WAEPA GUIDE

Estate Planning Guide

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Disclaimer

The information presented in this Estate Planning Guide is not intended to be a substitute for specific individual legal or tax advice as individual situations will vary. Because individual legal or tax situations vary, it is suggested that individuals should discuss any legal or tax issues with a qualified legal or tax advisor.

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2024 Estate Planning for Federal Employees Guide

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The 2024 Estate Planning Guide is presented by:

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The Need for Estate Planning

A comprehensive and up-to-date estate plan maximizes the chance that an individual's wishes with respect to medical and financial affairs will be carried out upon the individual's death or disability.

Every federal employee has an estate. This is because every federal employee has money saved and invested in banks and credit unions, in brokerage accounts, and with insurance companies. Every federal employee contributes each pay date to either the Civil Service Retirement System (CSRS) or to the Federal Employees Retirement System (FERS).

Almost all federal employees contribute to the Thrift Savings Plan (TSP). Many federal employees own at least one life insurance policy. Many federal employees own at least one piece of real estate. In short, employees each year are increasing the amount of personal assets and the size of their estates.

But employees must understand that they may not be able to enjoy their accumulated estate due to either incapacity or death. Estate planning is extremely important to ensure that one's estate will be passed on to loved ones at the least possible cost and in the least amount of time.

Estate planning is without doubt a complex and ongoing process. An individual must put together and assemble various available devices, techniques, and strategies to accomplish two main objectives:

1. An effective orderly continuity of one's affairs after one's death
2. The maximum sheltering of one's property (assets) against transfer taxes

A comprehensive and up-to-date plan also maximizes the chances that an individual's wishes with respect to medical and financial affairs will be carried out upon the individual's death or disability.

Here are some questions that are related to the need for an estate plan that individuals need to ask themselves:

- Who will conduct my affairs and pay my bills in case I am incapacitated?
- Who will act and decide on my behalf regarding medical procedures in case I cannot make those decisions due to incapacity?
- Who will decide on my behalf regarding whether I should stay on life support?
- Who will receive my assets upon my death?
- What organizations are worthy of my assets?
- How should my assets be transferred upon my death?
- Have I named the right beneficiaries for my retirement accounts?
- Is there something I should be doing now in order to minimize any difficulties in transferring my assets and costs upon my death?

The Need for Estate Planning *(continued)*

If these questions have not been properly answered or addressed, then it is time for some estate planning. Federal employees should be aware of the need for proper estate planning. Among the reasons for a proper estate plan include:

- The high cost of an estate settlement
- The need for estate liquidity to pay settlement costs
- The need for the care of minor children
- The need to plan for incapacity

The following chapters discuss the steps and procedures for crafting a proper estate plan.

Some Basic Estate Planning Tools and Documents

The following are some basic estate planning tools and documents for ensuring that an individual's estate plan wishes are carried out.

Will

A will is a document that takes effect only at the death of the will's owner. It directs how individually owned assets will be distributed upon the will owner's death. A will can also accomplish the following objectives:

- Appoint an executor(s) or personal representative of the deceased's estate
- Appoint a guardian(s) for the deceased's minor children
- Make certain tax elections
- Direct the payment of debts and taxes
- Establish trusts (testamentary trusts) for beneficiaries
- Dispose of (in some situations) certain assets to minimize or avoid estate taxes
- Limit the time a creditor or a disgruntled heir can challenge the deceased's intended disposition of assets, and
- Distribute (and change title of) assets as the deceased has directed.

A will is generally valid in the state in which it is prepared, signed, and witnessed by two adults. However, a will signed in one state will generally be valid if the will owner moves to another state and if the will is:

1. In writing
2. Signed by the testator or testatrix (the individual will owner)
3. Witnessed by at least two adults or is in conformity with the law of the state where it was signed

Nevertheless, once an individual has moved from one state to another state, it is probably a good idea to have an estate attorney in the new state of residence review the will. This is recommended in order to make sure that the will is in conformity with the estate laws of that state.

Durable General Financial Power of Attorney

A durable general financial power of attorney is a legal document that allows an individual (the "principal") to appoint a substitute decision-maker (the "agent") to act on behalf of the principal for financial decisions. By having such a document, the principal can avoid the court costs, legal fees, time, and inconvenience of going to a court to appoint a guardian or conservator should the principal become legally incompetent or disabled. However, banks, credit unions, and brokerages are increasingly reluctant to accept a durable general financial power of attorney. A bank, credit union, or brokerage may want its own durable power of attorney form filled out.

Health Care Power of Attorney

A health care power of attorney (sometimes referred to as an "advanced medical directive") allows an individual (the "principal") to appoint a substitute decision-maker or agent to make health care decisions for the principal if a physician or a hospital determines that the principal is "incapable of making an informed medical decision." It is not necessary for the principal to be in a terminal condition. The agent has full range of discretion, including:

1. Admitting, discharging or transferring the principal to medical facilities, rehabilitation facilities, nursing homes, hospice
2. Approving or withholding approval of diagnostic tests and procedures
3. Approving or withholding approval of medical and surgical procedures of all types
4. Authorizing the use, withholding, or termination of heroic measure to prolong life
5. Authorizing the use, withholding, or termination of artificial feeding and hydration.

Some Basic Estate Planning Tools and Documents *(continued)*

Living Wills

A living will declares the living will owner's desire that life-sustaining treatment be withdrawn or withheld under certain specific medical conditions. A living will may apply in cases in which the will owner is terminally ill or in a persistent vegetative state. A living will addresses only extraordinary life-sustaining decisions in cases of terminal illness or persistent vegetative state. A living will can also direct the withholding of artificial feeding and hydration.

Trusts

A trust is an arrangement created by a grantor (or a settler) in which a trustee administers and invests assets for the benefit of beneficiaries. Trusts may be revocable or irrevocable. Trusts can be created during an individual's lifetime (living or inter vivos trusts) or upon the death of the individual creating the trust (testamentary trust). Note that with a revocable trust, the grantor retains full and absolute control over the revocable trust and its assets and can amend or revoke the trust at any time. A revocable trust also acts like a will when the grantor dies. Upon the grantor's death, the successor trustee distributes the assets to the intended beneficiaries. A revocable trust has the following advantages over a will:

- Assets titled in the name of the revocable trust are not subject to the probate process upon death, thereby saving time and money
- A revocable trust is like a power of attorney to allow for the management of the trust's assets upon the grantor's incapacity
- A revocable trust is a private way to manage one's affairs and to dispense one's assets. Unlike a will, a revocable trust does not become a part of the public court record
- A revocable trust is more difficult to contest than a will

There are a few items that need to be considered with respect to a revocable trust, including:

- Having assets in a revocable trust does not necessarily minimize or avoid federal and/ or state estate taxes
- A revocable trust is not necessarily appropriate for someone with a small (or a simple) estate. A will may be more appropriate as probate should not be a concern
- Even if an individual has a revocable trust, the individual still needs a will. In particular, a "pour-over-will" usually accompanies a revocable trust and is used to make tax elections, appoint a personal representative, appoint a guardian for minor children, and transfer assets to the trust that were not titled in the name of the trust

Types of Property Ownership

Many individuals mistakenly believe that the only item needed in order to have a proper estate plan is a will or a living trust. While both a will and revocable trust control the testamentary disposition of an individual's assets, the manner in which an individual's property is titled can also play an important role in a person's estate plan. Federal employees therefore need to make inventories of the assets they own and determine how they are to be titled.

The manner in which assets are titled is important for estate planning purposes for the following reasons:

- The way in which property is titled can determine the total of the property owner's tax liability upon death.
- The way in which property is titled can determine the amount of administration expenses and attorney fees that the deceased property owner will pay.
- The way in which property is titled can determine how much of the individual's estate will be subject to probate administration.
- The way in which the property is titled will determine who will ultimately receive the deceased owner's property upon the owner's death.

This chapter discusses the various forms of property ownership, including sole ownership, joint tenancy with right of survivorship, tenancy by the entirety and tenancy in common. Community property (in certain states) is discussed in Chapter 4. Advantages and disadvantages of these forms of property ownership are also discussed, as is the issue of when it is most appropriate to use each form of property ownership when developing an estate plan.

Sole Ownership

The primary characteristic of property held in sole ownership is that one individual has absolute ownership and control of the property. This means that the individual has both lifetime control and post-mortem control of property. If the solely owned property produces income, then all income attributable to the solely owned property must be reported by the owner. For estate tax purposes, the entire amount of the solely owned property will be included in the sole owner's gross estate. Here are some examples of sole ownership.

Example 1. Jim, a single federal employee, owns a checking account, a savings account, and a certificate of deposit (CD) in his name. Jim is considered the sole owner of these accounts.

Example 2. Pamela, a recently married federal employee, owns a brokerage account which includes stocks and mutual funds. The brokerage account was acquired while Pamela was a single employee. Unless Pamela adds her husband's name to her brokerage account, the account will remain solely in Pamela's name as sole owner.

The owner of solely held property needs to plan for the proper transfer of such property when they die. Note that the sole owner may leave their property to whomever they wish and

Types of Property Ownership *(continued)*

may make a specific bequest of the property to one or more individuals through a will If the sole owner does not have a will (or a trust) and dies, the solely owned property will pass to the decedent's heirs and beneficiaries according to the "rules of intestate succession."

Each state and the District of Columbia has its own separate statutes for intestate succession. These statutes frequently determine the order in which the property passes to the heirs and the amount of the decedent's property that goes to each. However, should the decedent (the sole property owner) die without a will and without living heirs or designated beneficiaries, the property will "escheat" to the state in which the sole property owner lived. To avoid this consequence, the sole owner of property should have at least a will. Even if the owner has no relatives to bequest property, the owner could bequest property to a favorite charity.

