



Estate Planning 101: Documents You Need and Who Needs Them

→ November 11, 2020 →

Alumni Virtual Events Series
Co-Hosted by the Office of Planned
Giving and Gonzaga's School of Law



Presenters



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Estate Planning Webinar

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November 2020



The Three You Need – or not

- 1. A Will
- 2. A Durable Power of Attorney
- 3. An Advance Health Care Directive

LAST WILL AND TESTAMENT

of

FRANCIS ALBERT SINATRA

I, FRANCIS ALBERT SINATRA, also known as FRANK SINATRA, declare this to be my Will and revoke all former Wills and Codicils. I am a resident of Riverside County, California.

CLAUSE FIRST: Marital Status And Family.

I am married to BARBARA SINATRA, who in this Will is referred to as "my Wife." I was formerly married to NANCY BARBATO SINATRA, to AVA GARDNER SINATRA, and to MIA FARROW SINATRA, and each of said marriages were subsequently dissolved. I have three children, all of whom are the issue of my marriage to NANCY BARBATO SINATRA: NANCY SINATRA LAMBERT, FRANCIS WAYNE SINATRA, and CHRISTINA SINATRA. All of the above-named children are adults. I have never had any other children.

CLAUSE SECOND: Nomination Of Executor; Executor's Powers.

A. I nominate ELIOT WEISMAN and HARVEY L. SILBERT to act as Co-Executors of this Will. I specifically empower my Co— Executors at any time to designate and appoint any bank or other corporate fiduciary to act as Co—Executor with them, or as Agent on their behalf, and with the further power to change the designation of the said bank or other corporate fiduciary from time to time. If either ELIOT WEISMAN or HARVEY L. SILBERT is unable, unwilling or ceases to act as Co—Executor, I nominate NATHAN S. GOLDEN to act as Co-Executor with the other of them. If two of said three individuals become unable, unwilling or ceases to act as Executor, I nominate CITY NATIONAL BANK, Beverly Hills, California, to act as Co-Executor with the remaining individual, or as sole Executor if all three of said individuals become unable, unwilling, or cease to act hereunder. Whenever the word "Executor" or "Co—Executor" is used in this Will, it shall be deemed to refer to whichever one or more of them is acting from time to time. I direct that no bond shall be required of any Executor or Co—Executor as a condition to qualifying to serve hereunder, whether acting jointly or alone.

“We don’t need no stinking paperwork”

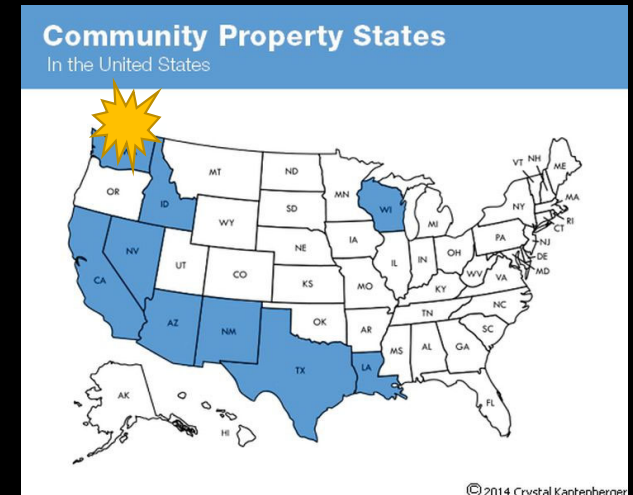
- If no will – your property will pass by intestacy
- If no durable power of attorney – a Court will appoint a guardian
- If no advance health care directive – your family will decide – spouse, parent, child, friend, or ultimately the hospital or care facility



What is intestacy?

- If a person dies “intestate,” it means he/she did not have a valid will.
 - A “probate court” will appoint an **administrator** of your estate
 - In WA – we have “**community property**” – as opposed to “separate property”
 - The spouse of the decedent (the person who died) has an absolute right to be the administrator of the community property RCW 11.28.030

Note: A couple may agree by contract to treat their property as community property or separate property



Intestacy in WA

RCW 11.04.015

Descent and distribution of real and personal estate.

