and transfers will be subject to gift tax. Annual amounts of over

This institution is an equal opportunity provider. For the full non-discrimination statement or accommodation inquiries, go to www.extension.iastate.edu/diversity/ext.

BFC 0006 September 2016

IOWA STATE UNIVERSITY
Extension and Outreach
Beginning Farmer Center

\$12,000 transferred into the trust will be subject to gift tax. An election can be made to transfer up to \$1 million into the trust without paying gift tax; however, the transfer will reduce the unified credit and increase the amount of your estate that will be subject to estate tax. For very large estates, it may be valuable to make the election so that property appreciates in the trust instead of in the estate. Since the property must be forfeited by the settlor, the beneficiaries must have a present interest in the trust property.

Other types of trusts include testamentary or pour over trusts which are established by will. **Spendthrift trusts** protect assets that may be recklessly spent by beneficiaries, by limiting the rights of the beneficiary to receive income from the trust. **QTIP trusts** provide a surviving spouse income during his or her lifetime. Charitable remainder trusts allow the settlor to contribute his/her property to charity and receive the income from the property over his/her lifetime.

Consequences of creating a trust including managerial capabilities, tax advantages and disadvantages, and revocability will vary greatly depending your specific circumstances. Consult with your attorney for more details.



Gifts: Resources to help our next generation of farmers

Photo by: Darcy Maulsby Okea/Thinkstock

Giving assets to the next generation before death may be useful to decrease the size of very large taxable estates, or to pass farm assets to cash-poor successors. Gifting may seem simple at first, but there are several potential problem areas.

In order to make a gift you must have intent to give the property and there must be actual or constructive receipt of the gift. If property to be given cannot actually be moved into the possession of the recipient, there must be constructive delivery. Constructive delivery is some action or transfer that is symbolic of the actual transfer; for example, giving the keys to a car if the car is not in the same vicinity as you. Other examples of constructive delivery include handing over the deed to land or a photo of the object to be transferred. Also, delivery must take place at the same time as expression of intent to give. For example, Dad says, "I want you to have my John Deere A when I die." This statement does not satisfy the requirements of a gift because the tractor was not actually handed over at the same time Dad expressed his intent to give. The tractor will become part of Dad's estate and be distributed according to his will. Some one else may end up with the tractor.

Gifts must be given free of any restrictions and are not revocable. The donor (giver) must be ready to completely part with the property. For example, Dad gives Son five cows and the cows are moved to the Son's pasture. Dad, however, still checks them every day, decides which bull to breed them to, and continues to make all managerial decisions regarding the five cows. This was not a gift but a loan or a lease and the cows will still be part of Dad's estate. Also, if Dad reserves the right to take the cows back, no gift was made.

Tax Implications

The current annual exclusion amount is \$12,000 and is indexed for inflation. This means that any one donor can make a gift of \$12,000 to any one recipient without being subject to gift tax and without affecting the unified credit (amount of your estate excluded from estate tax) of the donor. Husbands and wives can combine their annual exclusion and give one recipient an annual tax-free gift of \$24,000. For even larger gifts, husband and wife can give an adult child and his/her spouse each \$24,000 for a total tax-free gift of \$48,000. Any gifted amount in excess of \$12,000 per donor/donee will result in significant tax rates (as much as 45 percent) or will affect the size of the donor's taxable estate at death. Gifts for payment of educational and medical expenses are tax exempt.

Gifts in any amount are excluded from the recipient's gross income for tax purposes; however, there may be significant capital gains taxes if the recipient decides to sell gifted property. Capital gain is the sale price of the property minus your basis. Generally, basis is your cost of acquiring property plus the cost of improvements. When property is transferred by gift, the recipient must take the donor's basis in the property, which may be much less than the current fair market value and may result in large capital gains if sold. Current capital gains tax rates, however, are lower than gift tax rates. If an heir receives an asset at death by will or living revocable trust instead of during the life of the donor, he/she will receive a "stepped up basis," which is equal to the fair market value at the time of death. Time of death transfers will significantly reduce capital gains tax if the recipient decides to sell the property.

This institution is an equal opportunity provider. For the full non-discrimination statement or accommodation inquiries, go to www.extension.iastate.edu/diversity/ext.

BFC 0007 September 2016

IOWA STATE UNIVERSITY
Extension and Outreach
Beginning Farmer Center