Joint Tenancy with Rights of Survivorship (JTWROS)

This form of property ownership is frequently held between spouses. Unfortunately, many individuals mistakenly believe that it can only be held between spouses. Note that property can be held as JTWROS between parent and child, siblings, and between business partners. Here are the primary characteristics of property held as JTWROS:

- Income from income-producing property that is held as JTWROS is split equally among all of the join tenants. Thus, if the property produces income of $30,000 annually and is held by three joint tenants (it can be jointly owned by more than two tenants), each joint tenant will report income of $10,000
- The distinguishing feature of joint tenancy is its survivorship feature. In particular, upon the death of the first joint tenant, the property immediately passes to the surviving joint tenants in equal shares without having to go through probate. Thus, holding property as JTWROS excludes the possibility of any post-mortem control by the first joint tenant who dies. This could be a problem for an individual who owns property jointly with a spouse from a second marriage but wishes to leave the property to children from the first marriage
- The automatic survivorship feature of JTWROS means that such property is not controlled by the terms of a will
- The survivorship feature of joint tenancy causes such property to be excluded from the probate estate of the decedent. It does not, however, exclude such property from the gross estate of the decedent. Note that the gross estate is used in calculating any federal and/or state estate taxes (to be discussed in a later chapter).

Joint Tenancy by the Entirety (JTBE)

A few states still retain this form of ownership. JTBE is a form of joint tenancy property between spouses. The survivorship feature that is characteristic of joint tenancy property is also found in tenancy by the entirety. Upon the death of the first tenant, the property automatically passes to the survivor outside the terms of the decedent's will and outside the probate process. For estate tax purposes, the property is divided between the spouses equally with only one-half the value of the property included in the gross estate of the first tenant to die and the full value of the property included in the gross estate of the surviving tenant. Here is an example that illustrates.

Example 3. Peter, a federal employee, is married to Carol. Peter and Carol own a house as JTBE. They bought the house in 1980 for $100,000. Today the house is worth $400,000. Peter dies in 2022. $200,000 (half the value of the house) will be included in Peter's gross estate.

Types of Property Ownership *(continued)*

Property held as JTBE does differ from joint tenancy property in two significant respects, namely:

- Only spouses may hold the property at JTBE. This form of property ownership cannot be held between siblings, parent and child, or business partners.
- Unlike property held as JTWROS, which can be severed through the unilateral action of one of the joint tenants, property held as JTBE can only be severed with the consent of both spouses.

Tenancy in Common

Tenancy in Common (TCOM) is a method by which property can be owned by several individuals simultaneously. Property held as TCOM differs from property held as JTWROS in many ways. First, there may be several tenants in common who hold title. Those individuals each own an undivided interest in the property. The undivided interest may be one-half, one-third, or one-fourth interest. Unless the tenants in common agree to a specific allocation of their property rights in a partition of the property, each tenant in common continues to own a fractional undivided interest in any portion of the property at any given time. Second, tenants in common are free to transfer their respective shares of the property to other individuals (without permission of the other tenants). Third, there are no survivorship rights in property held in tenancy in common. For the holder of such an interest, this means that upon the death of the holder, his or her respective share of the entire property is included as an asset in the holder's gross estate. Furthermore, it means that the property will pass to whomever the deceased holds names in a will. Consider the following examples, which illustrate tenancy in common.

Example 4. Marvin, Tammy and Zelda are single federal employees who purchase a rental house together as tenants in common. They charge $2,000 per month in rent, and their annual rental expenses are $21,000. Marvin, Tammy and Zelda each have a one-third interest in the property. The net income for the rental property is $24,000 less $21,000, or $3,000. The $3,000 profit is divided equally among the three owners.

Example 5. Same facts as example 4 except that Marvin dies. In his will, Marvin bequests his share of the rental property (his one-third interest) to his nephew Sam. Sam now becomes one-third owner of the property with Tammy and Zelda.

In deciding whether or not to title property as tenants in common, federal employees should consider the following advantages of TCOM:

- TCOM can split income among several tenants in common. If tenants are members of the same family, TCOM can be an effective way of splitting income among family members
- TCOM can result in a reduced reportable amount of property in the gross estate of the decedent. This is not necessarily true with holding property as JTWROS, in which property is held one-half as a joint tenant, or all of it as a sole owner
- TCOM can serve as a means of transferring the property to an intended beneficiary under a will. The property does not pass automatically to the surviving tenants in common

Types of Property Ownership *(continued)*

The following table summarizes and compares the advantages and disadvantages of the different types of property ownership, including sole ownership, joint tenancy with rights of survivorship and tenancy in common. Federal employees should note the tax consequences as well as the disposition aspects of each of these forms of ownership in selecting the most appropriate form of ownership.

A Comparison of Sole Ownership, Joint Tenancy, and Tenancy in Common

Questions or Issues	Sole Ownership	Joint Tenancy WROS	Tenancy In Common
Avoid probate?	No	Yes	No
Can be disposed of by will?	Yes	No	Yes
Does decedent have post-mortem control?	Yes	No	Yes
Do beneficiaries receive a “step up” in basis at decedent’s death?	Receives step up in basis on entire amount when it passes to beneficiary or heir.	Yes, on the portion attributable to the decedent only.	Same as sole ownership on the tenant’s proportional interest.
Consent of others needed prior to conveyance?	No	Yes, if there is a spousal joint tenant it is advisable; otherwise, no.	No
Amount included in gross estate of decedent?	All	One-half if spouse’s; otherwise, the portion or percentage which is proved as actual contribution. If survivor cannot prove contribution, then the fair market value of the asset on the date of the owner’s death is included in the owner’s gross estate.	Tenant’s undivided fractional interest.
Survivorship rights upon death of decedent owner?	No	Yes	No
If gifted, subject to payment of gift tax?	Yes	No, if gifted to spouse: otherwise, yes.	Yes

Types of Property Ownership *(continued)*

A Comparison of Sole Ownership, Joint Tenancy, and Tenancy in Common *(continued)*

Questions or Issues	Sole Ownership	Joint Tenancy WROS	Tenancy In Common
Effective means of splitting income?	No	Yes	Yes
Reduced administrative expenses and costs?	No	Yes	No
Difficult to dispose of or convey?	Generally, no	Generally, no	Can be a problem if tenants in common cannot agree to buy or sell their interest to others can result in a co-ownership discount.
Can interest qualify for marital deduction?	Only if bequeathed to spouse in decedent's will or if transferred to spouse pursuant to intestacy stature.	Yes, if surviving joint tenant is spouse	Yes, if tenant in common bequeaths it to spouse in will or if transferred to spouse pursuant to intestacy statute.
Subject to creditors' claims?	Yes	No, possible free in some states, but state law must be checked..	Yes
Lifetime control?	Yes, total	Yes, partial	Yes, partial

Estate Planning in Community Property States

Community property is a form of ownership by husband and wife in the nine community property states which are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. In these states, both spouses each own a separate undivided and equal interest in property acquired during marriage.

The reasoning is that even if only one of the spouses acquires property or earns income used to benefit the couple residing in a community property state, the efforts of both spouses directly or indirectly led to the acquisition of property or income. Furthermore, even if only one of the spouses is an income earner, it is presumed that the efforts of the nonworking spouse contributed to the benefit of the marital property

Note that community property differs significantly from most common law forms of property ownership, including joint tenancy with rights of survivorship, tenancy by the entirety and tenants in common, with respect to estate planning (as well as regarding income and gift tax planning).

How Assets in Community Property States are Classified

The general rules for classification of assets as community property or separate property depend on when the property was acquired and how the property was titled at the time it was acquired. Here are the rules:

- If property was acquired prior to the marriage by either spouse as separate property, the property retains its status as separate property after the marriage unless the couple decides to change its classification
- If property is acquired by the spouses at any time subsequent to the marriage, the property is presumed to be community property unless the couple specifically titles the property to some other form of ownership
- If property is acquired by either spouse by gift or inheritance, the gifted or inherited property retains its separate character throughout the marriage

Right of Spouses in the Event of One Spouse's Death

In general, each spouse owns an undivided one-half interest in the community property assets. When one of the spouses dies, that spouse's gross estate contains one-half of the value of all assets held by the community.

With community property, each spouse controls the ultimate disposition of the assets contained in the estate. In that respect, community property differs significantly from property held as JTWROS or JTBE. With JTWROS or JTBE the one-half interest owned by the decedent passes by operation of law to the surviving spouse. In other words, the decedent spouse retains no postmortem control of the property.

The one-half interest owned in community property is controlled by the decedent spouse who can either bequeath it to the surviving spouse under the terms of the decedent's will, or bequeaths it to any third party that is a beneficiary of the decedent.

Estate Tax Implications of Community Property

For purposes of inclusion in a decedent's gross estate, property is treated as separately owned or community property according to the state in which the property was acquired, or

Estate Planning in Community Property States *(continued)*

where the spouses resided at the time of death. This is also true for any property agreement entered into by the parties during the course of their marriage.

All types of community property are included in the gross estate of a decedent spouse, provided they are community in nature at the time originally acquired. An example of this is as follows:

Example 6. Fred, a federal employee living in Arizona with his wife Laurie, acquired the following property during the course of their marriage: (1) stocks; (2) bonds; (3) mutual funds: (4) house; (5) rental property at the beach; and (6) life insurance policies on both spouses. When the first spouse dies, the decedent's gross estate would include one-half of the value of the house, rental property, stocks, bonds, and mutual funds at the time of death. Note that one-half of the death benefit payable by the life insurance policy is includable in the gross estate of the deceased when community funds were used to pay the premiums on the policy.

The Probate Process and How to Avoid or Minimize It

Probate is the process by which assets are transferred from a deceased individual to their beneficiaries. Assets included in the probate process are:

- Assets titled solely in the name of the deceased
- Assets held as tenants in common (as opposed to joint tenants with rights of survivorship or tenants by the entirety)
- Assets that are payable directly to one's estate

Example 7. An example that illustrates the probate process:

Betty, a single federal employee, owns the following assets solely in her name:

1. Checking account
2. Savings account
3. Certificate of deposit (CD)
4. U.S. Savings Bonds
5. Brokerage account

She also owns a house with her best friend Wilma as tenants in common. Betty also has retirement accounts, including FERS, Thrift Savings Plan (TSP), and an IRA. She has named beneficiaries for each of her retirement accounts. The following are includable assets for the probate process in the event of Betty's death: the checking account, the savings account, the CD, the savings bonds, the brokerage account, and her house.