The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

- (a) All of the decedent's share of the net community estate; and
- (b) One-half of the net separate estate if the intestate is survived by issue; or
- (c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his or her parents, or by one or more of the issue of one or more of his or her parents; or
- (d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

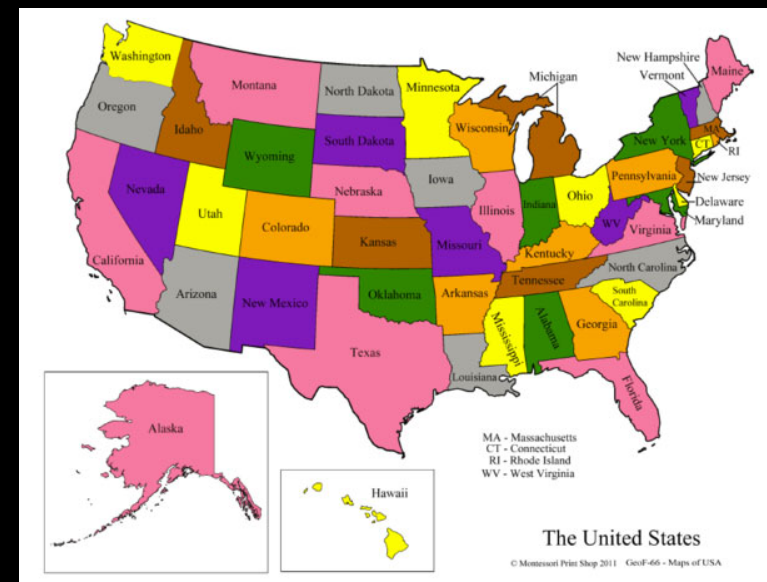
- (a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.
- (b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.
- (c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.
- (d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.
- (e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation.

That's a
Lot of detail

Need to Know

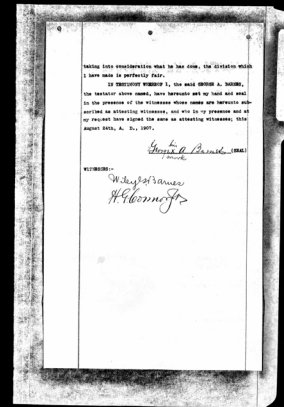
- **Amendment X**
- The powers **not delegated to the United States** by the Constitution, nor prohibited by it to the states, are **reserved to the states** respectively, or to the people.
- Each State is different –has its own rules
- There is NO federal probate, or wills, or trusts

But maybe Fed taxes!



WASHINGTON STATE WILL

- RCW 11.12
- Sound mind and 18 years or older
- A writing
- Signed by the Testator (the person who executes a will)
- Two or more competent witnesses – while in the presence of the testator
- No holographic wills in WA



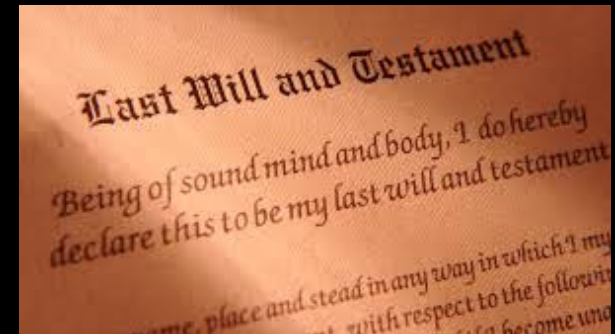
Why do a will when you are young?

What should you put in your will?

- Property – to whom would you like your property to go?
- Whom would you like as the Executor of your (name a secondary executor as well). Your choice, or the court will choose
- Directions for guardianship of your children
- Disposition of your body (cremation, burial, other)
- Powers of the Executor
- A trust in a will – or mention the trust in the will
- A “no contest” clause

