



Need for Estate Planning

Planning for the disposition of your estate achieves two primary goals:

1. To ensure that, upon your death, your property transfers to the people you want to have them
2. To minimize the effect of estate and gift taxes

Disposition of Your Property

Without estate planning, disposition of your property upon your death is governed by state law of intestacy. For Texas residents, this means that if you are not married when you die, but you are survived by one of more descendants (e.g., children or grandchildren), then all of your property will pass to your descendants. If you die without descendants, but with two surviving parents, each parent will inherit one-half of your property.

If you die with one surviving parent and at least one surviving sibling (or descendant of a sibling, e.g., niece or nephew), your surviving parent will receive one-half of your property and the remaining one-half will pass to your siblings or to their descendants. If you die with only one surviving parent and no surviving siblings or descendants of a sibling, your surviving parent will inherit all of your property.

If you are unmarried and die without surviving parents, your property will pass entirely to your siblings and to their descendants. If you have no surviving descendants, parents, siblings or descendants of siblings, your property will be divided into two halves (moieties) with one half going to your paternal grandparents, uncles, cousins, etc. and the other half to the maternal side. Texas does not have a laughing heir statute preventing these remote relatives from inheriting. If one side of the family has completely died out, your entire estate will pass to the surviving side. If you die without any heirs at all, all of your property will escheat to the state.

Minimizing the Effect of Estate Taxes

The estate tax in the United States is a tax imposed on the transfer of your "taxable estate," whether such property is transferred via a will or according to the state laws of intestacy.

For estate tax purposes, your taxable estate includes the value of all of your property, including the value of your home, your retirement accounts and the death benefits from your life insurance, less funeral expenses paid out of the estate, debts owed at the time of your death and value of the assets passed on to your spouse (which are exempt pursuant to an unlimited marital deduction). In Texas, which is a community property state, your

estate will include all of your separate property (i.e., property that you owned before marriage or acquired after marriage by gift, devise, or descent) plus one half of property owned with your spouse as community property (the other half of the community property estate vests in your spouse at the time of your death).

Under current law, \$2 million of taxable income is exempt from federal estate tax. This exemption will increase in 2009 to \$3.5 million and, in 2010, the estate tax will be repealed entirely. Unless Congress acts to make the repeal permanent, however, the exemption amount for 2011 will be return to \$1 million, so tax planning remains a critical element of estate planning.

If you are married, you can avoid estate tax altogether by transferring all of your property to your spouse. As a result of the transfer, however, your spouse's estate will increase by the amount of the transfer,