Property which is owned as joint tenants with rights of survivorship or tenants by the entirety will not go through probate upon the death of the first joint tenant. If the tenants are married, the probate will be postponed until the death of the second spouse. There are some other problems associated with holding property jointly, including:

- Owning property jointly does not solve the problem that is associated with disability. That is, how are an individual's jointly owned assets handled upon their disability? Disability and incapacity could also involve possible court supervision of an individual's medical treatment and financial affairs resulting from the individual's disability
- Owning property jointly does not avoid or minimize federal estate taxes
- Assets may be subject to the creditors of the tenants. Therefore, an individual's assets, held jointly with another person, may be used to pay that person's debts

Furthermore, when the joint tenancy is created (for example, an individual buys property and names someone as a joint tenant) and if the joint tenants are not married, then:

- There could be a potential unintentional gift tax problem upon the creation of the joint tenancy (the person named as joint tenant has received a gift)
- There is a potential loss of control and unintentional disinheritance for the desired beneficiaries
- The executor for the first joint tenant to die must prove that the entire value of properties owned as JTWROS should not be included in that individual's gross estate.

The Probate Process and How to Avoid or Minimize It *(continued)*

Pension benefits are not subject to the probate process. These include CSRS and FERS annuities, military pension annuity, Thrift Savings Plan monies and IRAs. This is because pension benefits are transferred by a beneficiary designation unless the pension owner designates the "estate" as beneficiary. *Note that the Appendix has a list of the important beneficiary forms for federal employees*.

There are, however, some potential pitfalls associated with beneficiary designations that life insurance and pension owners need to be aware of:

- Proceeds of life insurance, such as Federal Employees' Group Life Insurance (FEGLI), are included in the gross estate of the insured if the insured (normally, the federal employee) is the owner of the policy, no matter who the beneficiaries are
- The insured individual of a life insurance policy is considered the owner of the policy if the insured can change the beneficiary or cancel the policy
- Property cannot be paid directly to minor beneficiaries or incompetents

Note that assets gifted away during one's lifetime avoid the probate process. Also, assets held in a properly funded and drafted trust will not go through the probate process, but instead will be disposed of as provided in the trust agreement. Trusts can be revocable or irrevocable. However, placing assets in a trust, which must be done in order to make the trust effective, does not necessarily remove assets from the gross estate. It does remove assets from the *probate estate.*

There are additional ways of avoiding the probate process through will substitutes, including using:

- **Payable on Death (POD) accounts.** This form of will substitute is established when an individual opens an account with a financial institution, such as a bank or credit union, and this account is to be paid to a designated beneficiary in the event of the owner's death. Examples of such accounts are checking accounts, savings accounts and certificates of deposits (CDs). The U.S. treasury allows purchasers of savings bonds (EE and I bonds) to name beneficiaries through a POD designation. The depositor has complete control over the account during the owner's life. The individual named as beneficiary of the account is not permitted to make withdrawals, borrow from the account proceeds, or use them as collateral when seeking a loan. Finally, POD accounts, while not being included as part of an individual's probate estate, are included in the individual's gross estate.
- **Totten trusts.** A Totten trust is a form of a will substitute that is actually misnamed since it is not technically a trust and the individual designated as "trustee" has no active trustee duties and does not operate in a fiduciary capacity, as does the trustee of an active trust. With the Totten trust, the individual establishes an account with a financial institution and names themself as "trustee" of the account. In particular, the "trustee" may make deposits and change beneficiary designation at any time. The beneficiary(s) will receive whatever remains in the Totten trust account at the death of the "trustee."
- **Transfer on Death (TOD) accounts.** TOD accounts are like POD accounts except that TOD accounts are established for brokerage accounts (stocks, bonds, mutual funds).

Why has there been such an emphasis on and discussion regarding will substitutes and avoiding the probate process? There are several reasons to avoid probate and its costs. Individuals may prefer to use some sort of a will substitute because:

- Use of a will substitute avoids the cost and time

delays often associated with the probate of an estate. See the discussion and charts on the next two pages comparing the cost of dying when an estate is probated and when an estate is not probated. Also, the probate process in its entirety can take anywhere from six months to several years before the decedent's property is distributed in the manner desired by the decedent. Note that the use of a will substitute avoids this time delay by transferring title to the property immediately to another individual.

- Use of a will substitute guarantees the grantor (of a trust) or owner of property a greater degree of control or flexibility. For example, in the case of an individual who uses a revocable living trust as a will substitute, the grantor (of the trust) is assured of being able to determine who receives the property, in what amount, and the conditions or situations in which the beneficiary will cease to receive the property.
- Use of a will substitute can possibly transfer a decedent's interests to someone other than the surviving spouse while prohibiting the spouse from filing an election to take against the will or filing a will contest. However, if the intentions of the decedent were to fraudulently disinherit their spouse, and if the parties had not entered into a prenuptial agreement in which each agreed to give up their survivorship rights in the property of the other spouse, then in most states such an attempt could be successfully challenged by the surviving spouse.
- Use of a will substitute is often a quicker, more convenient means of creating an estate plan than the use of a will. A will usually involves meeting with an estate attorney (perhaps several times), as well as the search for and duplication of copies of important documents such as titles to property and deeds. Also necessary is a signature of the will with the requisite number of witnesses and the filing of the will with the probate court. On the other hand, a will substitute can be as simple as signing on a designated signature line or completing an application form.

Nevertheless, despite the apparent advantages of having a will substitute as part of an estate plan, there is always a need to have some type of will as part of an estate plan. This is because certain assets cannot qualify for a will substitute. Also, certain assets may be acquired in the future in which the owner may forget to include as part of an estate plan. In that situation, a will can be written in a way that ensures that assets that are not included as part of a will or a will substitute will automatically "pour over" into the will. This type of will is commonly known as a "pour over" will.

General Income and Estate Tax Issues

There are a number of income and state tax issues that need to be addressed and discussed in order for individuals to prepare a proper estate plan. Among the income tax issues that need to be addressed:

Revocable ("Living") Trusts. A revocable trust, also commonly called a living trust, is sometimes referred to as a grantor trust and does not exist as a separate taxable entity from the individual who establishes the trust (the "grantor" or the "settler"). In fact, a revocable trust's tax identification number is the grantor's Social Security number. Any income earned by a revocable trust is deemed earned by the grantor and must be reported on their income tax return.

IRAs/Retirement Plans (including CSRS and FERS pensions and the Thrift Savings Plan). When federal annuitants or their beneficiaries withdraw IRA funds or other retirement funds, the annuitant or their beneficiaries will pay income taxes on the amounts withdrawn (but not on the employee contributions, which were made with "after-tax" contributions). Federal retirees who have TSP accounts – this includes both traditional and Roth TSP accounts – and traditional IRAs must begin withdrawals by April 1 following the calendar year they reach age 73 (age 75 if born after December 31, 1959). However, Roth IRA owners are not required to take any withdrawals from a Roth IRA.

Here is some additional information regarding income taxes and IRA/retirement plans:

- A spouse is the only beneficiary who may defer income tax on a death benefit from the TSP or IRA by making a "rollover" into the spouse's own IRA
- A non-spousal beneficiary of the TSP account (traditional or Roth) or a traditional IRA may request a rollover of the account to an inherited IRA (traditional or Roth). If the TSP participant or traditional IRA owner died before January 1, 2020, then the non-spousal beneficiary can withdraw their inherited traditional IRA over their life expectancy, pay income tax on the withdrawn amount rather than withdrawing the entire amount and paying income tax on the lump-sum withdrawal. If the TSP participant died after December 31, 2019, then a non-spousal TSP beneficiary who requests a direct rollover to an inherited IRA must withdraw the inherited traditional IRA or Roth IRA by December 31st of the tenth year following the death of TSP participant
- Individuals who were born before Jan. 1, 1936, are eligible for the special "10-year income-averaging" that is based on 1986 income tax rates. For federal employees, this special averaging applies to their TSP accounts and any 401(k) plans that they may own
- Retirement benefits may be subject to the generation skipping transfer tax if an individual's beneficiary to retirement plans and/or IRAs are grandchildren (or other remote descendants)
- The minimum required distribution (MRD) rules apply to one's traditional TSP accounts, one's traditional IRA, one's 401(k), and one's 403(b) account. Starting when an individual turns age 73 and every year thereafter, an individual must withdraw a minimum

General Income and Estate Tax Issues *(continued)*

amount from each of these types of retirement accounts. A separate calculation is done for each account. There are other issues that individuals need to be aware of concerning the MRD. Among these issues:

- Payments must generally begin by April 1 following the year the owner turns age 73. There are two exceptions: Roth IRAs and employer plans (like the TSP and 401(k)) if the individual is still working for the employer
- Payment may be made over the individual's lifetime or over the joint life of the individual and a designated beneficiary. This is done by using the IRS uniform distribution table.
- Upon the death of the individual, only a spouse may roll over inherited retirement assets into a "rollover" IRA. In the case of married federal employees, inherited TSP assets from a deceased spouse may be rolled into the surviving spouse's TSP account

Estate Tax Issues and Calculations

One's gross estate may be subject to federal and state estate taxes. The amount of federal and state estate tax liability depends on the size of the gross estate as well as the year in which the individual who owns the estate dies. The gross estate consists of all assets one owns (as well as many assets one may not realize one owns). It will include:

- All assets in one's probate estate
- All assets in one's revocable trust
- Proceeds of life insurance paid by reason of the insured's death if the insured owned the insurance at any time within three years of death
- Pension and annuity death benefits
- One's share of property held in JTWROS (spouses are deemed to own one-half each); for joint tenants other than spouses, the first tenant to die has the burden of proving that their share for tax purposes is not the entire property
- Lifetime taxable gifts that exceed the annual gift tax exclusion currently $18,000 per recipient per year during 2024
- Transfers of assets from which the donor (deceased) retains an income for their life will be "brought back" into the decedent's estate for purposes of determining the gross estate
- Transfers of assets in which the donor (deceased) retains the right to alter or to terminate the transfer will be "brought back" into the decedent's estate for purposes of determining the gross estate

Proper estate planning can save individuals hundreds of thousands of dollars in unnecessary estate taxes. The federal estate tax is an excise tax on the right to transfer property at the date of death. The top estate tax bracket is 40 percent on estates over $1 million during 2024.