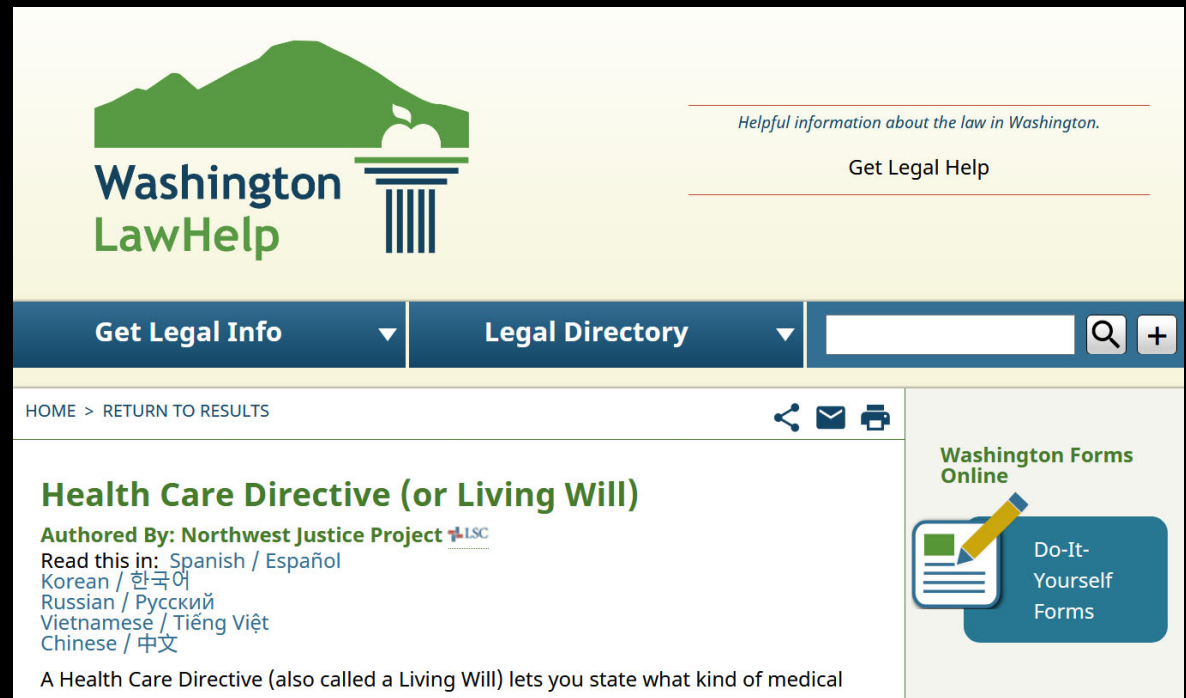


A “pour-over will”
do not have an even number
of Trustees



Excellent Resources in Washington

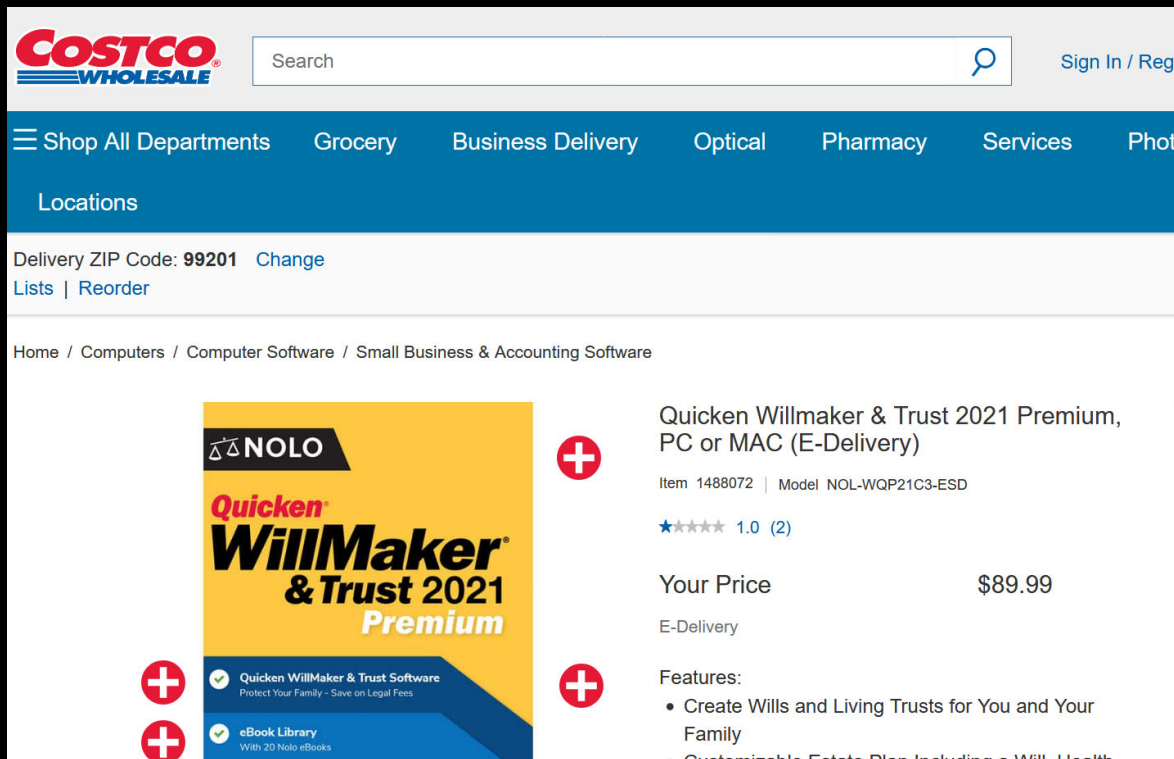
- All at no cost



The screenshot displays the Washington LawHelp website. At the top, the logo features a green mountain range and a classical column, with the text "Washington LawHelp" below it. To the right, a tagline reads "Helpful information about the law in Washington." and a button says "Get Legal Help". Below the header is a navigation bar with "Get Legal Info" and "Legal Directory" dropdown menus, followed by a search bar with a magnifying glass icon and a plus sign. The main content area shows a breadcrumb trail "HOME > RETURN TO RESULTS" and a title "Health Care Directive (or Living Will)". Below the title, it states "Authored By: Northwest Justice Project" with a small LSC logo. A list of languages is provided: "Read this in: Spanish / Español", "Korean / 한국어", "Russian / Русский", "Vietnamese / Tiếng Việt", and "Chinese / 中文". A brief description follows: "A Health Care Directive (also called a Living Will) lets you state what kind of medical". On the right side, there is a sidebar with the heading "Washington Forms Online" and a button labeled "Do-It-Yourself Forms" accompanied by a pencil icon.

How about a “form will?”

Be careful



At a minimum, the document itself must be:

- In writing;
- Signed by the testator (or by someone else at the testator's direction and in the testator's presence) in the presence of two competent witnesses; AND
- The two witness must either sign the will OR sign an affidavit, in the presence of a notary, that swears the facts needed to prove that the will belongs to the testator.

COVID

- Governor Inslee
 - Proclamations

JAY INSLEE
Governor



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05**

20-27

Electronic Notary Effective Date

Revoke a Will – Requirements there too!

- RCW [11.12.040](#)
- **Revocation of will—How effected—Effect on codicils.**
 - (1) A will, or any part thereof, can be revoked:
 - (a) By a **subsequent will** that revokes, or partially revokes, the prior will expressly or by inconsistency; or