The federal estate tax return (IRS Form 706) and any taxes due are generally due within nine months after the date of death. In some situations, a portion of the taxes may be paid to the IRS in installments.

If the value of the estate assets declines during the first six months after death (which often happens if the decedent owned a business), the value for all assets as of six months after the death may be used in the tax return. The following table summarizes how assets are valued.

Estate Tax Issues and Calculations *(continued)*

Valuation of Estate Assets: A Few Selected Assets

Types of Assets	How Assets Are Valued
Listed stocks and bonds (including over the counter)	The mean between highest and lowest quoted selling prices on the valuation date.
Mutual funds	Valued at their bid price or redemption value (i.e., the amount the fund would pay the shareholder if it redeemed the shares on the valuation date).
Survivor's annuity (under a joint and survivor annuity contract)	The amount that the same insurance company would require for a single life annuity on the survivor, as of the applicable valuation date.
Close corporation stock	Fair market value is based on the history and nature of business, economic outlook, book value, earning capacity. Dividend paying capacity, goodwill, recent sales of stock and similar publicly traded company stock.
Real estate	Fair market value of real estate in the United States or in a foreign country.
Real estate (farm or corporate-owned)	Value may be determined by actual use rather than on its highest and best use if certain conditions are met.
Mortgages and notes	The amount of the unpaid principal plus accrued interest, unless a lower value can be proven (I.e., an insolvent debtor).
Life insurance on the decedent's life	Amount receivable by the estate or by a named beneficiary, if the deceased insured had incidents of ownership in the policy.
Life insurance policy owned by decedent on the life of another person	The cost of buying another policy of the same value and same type on the same insured.
Joint tenancy with a spouse	One-half of the value of property owned jointly by spouses is included in the estate of the first spouse to die.
Joint tenancy with other than spouse (general rule)	Entire value of property less the original contribution of the survivor is included in the estate of the first joint tenant to die.

Note that for deceased federal employees and annuitants, the gross estate includes salary or annuity payments that had accrued to an employee or annuitant, but which were not paid before death, as well as the balance in the decedent's traditional and Roth TSP accounts. The gross estate also usually includes the value of the death and survivor benefits payable under the CSRS or the FERS. If the employee died leaving no one eligible to receive a survivor annuity, the lump sum (representing the employee's contribution via payroll deduction to the CSRS or FERS) payable to the estate or other beneficiary is included in the employee's gross estate.

Estate Tax Issues and Calculations *(continued)*

Survivor annuity benefits (CSRS or FERS) are also included in the deceased federal employee's or annuitant's gross estate (see table above for an analysis of how a survivor annuity is valued). In the case of a spousal survivor annuity, the annuity value would not be included as part of the taxable estate because of the unlimited marital deduction.

Also included as part of the decedent's gross estate is the annuity resulting from the decedent's participation in the CSRS Voluntary Contribution Program (VCP).

Federal Estate Tax Worksheet

Assumes Death Occurs During 2024

A. Fair market value of real estate and business property	$________
B. Fair market value of investments, stocks, bonds, funds, etc.	________
C. Fair market value of personal and other property	+ ________
D. **Gross estate** (sum of items A, B and C)	________
E. Administration expenses (funeral expenses, etc.)	________
F. Debts of decedent	________
G. Marital deduction (assets to spouse)	________
H. Charitable deduction (bequests to charity)	________
I. State death taxes	________
J. **Total deductions** (sum of items E through I)	(________)
K. **Taxable estate** (item D minus J)	________
L. Adjusted taxable gifts (gifts made during life)	________
M. Estate tax base amount (sum of items K and L)	________
N. **Gross estate tax** (on item M from table below)	________
O. Applicable credit (maximum of $5,389,800)1	________
P. Gift taxes paid on lifetime gifts	________
Q. **Total credits** (sum of items O and P)	(________)
R. **Net federal estate tax** (item N minus item Q)	________

[1]In 2024, the applicable credit may exceed $5,389,800 (up to a maximum of $10,779,600) if there is a "deceased spousal unused exclusion amount" available.

Estate Tax Issues and Calculations *(continued)*

Federal Estate Tax Table 2024

If Taxable Estate ...		Tentative Tax Is ...		
Is Over ...	**But Not Over ...**	**Tax**	**Plus %**	**Of Excess Over ...**
$0	$10,000	$0	18.00%	$0
$10,000	$20,000	$1,800	20.00%	$10,000
$20,000	$40,000	$3,800	22.00%	$20,000
$40,000	$60,000	$8,200	24.00%	$40,000
$60,000	$80,000	$13,000	26.00%	$60,000
$80,000	$100,000	$18,200	28.00%	$80,000
$100,000	$150,000	$23,800	30.00%	$100,000
$150,000	$250,000	$38,800	32.00%	$150,000
$250,000	$500,000	$70,800	34.00%	$250,000
$500,000	$750,000	$155,800	37.00%	$500,000
$750,000	$1,000,000	$248,300	39.00%	$750,000
$1,000,000	And up	$345,800	40.00%	$1,000,000

Estate Tax Issues and Calculations *(continued)*

Here is an example: For a gross estate totaling $10 million, total deduction of $2.5 million, taxable gifts since 1976 of $100,000 and gift taxes paid of $10,000.

Federal Estate Tax Approximator
Assumes Death Occurs in 2024

Item Description	Value
Estimated gross estate at death	$10,000,000
Debts, administration expenses, mortgages	- $2,500,000
Net taxable estate at death	**$7,500,000**
Assets passing to charities	-$1,000,000
Taxable estate	**$6,500,000**
Adjusted taxable gifts made after 1976	+ $100,000
Adjusted taxable estate	**$6,600,000**
Tentative federal estate tax	$2,585,800*
Gift taxes paid after 1976	-$10,000
Applicable (unified) credit amount	-$5,389,800
Federal estate tax due *Using the Estate Tax Table above.	**$0**

State Estate and Inheritance Taxes

In addition to the federal government imposing a federal estate tax, there are some states assess their own estate and inheritance taxes. These death taxes are charged in addition to any federal estate taxes that heirs of deceased state residents will owe on the assets that the deceased state resident intended to bequest to their heirs.

Both estate and inheritance taxes are the result of someone's death. While the concept of both of these taxes is similar, the way each tax is assessed and collected is quite different. During 2024, six states charge some form of inheritance tax, and 13 states including the District of Columbia have some form of estate tax.

It should be noted that estate taxes and inheritance are calculated differently, as discussed here:

State Estate and Inheritance Taxes *(continued)*

Estate tax

Estate taxes are calculated by adding the value of the deceased's assets. If the value of these assets does not exceed the current state/federal exemption, no estate taxes are owed. If estate taxes are owed, they are the responsibility of the estate.

The following table shows the 13 states including the District of Columbia that assess state estate taxes during 2024 together with their exemption amounts:

State	Estate Exemption Amount
Connecticut	$13,610,000
District of Columbia	$4,710,000
Hawaii	$5,490,000
Illinois	$4,000,000
Maine	$6,410,000
Maryland	$5,000,000
Massachusetts	$2,000,000
New York	$6,940,000
Oregon	$1,000,000
Rhode Island	$1,774,583
Vermont	$5,000,000
Washington	$2,193,000

Inheritance tax

An inheritance is calculated as a percentage of the overall value of the inheritance, and it is collected from the recipient. In all six states, spouses are exempt from inheritance taxes, but in some states children or domestic partners may not be exempt.

The following table shows the six states that assess inheritance tax during 2024 together with inheritance tax percentages.

State	Inheritance Tax Percentage
Iowa	1 to 3 percent
Kentucky	4 to 16 percent
Maryland	10 percent
New Jersey	11 to 16 percent
Pennsylvania	4.5 to 15 percent
Nebraska	1 to 15 percent

Estate Tax Saving Tools and Techniques

There are seven ways for federal employees to avoid or minimize estate (and gift) taxes. They are:

#	Technique	Description
1	**The Unlimited Marital Deduction**	Any assets that are transferred to a spouse (if they are a U.S. citizen) are free of estate tax. However, when that spouse dies, estate taxes may have to be paid, depending on the size of the estate and the value of the second spouse's estate. This includes any assets transferred by the first spouse. The unlimited marital deduction is therefore only a deferral technique, not actually an avoidance technique. But see below **(Taking Advantage of the Estate Tax Rule Allowing a Surviving Spouse to Use the Portion of the Deceased Spouse's Unused Estate Tax Exemption)**
2	**The Unified Credit or Applicable Exclusion Amount**	Every individual who dies during 2024 is entitled to a credit against the federal estate tax in the amount of $5,389,800, which is the tax on the first $13.61 million of one's estate.
3	**The Annual Gift Exclusion**	During 2024 one can give away up to $18,000 to an unlimited number of people without any federal gift tax consequences. For example, during 2024, spouses can each gift $18,000 to each of their four children, a total of $144,000, and have the entire amount excluded from gift taxes.
4	**Lifetime Taxable Gifts**	Giving away assets in excess of the annual exclusion may have tax advantages., even if a gift tax is incurred (more about gift tax in Chapter 8). First, all future appreciation will escape taxation. Second, all future income earned will be shifted to the individuals receiving the gifts.
5	**Life Insurance**	If one does not "own" life insurance on their life, then the proceeds are not subject to estate taxes upon the individual's death. For example, if an irrevocable life insurance trust owns life insurance on one's life, then there is no estate tax due on the proceeds.
6	**The Charitable Deduction**	There is a 100 percent charitable deduction for completed ascertainable gifts given to charities.
7	**Grantor Retained Trusts**	One may place assets in a trust while retaining certain rights to the trust assets for a period of years. All future appreciation passes to the beneficiaries.

Taking Advantage of the Estate Tax Rule Allowing a Surviving Spouse to Use the Portion of the Deceased Spouse's Unused Estate Tax Exemption

Under federal estate tax guidance issued by the IRS in June 2012 for an estate tax law Congress passed late in 2010, when one spouse in a married couple dies, the executor should file a federal estate tax return (IRS Form 706) preserving the value of the estate tax exemption (during 2024 this is $13.61 million). Once the surviving spouse dies, any unused portion of the first-to-die spouse's unused exemption will be added to the second-to-die spouse's exemption. This is called *portability*. The following example illustrates:

Example 8. Philip and Joan have a gross estate valued at $22 million. Their two houses, brokerage accounts, retirement annuities, IRAs, bank accounts and personal items are held jointly with rights of survivorship (JTWROS). Philip died early in 2024, leaving Joan and one child as survivors. When he died, all of Philip's accounts and the house went to Joan. No federal estate taxes were paid because of the unlimited marital deduction. Nonetheless, the executor filed a federal estate tax return using Form 706 for the year 2024, thereby preserving Philip's $13.61 million exemption for Joan. The $13.61 million is added to Joan's own personal exemption, currently $13.61 million during 2024. In other words, if Joan were to die during 2024, the first $27.22 million of Joan's estate is exempt from federal estate taxes.

Please note that in order to preserve the first-to-die exemption, IRS Form 706 for Phillip must be filed, even if no federal estate taxes are due because of the unlimited marital deduction.

Federal Gift Taxes

Lifetime gifts and transfers at death are taxed using a tax schedule that has cumulatively progressive rates. Each taxable transfer, including the final transfer at death, begins in the tax bracket reached by the prior gift.

Prior to the passage of the Economic Growth and Tax Relief and Reconciliation Act (EGTRRA) of 2011, both lifetime gifts and transfers at death were taxed under a unified estate and gift tax system. Against this tax each taxpayer had a "unified credit" which could be used fully or in part during their lifetime, with any remaining portion available at death. For example, during 2001 the unified credit was $220,550 equivalent to $675,000 of assets. The Tax Relief Act of 2010 reunited the estate and gift tax system. The table below presents the exemption amount (the applicable exclusion amount) from 2014 through 2024.

Calendar Year	At-death Exemption (in millions)	Gift Tax Exemption (in millions)
2012	$5.12	$5.12
2013	$5.25	$5.25
2014	$5.34	$5.34
2015	$5.43	$5.43
2016	$5.45	$5.45
2017	$5.49	$5.49
2018	$11.18	$11.18
2019	$11.40	$11.40
2020	$11.58	$11.58
2021	$11.70	$11.70
2022	$12.06	$12.06
2023	$12.92	$12.92
20124	$13.61	$13.61

The gift tax applies to transfers by gift of property. An individual makes gift if the individual gives property (including money), the use of property, or the right to receive income from property, without expecting to receive income from property or without expecting something of at least equal value in return.

Federal Gift Taxes *(continued)*

The general rule is that any gift is a taxable gift. But there are several exceptions to this rule, including:

- Gifts, excluding gifts of future interests, that are not more than the annual exclusion for the calendar year
- Tuition or medical expenses paid directly to an educational or medical institution for someone else
- Gifts to one's spouse
- Gifts to a political organization for its use
- Gifts to charities

Annual Gift Tax Exclusion

Every individual is allowed to transfer or gift a certain amount of assets each year, without concern for gift taxes. The annual exclusion amount is $18,000 per donee in 2024. If the spouses agree, they can give twice this amount to each of any number of children, grandchildren, etc.

Marital Deduction

There is an unlimited marital deduction for gifts of separate or community property passing from one spouse to another. Transfers to spouses who are not U.S. citizens are not protected by the unlimited gift tax marital deduction. In fact, a noncitizen spouse is entitled to a is $185,000 per year (during 2024) special annual gift tax exclusion if such a gift would qualify for the marital deduction if the spouse were a U.S. citizen.

Educational or Medical Expenses

A donor may give, free of gift tax consequences, unlimited amounts for a donee's school tuition (not books, supplies or other expenses) or qualified medical expenses (such as payments to a doctor or hospital). Such gifts must be made directly to the school or health care provider, and not directly to the donee.

Deductibility for Income Tax Purposes

Gifts or gift taxes are not deductible for income tax purposes unless contributed to a qualified charity.

Gift Tax Returns (IRS Form 709)

These returns are filed annually no later than April 15 of the year following the year in which the gift(s) in excess of the annual gift tax exclusion was given.

A taxpayer can avoid gift tax on the gift tax return during 2024 by claiming part of the lifetime gift tax exemption ($13.61 million). However, any part of an individual's $13.61 million exemption used as a gift tax exemption during 2024 will not be available at the time of the individual's death as an estate tax exemption.

Includability of Gifts in the Estate

If the gifts exceed the annual gift tax exclusion, $18,000 during 2024, then the gifts may be added to the taxable estate as adjusted taxable gifts. This, in effect, pushes the assets remaining in the taxable estate into higher tax brackets. However, the appreciation on the assets from the date of the gift(s) until the date of death is not brought into the computation.

Gifts of life insurance policies, however, are still included if made within three years of death. Certain incomplete transfers (for example, retained life estates, revocable transfers, etc.) will also be included in the gross estate without regard to when they were made.

Advantages of Making Gifts

The advantages of making gifts include:

- Gifts keep future appreciation out of the estate
- The gift tax paid reduces the taxable estate
- Making gifts of income-producing assets may reduce current income taxes
- Probate administration is not necessary for gifts assets
- The donor can see the beneficiaries enjoy the assets while they are still living

Using Trusts as Estate Planning Tools

In Chapter 7, some estate tax savings tools and techniques were presented. One estate tax saving technique for married couples is a trust variously known as a bypass. A/B, remainder or unified shelter trust. This trust is used to take advantage of the unified credit amount in a decedent's estate. This chapter discusses other trusts that federal employees may want to consider as estate planning tools or ways to reduce potential federal estate taxes.

QTIP Trust

The acronym QTIP refers to qualified terminable interest property. A QTIP trust allows a married couple to ensure that no estate tax will be payable until the death of the surviving spouse.

In particular, when the first spouse dies, any property passing to a QTIP trust qualifies for the unlimited marital deduction. The trust can be used to ensure that no estate tax is payable on the death of the first spouse. However, all property in the QTIP trust is taxable in the estate of the surviving spouse.

A QTIP trust can be used to ensure that the trust property is ultimately distributed in accordance with the wishes of the original owner of the property. It is extremely useful to married individuals in a second marriage who want to provide income to a surviving spouse but who also want to provide for other family members, such as children. The following example illustrates:

Example 9. Paul and Maureen are both in their second marriages. Each wants to make sure that any assets are used for the benefit of the surviving spouse, but upon the death of the spouse, they want their individual assets to pass to their respective children. Paul and Maureen each establish QTIP trusts that provide all trust income be paid to the surviving spouse. Upon the death of the surviving spouse, federal estate taxes may be due (depends on the size of the surviving spouse's total estate, including what is left in the QTIP trust). However, Paul and Maureen also direct that whatever remains in their respective QTIP trusts at the death of the surviving spouse will go to their own children.

A QTIP trust is an extraordinary estate planning tool. It allows an individual to provide for a spouse, to take advantage of the marital deduction for estate taxes and be certain that assets go to family members such as children and grandchildren.

Life Insurance Trust

A life insurance trust:

- As a trust created for the purpose of owning life insurance
- Is not includable in the gross estate of the insured
- Allows the estate to avoid taxes, but also provides a ready source of liquid assets

Here is an example that illustrates:

Example 10. In Chapter 7, Philip and Joan established a bypass trust for their $22 million gross estate that includes cash, stocks, and real estate. Suppose Philip and Joan are insured for $2 million under a "second-to-die" life insurance policy. This means that the proceeds from the life insurance policy are payable after the death of the surviving spouse. This insurance policy is owned by a life insurance trust and their children and grandchildren are the beneficiaries of the trust. The trust owns the policy, and no portion of these proceeds will be taxed in the estate of Philip or Joan. Thus, by using a life insurance trust in conjunction with a bypass trust, Philip and Joan are able to pass $5 million in assets to their intended beneficiaries free of either income or estate tax.

Life Insurance Trust *(continued)*

Note that federal employees are allowed to include their Federal Employees' Group Life Insurance (FEGLI) policies in their life insurance trusts. They can do so by filling out **Standard Form (SF) 76-10** (available for download at **www.opm.gov/insure/life**) and submitting the form to their personnel offices.

Employees who own other individual life insurance policies can transfer ownership of these policies to their life insurance trusts. Under IRS rules, the individual (the insured) who transfers ownership of their life insurance policy must live for at least three years after transferring the policy in order to keep the policy proceeds out of the gross estate.

Charitable Remainder Trust

A charitable remainder trust is designed to reduce both income and estate taxes by an individual's making a gift to charitable organization. As typically used, the donor will give an asset (such as a house or stock) to a charity. However, the donor retains a life interest in the property. In other words, the donor and their spouse have the use of the asset while they are living; however, it will ultimately pass to the charity. The asset is removed from the taxable estate of the donor. In addition, because the donor has made a charitable contribution, the donor may claim an immediate tax deduction on their income tax return (in the year the asset is donated to the charity) for the value of the remainder interest.

Children's Trust (Minor's Trust)

A children's or minor's trust is a trust established for the benefit of a minor child. It is designed to transfer assets out of the parent's estate by taking maximum advantage of the annual gift tax exclusion. A potential drawback of such a trust is that the child may have access to funds in the trust at age 21 (or 18, depending on the age of majority in a particular state).