 - (b) By being **burnt, torn, canceled, obliterated, or destroyed**, with the intent and for the purpose of revoking the same, *by the testator or by another person in the presence and by the direction of the testator*. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by *two witnesses*.
 - (2) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent.

What is a Codicil?

- Essentially an amendment to a will

Same requirements of a will

- Don't do this...

BEGINNING ⁶ 7-7-03 DO NOT, ~~ON OR~~ ARTICLE IV
VOID ARTICLE IV

James Paul Allen

real property located in Beaufort, Hyde and Washington Counties
with a vested remainder therein unto, HOPE PAITYTON ROBINSON and
CHRISTIAN ANN ROBINSON, in equal shares, in fee simple absolute,
subject to the life estate herein devised unto MELVIN RAY WOOLARD.

Durable Power of Attorney

- Appoint a **very trustworthy person** to act for you
 - This person is able to do anything you are able to do – stands in your shoes
- Why “durable?” It lasts into your incapacity – if that happens
- May have two (or more)
 - DPOA for Finances
 - DPOA for Health Care

Durable Power of Attorney for Finances
for

[My Name]

1. **Agent.** I choose _____ as my Agent with full authority to manage my finances.
2. **Alternate.** If _____ is unable or unwilling to act, I choose _____ as my Agent with full authority to manage my finances.
3. **My Rights.** I keep the right to make financial decisions for myself as long as I am capable.
4. **Durable.** My Agent can use this power of attorney document to manage my finances even if I become sick or injured and cannot make decisions for myself. This power of attorney document shall not be affected by my disability.
5. **Start Date.** This power of attorney document is effective: (check one)

Advance Health Care Directive

- Indicates (in advance) your choices on artificial hydration/respiration
 - Terminally ill or permanently unconscious
 - Also may have a “dementia directive”

Don't do it for you – do it for your family

Health Care Directive
of

[My Name]

I am of sound mind and body and voluntarily execute this health care directive. If I cannot make decisions for myself about life sustaining medical treatment, my relatives, friends, agents and medical providers should fully honor every part of this directive. If any part of this directive is invalid, the remainder should be honored. I revoke any health care directives I have signed in the past.