Qualified Personal Residence Trust

A qualified personal residence trust (QPRT) is a trust that is generally designed to transfer an individual's primary residence or a vacation home to the individual's children while reducing the size of the individual's gross estate. An individual transfers the title of the home to the QPRT. Under the terms of the QPRT, the individual retains the right to use the home for a specified period. At the end of this period, title to the home will vest in the beneficiary (that is, the children). Meanwhile the individual (the parent) may retain the right to rent the property at fair market value.

The parent has made a gift equal to the present value of the remainder interest but has removed the full value of the asset from the parent's gross estate. Consider the following example.

Qualified Personal Residence Trust *(continued)*

Example 11. Joshua is 65 years old and owns a vacation home worth $500,000. During 2024, he established a QPRT and under the trust he retains the right to use the property for 10 years. At the end of his time the property passes to his only child. Under IRS annuity tables (obtained from IRS publication 1457), the value of the remainder interest is 0.40560 times $500,000, or $202,830. The $202,830 is subject to gift tax (although Joshua can use part of his $13.61 million lifetime gift tax exemption). However, Joshua has effectively removed an asset worth $500,000 (plus future appreciation) from his gross estate at a discounted value.

One possible setback to the QPRT is if the donor dies before the specified term in the trust (in the example above, the term is 10 years), the full value of the residence is included in his gross estate.

Living Trust to Protect Against Disability

Many senior citizens are concerned about who will manage their affairs if, because of illness, accident, or advanced age, they become unable to do so. The management of affairs includes simple and basic tasks such as writing checks and paying bills for rent, mortgage or medical expenses. One way to designate someone for these tasks is through court-ordered guardianship. However, court-ordered guardianship is time-consuming and expensive, and it requires medical and other testimony that the ward is incompetent to manage their own affairs.

A better alternative is a living trust. A living trust is a revocable trust that is established for the benefit of the individual establishing it (the "trustor" or "settlor") with that individual named as trustee or manager of the trust. Most important, the trust document further provides for a substitute trustee if, for any reason, the "trustor" cannot or does not want to continue as trustee.

The living trust is established by the creation and signing of a revocable living trust. Since the terms of the living trust are revocable, the trust can be changed or modified at any time.

After the trust is established, all assets that are to be included in the trust must be transferred into the trust. This includes checking and savings accounts, stocks, bonds, real estate, and mutual funds.

After the property is transferred into the trust, it is managed by the trustee (who has total and complete control of the assets). If the trustee becomes incapacitated, the substitute trustee takes over and manages the trust assets, including paying any bills. No one has to go to court to get authority. Furthermore, there are no income tax consequences for transferring and keeping assets in the trust.

The Need for Legal Counsel & Updating One's Estate Plan

This publication should not be considered a substitute for seeking legal advice from a qualified estate attorney. Because estate laws vary from state to state, federal employees should seek the services of qualified estate attorneys in their respective states in order to develop and implement proper estate plans. Furthermore, employees who move from one state to another or who retire in another state need to have their estate plans reviewed by qualified estate attorneys in their new states of residence. Employees are encouraged to contact their State Bar Associations for a list of qualified estate attorneys in their states.

The Tax Cuts and Jobs Act of 2017 (TCJA) was the most recent legislation passed by Congress that resulted in major changes to federal estate and gift taxes. But TCJA (which became effective on January 1, 2018) is due to expire on December 31, 2026 unless Congress renews TCJA. If Congress fails to renew TCJA, the federal and gift tax exemption will revert to $6,000,000.

When an individual meets with an estate attorney, the attorney will typically ask five important estate planning questions. These questions are:

1. How does the individual want to distribute assets to heirs? That is, who should receive what, under what terms, and when?
2. Given the amount of the individual's assets, what taxes might the estate be liable for, and are there any tax minimization strategies that may be appropriate and appealing?
3. What are the individual's preferences and values with respect to the management of medical and financial affairs in the event of incapacity?
4. What particular circumstances will affect this estate plan? For example, if the individual and/or the individual's spouse is not a U.S. citizen, then certain provisions of the tax code do not apply. Other complicating family issues, such as children from a previous marriage, a disabled child, major charitable intentions, potential creditor problems or a probable large inheritance, may need additional consideration.
5. What provisions are necessary to make the estate plan as flexible as possible? A good estate plan recognizes the fact that life is ever-changing, and the plan will accommodate this by including reasonable provisions for changing circumstances. For example, the estate plan will include a provision to "disclaim" (or in essence to step away from) an inheritance in favor of the next heir in line. Another example of a flexible plan would include a provision to allow the estate executor to withhold estate assets from an heir deemed incompetent.

In order for the attorney to answer these questions and prepare an estate plan for the individual, the attorney needs full and accurate information about the individual. This information includes:

- **Demographic information.** This includes names of spouse and children, date of residency in the state, date of marriage(s), country of citizenship and information about taxable gifts.
- **Financial information.** This includes a detailed list of what the individual owns, including real estate, banking and brokerage accounts, life insurance policies and business interests, as well as how each asset is currently titled.
- **Personal circumstances.** These are special issues for the attorney to consider, including potential inheritances, creditor problems, desires to give gifts, potential family disputes, and any concerns of the individual.

The Need for Legal Counsel & Updating One's Estate Plan *(continued)*

- **Preferences.** The individual's wishes for end-of-life medical care, how wealth will be distributed to heirs, any specific bequests to individuals and to charities, and how much planning is necessary to minimize potential federal and state estate taxes and inheritance taxes.

To assist individuals in preparing the information that should be provided to the estate attorney at the time of their initial meeting, the following worksheet is being provided.

Worksheet: Preliminary Information Needed for Estate Planning

General Information **Date** ____________________

Marital Status: ☐ Married ☐ Single ☐ Divorced ☐ Widow

____
Name (First, Middle, Last) | Social Security No. | Date of Birth

____
Spouse's Name (First, Middle, Last) | Social Security No. | Date of Birth

____
Home Address | City | State | Zip

____
Mailing Address (if different from above) | City | State | Zip

____
Home Phone | Cell Phone | Fax Number | Work Phone | Occupation

____
Spouse Home Phone | Cell Phone | Fax Number | Work Phone | Occupation

____
Your Accountant or C.P.A. | Phone Number

Are you a U.S. citizen? ☐ Yes ☐ No   Is your Spouse a U.S. citizen? ☐ Yes ☐ No

Do you or your spouse expect to receive a significant inheritance? ☐ Yes ☐ No

Worksheet: Preliminary Information Needed for Estate Planning
(continued)

Beneficiary Information

Children (from oldest to youngest)					
Name of child	Date of Birth/Age	Married?		City and State of Residence	Children? If yes, Names and Ages
1.		Yes	No		
2.		Yes	No		
3.		Yes	No		
4.		Yes	No		

Name of other persons or institutes to whom you wish to leave assets			
Name of child	City and State	Relationship (if any)	Amount or Percentage
1.			
2.			
3.			
4.			

Financial Information
Assets

(Estimated Current Fair Market Value)	Titled Jointly	Titled in Self's Name Only	Titled in Spouse's Name Only
Primary Residence			
Other Real Estate			
Checking Account			
Savings or Money			
Market Account			

Worksheet: Preliminary Information Needed for Estate Planning
(continued)

Financial Information

Assets *(contd)*

(Estimated Current Fair Market Value)	Titled Jointly	Titled in Self's Name Only	Titled in Spouse's Name Only
Certificates of Deposit			
Note(s) Receivable			
Stocks & Bonds			
Partnerships			
Closely Held Business			
Personal Property			
Total Assets			

Liabilities

(Estimated Current Fair Market Value)	Titled Jointly	Titled in Self's Name Only	Titled in Spouse's Name Only
Home Mortgage			
Other Real Estate			
Mortgages			
Other Debts			
Total Liabilities			
NET WORTH			

Profit Sharing, IRA or Pension Plans		
Description	**1st/2nd Beneficiary**	**Current Value**
1.		
2.		
3.		
4.		

Worksheet: Preliminary Information Needed for Estate Planning *(continued)*

Financial Information *(contd)*

Life Insurance Policies and/or Annuities			
Name of Company	**Policy Owner**	**1st/2nd Beneficiary**	**Death Benefit**
1.			
2.			
3.			
4.			

Finally, once the estate plan is established, signed, and "delivered," the work is not over. Since life is not static and major events could have major impacts on one's will, trust or other estate planning documents, it is important for individuals to review and update their wills, trusts, and estate plans regularly (perhaps every five to 10 years, more frequently depending on changes in family circumstances).

Individuals should also make sure to keep up-to-date records and consider how personal events may affect their estate plans. The following items should be kept current.

- Names and addresses of guardians for minor children
- Funerals and burial arrangements
- Location of safe deposit boxes and details about keys, combinations, and passwords
- Account numbers for all checking and savings accounts
- Names and addresses of any professionals (including accountants, financial advisors, attorneys, and stockbrokers) who could potentially assist the personal representative or executor
- Locations and policy numbers of all life insurance policies
- A list of credit card accounts and numbers
- Information on outstanding debts
- All property and other assets with the location of deeds and titles
- Details about brokerage accounts and other investment vehicles
- A list of all retirement accounts with designated beneficiaries and the locations of account statements

If an individual's will or trust is updated, then the individual's personal representative and executor should be given a copy of the latest version. It is also important to keep the will or trust document in a safe but accessible place. Using a bank safety deposit box could be a problem because it could be sealed upon the individual's death.

Some Specific Estate Planning Recommendation for Single Employees and Retirees

Many single individuals think that if they have few possessions or limited assets, that there is no need for estate planning. However, many single federal employees and retirees' own life insurance policies and retirement accounts (TSP, IRAs), real estate including condominiums/houses and vacation homes, and personal items. It is therefore important for singles to make a list of the assets they own and plan accordingly. Should no estate plan be formed, a court ultimately decides who takes care of the single individual and his or her finances and could choose someone the single individual would not.