1. **Withhold or Withdraw Treatment.** If my attending physician diagnoses me with a **terminal condition**, or if two physicians determine that I am in a **permanent unconscious condition**, and if my physician(s) determine that life-sustaining treatment would only artificially prolong the process of dying, the following treatment should be withheld or withdrawn from me:
(check all that apply)

- ☐ Artificial nutrition
- ☐ Artificial hydration
- ☐ Artificial respiration
- ☐ Cardiopulmonary Resuscitation (CPR), including artificial ventilation, heart regulating drugs,

Where put all of these documents?

Or...



- No



- Yes



Will Repository

The purpose of depositing a will with the clerk is to provide a safe place for the will. It is not required by law that a will be deposited with the clerk. The acceptance of a will for safekeeping by the clerk in no way ensures the validity of any provision contained in the will, nor does acceptance in any way enhance the force or effect of the will. The will deposited with the clerk is a sealed document before the testator dies and cannot be released except to the testator upon proper identification. Any person, including an attorney in fact or guardian of the testator, may withdraw the original will so filed only upon court order. Upon request and presentation of a certified copy of the testator's death certificate, the will may become a matter of public record.

Estate Planning 101

Planning Considerations

Patrick W. McNulty
Principal at Randall | Danskin, P.S.



Disclaimer

- The following is a general overview of some estate planning considerations and pointers and does not constitute legal advice
- Make sure to consult with your estate planning attorney to make sure that your particular estate plan meets your needs and objectives

Revocable Living Trusts

- Different from irrevocable trusts
- Used as alternative to having will serve as focal point of estate plan
 - Property in multiple states
 - Certain states have lengthier and more involved/costly probate process
 - Probate avoidance (trust owns property, not probate at your death thus no probate needed to transfer or continue ownership)
 - Privacy (somewhat)
- Can accomplish same tax and non-tax planning objectives as a last will and testament
- Centralization of management and control

Revocable Living Trusts – Continued

- Must fund fully with property and other assets that would be subject to probate or still left with probate process
 - Pour over will
- DOES NOT AVOID ESTATE TAX AND DOES NOT AVOID FILING ESTATE TAX RETURN – is not more tax efficient
 - Common misconception – can save estate taxes with trust
- Mechanically – trust is revocable by trustor(s)
- Covers what happens while alive and on 1st death and 2nd death (spouses)
- Sets forth where property goes once trustors are deceased
- Selection of Trustee is key – who is backup? What triggers backup trustee? – Incapacity considerations
- Certificate or Memorandum of Trust – establishing the terms of trust
- Often more expensive to set up—may save probate/administration costs if property in multiple states or probate expensive in your state (California)

Tax and Non-Tax Considerations

- NON-TAX CONSIDERATIONS

Tax considerations are important but don't let the tax tail wag the dog

- Who gets your assets?
 - Spouse? Kids? Charities? Other family members?
- Special considerations for recipient?
 - Age? Financial ability? Risk of loss? Special needs? Governmental assistance?
- Trust? Outright bequest?

All discussed further next

Planning with Spouses

What happens at the first death? What happens at second death?

- Outright bequest – Pros and cons
 - Simple
 - Tax inefficiency? Discussed later
 - Surviving spouse controls estate and disposition (potentially good or bad)
 - Remarriage? Blended family? Asset protection?
- Trust or Disclaimer structure – Pros and cons
 - Decedent's will controls his or her estate
 - Asset protection (as to decedent's portion of estate)
 - Potentially greater tax efficiencies (use of exemption)
 - QTIP (qualified terminable interest property)
 - Cost of administration and tax returns

Planning for Second Death, Kids and More Remote Beneficiaries

Trust vs. Outright Bequest

- Simplicity vs. need to protect assets and protect beneficiary from him or herself
- Tax considerations – If trust, must income be carried out? GST tax?
- Terms of trust? Income? Principal for health, education, maintenance, support (ascertainable standard) or any standard
- Who is trustee? Beneficiary? Family member? Grandparent? Professional trustee? Consider age of trustee
- When does trust terminate? What happens when it terminates?
 - Rule against perpetuities
- Special or supplemental needs?
- Consider having trustee separate from guardian for minor children

Federal Estate and Gift Taxes

Unified Federal Estate and Gift Tax

- 40% flat rate on amount that exceeds exemption amount
- Exemption is \$11.58 million per person in 2020, \$11.7 million per person in 2021 (future???) (spouses have 2 exemption amounts)
 - Tax Cuts and Jobs Act expires 2025 and exemption reverts back to pre TCJA levels (\$5.6 million plus inflation) unless extended
 - Greater exemption? Reduced Exemption? Change to basis rules?
- Portability between spouses
- Can be used on lifetime gifts over annual exclusion amount and at death
- Gifts/bequests to charity/spouse are not taxable
- Biden campaign proposals to move exemption to \$3.5 million person and top rate to 45% along with elimination of basis increase at death per taxfoundation.org
 - IRC 1014(b) currently adjusts basis in property acquired from decedent to Fair market value at date of death (huge benefit)

Generation Skipping Transfer Tax

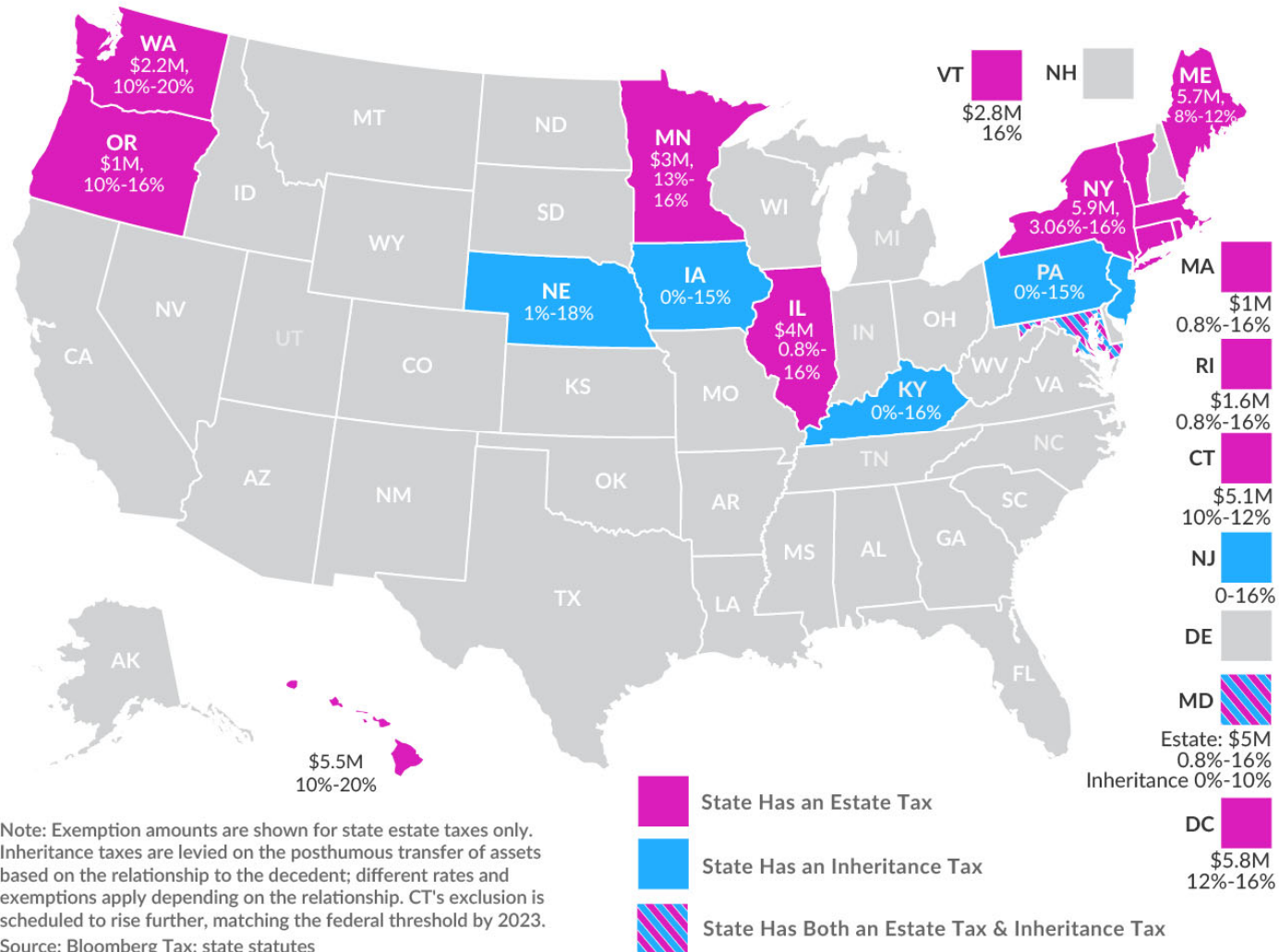
Additional tax on transfers to individuals generally speaking who are more than one generational level below transferor or 37.5 years apart if not related