The following is a list of items single employees and retirees should have as part of their estate plan:

- **Revocable trust or will**
  Because a single individual does not have a spouse to inherit their property, making a Last Will or Trust is essential to make sure that the individual's estate is handled in the manner the individual desires. If the individual dies without either a revocable trust or a will, state intestate laws decide who will inherit the property of that individual. In most cases, the majority of the property is divided among the closest relatives in various percentages.
- **Durable Power of Attorney**
  A Durable Power of Attorney allows a designated person (the "agent") to act on an individual's (the "principal") to conduct any business that the individual can legally do themself. This includes among other things buying and selling property, mortgaging property, opening financial accounts and entering into contracts. A Durable Power of Attorney is especially important for a single individual because without a spouse there may be no one to act on their behalf should they become incapacitated.
- **Living Will/Healthcare Directive**
  A living will, also known as a Healthcare Power of Attorney or Healthcare Proxy, is another important estate planning suggestion for single individuals. Unlike a will, a living will take effect during the lifetime of the grantor should the grantor become physically incapacitated and require life support. The grantor of the Living Will/Healthcare Directive designates a person, or persons, who will make healthcare decisions on behalf of the grantor based on the grantor's specific wishes should the need arise.
- **Burial arrangements**
  No one likes to think about making burial arrangements, especially for themselves. However, making arrangements for one's burial is getting more common because parents do not want to burden their children with the grief and cost of making funeral arrangements. For single individuals, making and paying for their own funeral arrangements should be a part of their estate plan.

Some Specific Estate Planning Recommendation for Single Employees and Retirees *(continued)*

The following are recommended actions single individuals should take for their estate plan:

1. Prepare a will or a trust
2. Making sure beneficiary designations are made for life insurance policies, retirement accounts including IRAS, "payable on death" designations for bank and credit union accounts, and "transfer on death" designations for brokerage accounts.
3. Appoint guardians for minor children.
4. Execute financial power of attorney, health care power of attorney (health care directive), and Living Will.
5. Plan for taxes (income, estate and inheritance taxes) and estate settlement costs.
6. If some of the estate is to go to charity plan according by creating a Charitable Trust.
7. Be prepared and plan one's estate. Outline one's wishes in writing. In so doing, this could be the best gift for one's family and friends and help avoid legal problems after one's death.

Some Specific Estate Planning Recommendation for Married Employees and Retirees and Surviving Spouses

When two individuals get married, it will hopefully be the start of a lifelong journey that brings happiness for both spouses. Marriage comes with many responsibilities and obligations. Estate planning for married couples is important whether or not the couple has children. Marriage is not just a lifelong commitment; it is a financial partnership. Many couples, especially early in their life together, do not understand how important estate planning is.

Many married individuals mistakenly believe that estate planning is not really that important when one is married because of the way married couples jointly own assets. Nothing could be further from the truth. Having an estate plan in place is still critical. Some of the most important purposes of estate planning for married couples are:

1. Protecting one's legacy and family
2. Giving one control over who inherits what
3. Protecting oneself in the event of incapacity
4. Protecting one's children, particularly children younger than age 18
5. Minimizing the likelihood of family disputes

Married couples are advised to take the following key steps in creating their estate plan:

1. Hire an estate planning attorney to draft or update a will or a trust, and other estate-planning documents
2. Hire a financial advisor both spouses like
3. Make sure each spouse's will gives the executor power to manage digital assets
4. Use an electronic password aggregator to keep track of log-in information for online accounts and keeps the password with their wills
5. Set up bank and other financial accounts information for immediate access, in both spouses' names or as "payable on death" from spouse to spouse
6. When the first spouse dies, their estate is required to use assets in the deceased spouse's name alone to settle their individual debt. Assets that jointly held or are held in the survivor's name alone, are protected, unless the survivor co-signed or guaranteed the debts

Upon the death of the first spouse a surviving spouse should take the following key steps:

1. Order at least 20 copies of the death certificate to use to retitle financial accounts and settle the estate
2. Contact the estate attorney, accountant and financial advisor
3. Gather household and bank, brokerage, insurance, and credit card statements
4. Retrieve electronic statements from the deceased spouse's email account or petition the email provider for access
5. Start the probate process by having the executor

Some Specific Estate Planning Recommendation for Married Employees and Retirees and Surviving Spouses *(continued)*

submit the death certificate and any will that exists to the court

6. If the deceased spouse was a federal retiree, contact the Office of Personnel Retirement online at **rsreporting.opm.gov/AnnuitantDeath** or call **(888) 767-6738** to report the annuitant's death
7. If deceased spouse was a federal employee with a Thrift Savings Plan (TSP), call the TSP at **(877) 968-3778**, or online at **tsp.gov/forms**, and complete Form TSP-17, *Information Relating to Deceased Participant*. If the deceased spouse was receiving a qualified retirement plan, for example, a 401(c) or 403(b) retirement plan, contact the retirement plan administrator
8. File with Social Security for a $255 death benefit
9. Consult someone who knows the rules for claiming Social Security survivor benefits, based on the amount your spouse would have received. A widow(er) can claim as early as age 60, or 50, if disabled
10. Retitle household bills in your name
11. Update your will and/or Revocable Living Trust
12. Create a new financial plan once you understand what you own and owe and are able to make long-term decisions
13. Check the most recently filed tax return for the names of the financial firms that house the household accounts financial firms provide 1099's when bank, retirement and taxable accounts generate income, capital gains, dividends or interest
14. Present the death certificate and proof of identity to obtain their share of a spouse's IRA, traditional IRA and Roth IRA, qualified retirement plan, and life insurance. Be aware of the rules surrounding penalties before transferring money from a spouse's 401(k) or IRA to your own
15. Ask for free help if you believe your spouse was entitled to a pension from a company you cannot locate. Sources include the Labor Department and the Pension Benefit Guarantee Corporation
16. Search for missing life insurance and annuity contracts in the "life Insurance Policy Locator Service" sponsored by the National Association of Insurance Commissioners or in your state's unclaimed property fund

Appendix

1 Estate Planning Glossary

2 Various Estate Planning Arrangements

3 Important Beneficiary Forms for Federal Employees

1 Estate Planning Glossary of Terms

Annual exclusion amount – an amount that a donor can gift to a donee annually without payment of gift tax: currently, a donor can gift **$18,000 in 2024** to each donee per year without being subjected to gift tax liability.

Bypass trust (A/B, remainder, unified shelter trust) – a trust that is used to take advantage of the unified credit amount in a decedent' estate. Typically, an individual uses the by-pass trust to provide the surviving spouse with a life income and upon the death of the surviving spouse, the property passes to children or other living heirs. This trust is usually funded in a n amount equal to the exemption equivalent and remains in the gross estate of the decedent. Because it is funded in an amount equal to the exemption equivalent, the decedent's estate pays no estate tax on tis trust. This trust does not qualify for the marital deduction.

Charitable deduction – a deduction that may be taken by an individual or an estate for a transfer of property to a qualified charity; if the transfer is made to the charity after the donor's death, the transfer reduces the donor's estate tax liability if the transfer is made to the charity while the donor is alive, the transfer reduces the donor's income tax liability.

Charitable lead trust – a charitable trust that produces income or estate tax savings to the donor of the property. If structured to take effect during a donor's lifetime, the charity receives the income from the trust for a stated period of time (e.g., 20 years) and at the end of the stated time, noncharitable beneficiaries receive the remainder interest. The donor receives an income tax deduction for the charitable contribution based on a percentage of the donor's adjusted gross income. If structured to take effect upon the donor's death, the donor's estate receives a charitable deduction for the present value of the income stream passing to the charitable remainder annuity trust (CRAT) – a form of a charitable trust in which the income (or annuity) is first paid to a noncharitable beneficiary (e.g., the spouse or children of the donor) and upon the death of the noncharitable beneficiary, or after a stated period of time (e.g., 20 years), the income stream terminates and the remainder is transferred to the charity. The amount of income passing to the noncharitable beneficiary remains constant for the period in which it is distributed to the noncharitable beneficiary. This amount must be at least five percent of the initial fair market value of the property. This trust can generate either income or estate tax savings for the donor.

Charitable remainder unitrust (CRUT) – a form of a charitable trust in which a stream of income is first paid to a noncharitable beneficiary and upon the death of the noncharitable beneficiary, or after a stated period of time (e.g., 20 years), the income stream terminates, and the remainder is transferred to the charity. The amount of income passing to the noncharitable beneficiary increases or decreases each year, since a specific percentage (at least

five percent of the corpus and income, reappraised annually) must be given to the noncharitable beneficiary. This trust can generate either income or estate tax savings for the donor.

Codicil – a document that modifies the terms of an original will without requiring the entire will to be redrafted. Codicils are often attached to the will and are executed according to the same requirements as a will.

Completed gift – a transfer of property in which the donor has made a total, irrevocable transfer of dominion, control and title to the donee. A completed gift is the only type of gift that is subject to gift tax liability.

Current income interest trust – a trust that is required to distribute its income at least once annually to the spouse of the grantor. The spouse must be the only recipient of the income and the income is distributed to the spouse for life. Upon the death of the spouse, the trust terminates, and the remainder interest passes to children or other beneficiaries designated by the grantor. If the executor of the grantor's estate makes an election on the federal estate tax return, the property transferred to this trust qualifies for the marital deduction in the estate of the grantor and the value of the trust property must be included in the gross estate of the surviving spouse. This trust is also known as a QTIP trust.

Disclaimer – an exclusion technique used to reduce the size of a gross estate. It consists of an absolute, unqualified renunciation of any beneficial interest, use, enjoyment, or ownership of property. If the disclaimer is "qualified," the value of the property in the disclaimer is included in the gross estate of the individual filing the disclaimer.

Disclaimer trust – an irrevocable trust established to receive assets that are disclaimed by the surviving spouse of a decedent. The trust enables the surviving spouse to disclaim the property yet receive the income produced by the trust for the life of the spouse.

Family settlement agreement – an agreement made by family members of a decedent who consents to the division of the decedent's property in a particular fashion. The family settlement agreement is normally reached by the family members outside of court with subsequent court approval.