- 40% (in addition to any estate or gift tax)
- Have same exemption amount as federal estate and gift – presently \$11.58 million/person
- Idea here is that GOV wants tax at generational level

State Estate Tax

Does Your State Have an Estate or Inheritance Tax?

State Estate & Inheritance Tax Rates & Exemptions in 2020



State Estate Tax

WA, OR and HI all have state estate taxes. Similar to Federal Estate Tax in computation but exemption is lower

- WA exemption is \$2.2 million
- Lower tax rates – WA starts at 10% and graduates to 20% on amounts in excess of \$9 million over exemption
- Thus, WA individual with state and federal estate tax (i.e. estate exceeds \$11.58 million) pays 55% rate between state and federal OUCH
- Example - \$5 million estate at death in WA – no fed tax but \$2.8 million over state estate tax (could gift down and avoid this tax)

Check with your state

WA taxes estate but not gifts

- Bill Gates could give away his fortune to me and pay no state level tax (would pay federal gift tax unless an exempt gift)

Tax Planning Considerations

Annual Exclusion Gifts - \$15k/person/year (over this amount not taxable, but must file return and use exemption)

- Can front load 5 years of 529 plan (\$75k/person/recipient)
- Annual exclusion does not eat into federal exemption
- Gifting down estate in WA
 - Make sure that power of attorney has appropriate gifting powers
 - Also need to consider basis of gifted assets—recipient of gift takes donor's basis—if inherited takes basis equal to fair market value
 - Top capital gains rates of up to 23.8% may outweigh potential state level estate tax savings

Direct Payment of Medical or Educational Expenses

Transfers to Spouse or into certain trusts for spouse are not taxable

Gifts Within/Over Federal Exemption Amount

Federal Exemption is currently \$11.58 million – no gift tax on donor or donee

- Must file return on gifts over annual exclusion amount to track exemption
 - Leverage use of this exemption through discounted gifts
 - Fractional interests in businesses may qualify for further discounts
 - Loans at applicable federal rate
 - Even if your state has an estate tax, it may not have a gift tax thus, gifting down within federal exemption amount may make sense
 - Gifting assets likely to appreciate gets value out of your estate
 - Keep an eye on basis of gifted assets – carry-over basis for gifts vs. adjusted basis for assets received at death
- For very large estates, gifts over federal exemption may make sense (pay tax on gift but get value out of estate)

Tax Planning Considerations Continued

Gifts or bequests to charities not taxable

- Outright gifts or bequests or transfers into certain types of trusts
- Bill Gates could give his entire fortune away to charity and no tax would be due
- Intervivos (during life) gifts have added benefit of income tax deduction
 - Generally, up to 60% of AGI (for cash), modified to 100% in 2020
 - Must itemize to take deduction

IRAs and Planning

- Largest single asset for most people
- Spouse can rollover and stretch out for his or her life
- Non-spouse generally limited to 10-year distribution window (used to be able to stretch out)
- **Need to make sure designations are properly in place (often overlooked) – can destroy estate plan objectives – typically pass non-probate (i.e. not subject to will)**
 - **Example – spouse with kids named as backup—will expressly disinherit one child or places assets in trust for child due to severe drug abuse problem**
- Trust typically bad recipient unless distributions are carried out (trust pays a more condensed income tax bracket)
- Recipient will pay tax on distributions as they come out
- If payable to estate, will have maximum 5-year distribution window

IRAs and Charities

- Distributions from IRA to Charity
 - Qualified distributions – can meet minimum distribution requirements for individuals who have reached minimum distribution age
 - Up to \$100k/year
- Bequeath All or Portion of IRA to Charity
 - tax efficient – get deduction from estate and income tax is not paid on contribution
- Roth IRA (already taxed) – leave to kids/beneficiaries and give traditional taxable IRA to charities
- If you are charitably inclined – IRA is a great asset to leave to charity with other assets passing to non-charitable beneficiaries given taxability of IRA distributions

Insurance

- Term vs. Whole Life
 - Key piece of estate plan for many individuals, particularly younger individuals with families
 - Replace lost income for spouse and family
 - Insurance is not subject to income tax but watch out for estate tax
 - Who is beneficiary? Spouse? Kids? Estate? Trust?
 - Includible in estate – consider using trust to hold life insurance if state or federal estate tax considerations
 - Irrevocable life insurance trust
 - Tool that can be advantageous for higher net worth individuals to leverage the value of insurance and gift exemption
 - Typically use whole life (i.e. does not lapse)
 - Insurance paid into trust is received income and estate tax free
 - Make sure that beneficiary designations are up to date

Property in Multiple States?

- Consider using LLC or revocable living trust to own property to avoid filing ancillary probate in other jurisdictions
- Be mindful of how various state estate taxes work for states in which you have real property
- Revocable living trust also avoids probate if properly funded
 - Can accomplish same tax and estate planning objectives

TOD (transfer on death) and Payable on Death Designations

- When establishing bank accounts/brokerage accounts, taking title to property, consider whether property should transfer automatically at death
- We generally avoid this feature as it may interfere with distribution scheme under will – also, as estate plan changes, may not change the designation on account
- For smaller and simpler estates may make sense to have spouses jointly on accounts with TOD designations
 - If all assets are TOD/POD/held with survivorship feature – may avoid probate
- Before designating TOD make sure to consult with your estate planning attorney

What to do with the family lake cabin or ski condo

- Do the kids want the property?
- If more than one owner, consider transferring into trust or LLC as opposed to co-ownership
- Trust or LLC agreement can govern how property is used and how owners can monetize their interest
- Also governs payment of taxes and expenses
- Prevents unwanted or forced sale of interests of one or more owners (bankruptcy/divorce)
- Consider gifting funds into LLC or trust to cover these costs

Hypothetical

Mr. Smith is divorced and has 3 adult children. He lives in Washington. He graduated from Gonzaga's business school. Mr. Smith has a net worth of \$30 million dollars. He has never made any taxable gifts for which a return was required.

- If Mr. Smith does nothing, he will pay approximately \$5.25 million in WA estate tax and approximately \$5.27 million in federal estate tax

Possible strategies - simple:

- Charitable gifting reduces estate dollar-for-dollar. Gifts during life further provide income tax benefit
- Gift down to reduce state of WA estate tax (gifts within the federal exemption amount of \$11.58 million are not subject to tax)
- Life insurance trust structured to acquire life insurance with very little gift tax used can then be used to purchase assets from estate to help pay tax and provide liquidity (cannot have life insurance payable to estate)
- Move out of state of WA to Jx that does not have estate tax and sell all WA property
- Start fractionally gifting property to children (potential valuation discounts)
- Annual exclusion gifting program - \$15k/yr/person (adds up with 3 adult kids, 3 spouses, and their respective children)
- 529 plans and payment of educational and medical expenses

How to Pick a Professional

- In choosing your professional, make sure you have good rapport with them and that they have the requisite skills to handle the size and complexity of your estate
- Ask for references or speak with family and friends to get a good referral
- Interview the professional and make sure you are comfortable with them – many estate planning attorneys are happy to provide a free initial consultation
- Ask about fee structure and make sure you understand it. Hourly? Flat rate?
- Make sure they are licensed in the state in which you live
- I would suggest not making this decision solely on cost
- Saving \$500 to use services you are not comfortable with is probably not a good investment
- Think of this as a long-term relationship – similar to CPA, financial advisor or primary care physician

Estimated Cost

- These are pretty rough estimates and will vary dependent upon complexity, time spent and location
- I have seen firms willing to do simple wills in Spokane for as low as \$500-\$750
- Moderately complex typically a couple thousand dollars \$1500-\$4500
- Complex – can vary widely based upon complexity and tools used – Family with \$100 million estate is likely engaging in continued and involved estate planning
 - However, as a hypothetical, saving \$5 million on estate taxes for \$20k of planning is likely money very well spent
- Revocable Living Trust – Typically more expensive to set up but can save money on back-end administration I have seen \$2500-\$7500 in Spokane for simple and moderately complex trusts although, once again, this is a very rough estimate

Conclusion

- Don't let the tax tail wag the dog – make sure your estate plan fits your particular needs
- Be mindful of federal and state estate taxes and use of federal exemption
- Talk with your estate planning attorney – everyone's situation is unique