"5 and 5" power – a noncumulative right held by the surviving spouse that allows the surviving spouse to withdraw each year from a trust the greater of: (1) 5 percent of the corpus of the trust, or (2) $5,000. If exercised, only the property subject to the "5 and 5" power is included in the gross estate of the holder. Such a power will prevent inclusion of the entire corpus of the trust as an asset in the gross estate of the surviving spouse.

General power of appointment – a power the entitles the holder to transfer specific property to the holder, the holder's estate, the holder's creditors or the creditors of the holder's estate. Generally, the holder may transfer the property to whomever the holder wishes. All property subject to this power is included as an asset in the gross estate of the holder.

Generation-skipping trust – a trust in which income from the trust is spread over more than one generation, with the corpus of the trust passing to one or more individuals who are two generations younger than the grantor's generation. A generations-skipping trust can generate estate tax savings since there is a $1 million exclusion per transfer. A generation-skipping trust is one in which the grantor could provide income to be distributed to the grantor's spouse for life, with income also to be distributed to the children of the grantor and spouse for as long as the children live. Upon the deaths of all children the trust would

Estate Planning Glossary of Terms *(continued)*

terminate the principal and undistributed income would be allocated proportionally among all grandchildren of the grantor and grantor's spouse.

Gift of a future interest – a gift in which the donee's possession or enjoyment begins at some time after the gift is made. Gifts of a future interest do not qualify for a gift annual exclusion amount of $18,000 for 2024 per donee per year.

Gift of present interest – a gift in which the donee's possession or enjoyment begins at the time the gift is made. Gifts of a present interest qualify for the gift annual exclusion amount of $18,000 for 2024 per donee per year.

Grantor annuity trust – an irrevocable trust into which property or money is transferred in exchange for an annuity in a fixed amount payable to the grantor for a specified period of time. The trust is used primarily to provide a stream of i ncome to the grantor for a specific purpose.

Grantor estate – The total fair market value of all property and interests owned or held by the decedent at the time of death, before credits and subtractions for deductions, debts and administrative expenses.

Gross estate – the total fair market value of all property and interests owned or held by the decedent at the time of death, before credits and subtractions for deductions, debts and administrative expenses.

Guardianship – a legal relationship in which an individual or co-person are appointed by a court to take care of the needs of a minor or an incapacitated or incompetent person (the ward). The guardian has custody and manages the ward's property and makes expenditures, with court approval, on behalf of the ward. The guardian's duty to take care of the ward's needs continues until the ward reaches the age of majority, or once again becomes competent.

Intestacy – the scheme for distributing the property of an individual who dies without a will.

Intestate estate – the assets comprising the gross estate of an individual who dies without a will.

Joint and last survivor annuity – an annuity payment, either through a commercial annuity or through a private annuity, that pays a fixed sum of money to an annuitant until the annuitant's death, and upon the annuitant's death, continues to pay a fixed sum of money (usually lesser in amount) to a designated beneficiary.

Joint tenancy bank account – a form of will substitute created when two or more individuals open an account with a bank. Both individuals may make deposits or withdrawals. Upon the death of one depositor, the proceeds pass to the survivor and avoid probate.

Joint tenancy with right of survivorship – a form of property ownership in which two or more individuals hold an undivided interest in a property, as well as in a part of the property simultaneously. Joint tenancy is characterized by full title passing to the surviving joint tenants upon the death of one of them.

Joint will – a single legal document that serves as the last will and testament for two or more individuals.

Marital deduction – a deduction that may be taken by an individual or an estate for a transfer of property to a spouse; if the transfer is made under the terms of a will or after a donor's death, the transfer reduces the donor's estate tax liability; if the transfer is made wile the donor is alive, the transfer reduces the donor's gift tax liability to zero.

Minority interest discount – a valuation technique used to value closely held stock; the discount is applied to the stock in a minority shareholder's estate on the grounds that, as a minority shareholder, the shareholder was unable to influence corporate policy, compel dividend distributions, or force corporation liquidation,

Estate Planning Glossary of Terms *(continued)*

merger, consolidation or sale. The minority interest receives a discount that reflects this lack of marketability for all but the majority shareholders.

Net gift – a gift for which the donee agrees to pay the gift tax liability on the amount of the gift rather than having the donor pay the gift tax liability, as is usually required.

Totten trust – a form of will substitute that is created when an individual deposits money in a bank account for another person's benefit and names himself as the "trustee" of this account. The depositor retains the right to withdraw all funds from the account at any time prior to death. At death, the funds are paid to the named beneficiary, who has no right to the funds until that time.

Unified credit – a federal estate tax credit that offsets tax liability, dollar for dollar, for both lifetime gifts and testamentary transfers. The unified credit amount decreases the amount of gift tax liability on lifetime gifts and the amount of estate tax liability on testamentary transfers. The unified credit amount for 2024 is $13.61 million.

Unified tax system – a single tax rate that was adopted in 1977 for both lifetime gifts and testamentary transfers. The unified tax system imposes identical tax rates on lifetime gifts and testamentary transfers that are equal in value.

Uniform Gifts to Minors Act – a model act for making gifts to minors, which has been adopted, in one form or another, by all 50 states and the District of Columbia. The act provides that an adult, while alive, may make a gift of certain types of property to a minor by having the gift registered in the name of or delivered to the donor or another adult person as custodian for the minor. These gifts qualify for the annual exclusion amount. Some states have adopted a modified version of this act, known as the uniform Transfers to Minors Act, which allows transfers of property, including testamentary transfers, transfers of real estate, and transfers of partnership interests, and oil and gas interests, to be placed into the minor's custodial account.

Unlimited marital deduction – a variation of the marital deduction that allows a decedent to qualify his or her estate for the marital deduction so long as the decedent bequeaths all property to the surviving spouse. The unlimited marital deduction became available for surviving spouses as a result of the Economic Recovery Tax Act (ERTA), which became law in 1981. If the unlimited marital deduction is used by the estate of a decedent spouse, the decedent's estate does not use the amount of unified credit available to it to offset estate tax liability. The unlimited marital deduction only became available for the estate of a decedent dying on or after Jan. 1, 1982.

Will contest – a means of disputing the validity of a will on one or more grounds, for example, if the testator lacked the mental capacity to make a will, or the testator inadvertently omitted one or more devisees who are heirs of the decedent. IF a will is successfully contested, it can cause a redistribution of the decedent's estate and can alter the amount of property received by an individual under the terms of the will.

Will substitute – a means of transferring title to property or assets by the use of some mechanism other than a last will and testament. Commonly used type of will substitutes include joint tenancy with right of survivorship, Totten trusts, joint bank accounts, payable on death (POD) accounts, deeds, life insurance contracts, IRA accounts and revocable trusts. Most will substitute help avoid probate.

2 Various Estate Planning Arrangements

A Summary of Benefits						
Benefits	**No Will**	**Basic Will**	**Trust Will**	**Basic Living Trust**	**By-pass with Living Trust**	**By-pass, QTIP,[1] & Living Trust**
1. Allows you to select:						
a. Beneficiaries	No	Yes	Yes	Yes	Yes	Yes
b. Executor of will	No	Yes	Yes	Yes[2]	Yes[2]	Yes[2]
c. Guardians for children	No	Yes	Yes	Yes	Yes[2]	Yes[2]
d. Trustees of trust	No	No	Yes	Yes	Yes	Yes
2. Avoids probate[3]	No	No	No	Yes	Yes	Yes
3. Provides asset management for children over age 18	No	No	Yes	Yes	Yes	Yes
4. Protects estate owner from a conservatorship	No	No	No	Yes	Yes	Yes
3. Designed to save death taxes for couples	No	No	Maybe[4]	No	Yes	Yes
4. Allows the first spouse to die to determine the ultimate beneficiaries of the estate in excess $13.61 million[5], while still deferring the death taxes	No	No	Yes	No	No	Yes

[1] QTP stands for qualified terminable interest property trust.

[2] Each living trust is generally accompanied by a "pour over" type of will which picks up assets not put into the trust during lifetime and transfers them after death. Executors/guardians are named in a will.

[3] If all of the assets are in the living trust, probate is not necessary. However, there will usually be some expense for legal advice or the transfer of assets not in the trust. Without a trust, probate costs may exceed 5% of the total estate.

[4] Some trust wills contain by-pass trusts designed to save death taxes, while others merely manage assets.

[5] The applicable exclusion amount is the dollar value of assets protected from federal estate tax by an individual's applicable credit amount. For 2024 $13.61 million.

Various Estate Planning Arrangements *(continued)*

Brief Description of Arrangement

No Will: Your estate passes to heirs picked by the legislature

Basic Will: Generally, passes everything to your spouse, if living, otherwise to your children when they reach age 18.

Trust Will: May contain by-pass and QTIP trusts or may pass everything to spouse, if living, otherwise to children.

Basic Living Trust: Designed to avoid probate and provide asset management. Used for smaller estates and single persons.

By-pass with Living Trust: Designed to set aside assets for specific heirs while giving the surviving spouse income and flexibility. Appreciation of assets inside the trust can avoid estate tax.

By-pass and QTIP with Living Trust: Same as the by-pass with living trust, plus it gives the first spouse to die more control over who will eventually receive his or her assets after the surviving spouse dies. Also called a QTIP trust.

3 Important Beneficiary Forms for Federal Employees

(May be downloaded from www.opm.gov)

Form	Title
SF 1152	Designation of Beneficiary – Unpaid Compensation of Deceased Civilian Employee
SF 2808	Designation of Beneficiary, CSRS
SF 2823	Designation of Beneficiary, Federal Employees' Group Life Insurance Program
SF 3102	Designation of Beneficiary, FERS
SF 3104	Application for Death Benefit (FERS)
SF 3104B	Documentation and Elections in Support of Application for Death Benefits When Deceased as an Employee at the Time of Death (FERS)
SF 3114	Eligibility for Death Benefits Under FERS Type of Death Benefits Payable
TSP - 3	Thrift Savings Plan – Designation of Beneficiary **(TSP-3 must be filled out and submitted online at tsp.gov using one's TSP online account).**