

Estate planning

The least pleasant part
of estate planning

A picture is worth a
thousand words

Trust UPDATE



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The least pleasant part of estate planning

Few people enjoy attending to their estate planning, which may be why so many put it off for so long. Also, estate planning is optional, in a sense. The state government has an estate plan in place for anyone who fails to make one on their own, called the law of intestacy. The better approach is to take responsibility for preparing a plan for winding up one's financial affairs after death.

A thoughtful estate plan will answer a wide range of questions: What is owned? Who will settle the estate? Who will be the beneficiaries of the estate? Will trusts be employed for longer-term financial security? What happens to the personal property? What happens to the real estate? How will taxes at death be handled? Are there

strategies for minimizing estate, inheritance, and income taxes after death?

One more question, one that does not get as much attention in estate planning discussions, and one that most people don't want to think about, is this: What will happen to your body?

Traditional and emerging choices

Every January, estate planners from around the country converge on Orlando, Florida, for the Heckerling Institute on Estate Planning. This year, included among the discussions of tax strategies and business succession planning was a new topic, "Planning to Meet One's Maker: The Intersection of Religious Beliefs and Estate Planning."

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What will happen to your body?

A recent survey of consumer awareness of choices and preferences for handling their remains.

Method of disposition	Have you heard of this method?	Would you consider this method for yourself?
Cremation	100.0%	80.5%
Casket burial	99.3%	57.7%
Donation to science	96.7%	52.1%
Green burial	40.0%	51.6%
Natural organic reduction	38.6%	48.8%
Water cremation	13.5%	42.3%

Source: Tanya D. Marsh and Quincey J. Pyatt, *Maybe It's Time to Let the Old Ways Die: New Data on Consumer Preferences in Death Care*, 59 WAKE FOREST L. REV. 909 (2024).

The discussion concerned religious considerations and the disposition of bodies after death.

Until the late 19th century, burial was the only legal method for handling dead bodies. Cremation was then legalized, and it has slowly but steadily gained in popularity, reaching an estimated 62% of dispositions of remains in 2024.

Law professors Tanya Marsh and Quincey Pyatt conducted a survey in March 2024 to learn how much the general public knows about the choices that are now available. These are:

Cremation, in which the dead body is placed in a chamber and heated to a very high temperature until it is reduced to ashes.

Casket burial, the placement of the dead body in a specially designed box called a casket, which is either buried in the ground or kept in a mausoleum.

Donation to science, in which the dead body is given to a medical school or other organization that uses the body for medical research or education. When that usage is complete, the body is cremated, and the ashes are returned to the family.

Green burial is the burial of the dead body without treatment with chemicals (embalming) either directly in the ground or in a biodegradable container in the ground.

Natural organic reduction, sometimes called “human composting,” places the dead body in a container filled with natural materials and microorganisms that break down the tissues into soil. (The presenters emphasized that the process does *not* involve worms.)

Water cremation, or more formally, alkaline hydrolysis, places the dead body in a chamber with a mixture of water and chemicals, which is then heated and pressurized until the body is reduced to liquid and powder called “ashes.”

More than 90% of the respondents had heard of the first three options, as shown in the table on page one.

More than 40% were open to considering any of the newer choices.

Respondents were then asked to rank their preferences for these disposition approaches. Some 62% ranked cremation as a first or second choice, while only 38% identified casket burial that way. Casket burial was the first choice of only 16.7% of those ages 60-78 in the survey, and it was not much higher for younger respondents. Interest in green burial was strong, with roughly 60% of those under age 60 saying they would consider it (only 46% of those over 60 felt that way).

Make YOUR wishes known.

Some people have strong feelings about what will happen to their bodies after life; others are less concerned. Whatever your feelings are, communicate them with family members early and clearly. Don't rely on will instructions or papers in a safety deposit box—those might not be discovered until it is too late.

We are ready to serve you and your family.

Our role in estate planning is serving as executor or personal representative of the estate. Who should you choose to settle *your* estate? We have the skills, the experience, and the knowledge to handle properly the job of estate settlement. We are available, and we are impartial. We understand the nature of fiduciary responsibilities, and we know how to discharge them.

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Take the responsibility to prepare a plan for winding up one's financial affairs after death.

A picture is worth a thousand words

A *specific bequest* in a will is a gift of personal property that is identified with sufficient detail so that it is clear *at the time of will execution* what item the beneficiary will receive. For example, “I leave my 2020 Subaru Forester [VIN number] to [beneficiary]” or “I leave the gold Rolex pocket watch I inherited from my grandfather that has the initials OFB engraved on the back to [beneficiary].”

Specific gifts of a general nature raise additional concerns to address when preparing the will. Some estate planners are now considering the use of photographs to help resolve ambiguities.

For example, assume that George (name is fictitious) makes the following gift, “I leave my car to [beneficiary],” and then dies owning several cars. Which car does the beneficiary receive? Is it the car that George owned at the time of the will execution if the testator still owns it? Is it the newest car? Is it the most or least valuable car (Lamborghini vs. Gremlin)? Thus, if George wants to make this type of gift, explicit instructions are needed to resolve the situation, such as allowing the beneficiary to select a particular car, indicating that the gift is the car with the highest or lowest fair market value, or describing another method to determine which item the beneficiary receives.

Using the example gift, that is, “I leave my car to [beneficiary],” what happens if George either does not own a car or owns a car along with other vehicles? Does the term “car” include an SUV, truck, RV or motorcycle? A dispute may arise regarding whether the term “car” is ambiguous and how “far” from a traditional car the term encompasses. It would seem easy to include an SUV, a bit harder to include a truck, and more of a stretch to include an RV or motorcycle.

Photography to the rescue

Today, photographs have become an integral part of how society expresses itself. Through the arts, journalism, and even the legal profession, we use the photograph to tell a story. Memories are preserved and documented to

2A



2B



2A AND 2B Yellow Gold, Sapphire and Diamond Ring with Matching Pierced Earrings

be relived and shared. We use the photograph to depict what words cannot.

The photo insertion technique is best suited to specific gifts of tangible personal property rather than specific gifts of a general nature. The insertion of a photo along with the description of a specific item is a simple method that has the potential to be incredibly effective. It is an easy technique that enhances an estate planner's ability to provide adequate detail for identification. It is often said that “a picture is worth a thousand words,” meaning that complex and sometimes multiple ideas can be conveyed by a single still image, which conveys its meaning or essence more effectively than a mere verbal description. This is especially true when applied to specific gift descriptions in a will. Even the most eloquent writers cannot reproduce the specificity and clarity that a photograph can provide. Photos serve as a visual aid and are more difficult to misconstrue or misinterpret, unlike a written description.

The technique of photo insertion is straightforward in practice. The will drafter may take a photograph of the item using a digital camera or a smartphone. The cameras built into smartphones are often of great quality and can produce a high-resolution image. After the photo is taken, it can then be resized to fit neatly in the will. The photo can also be cropped to ensure that only the gifted item is displayed. After the photo has been appropriately resized and cropped, it can then be electronically inserted into the will.

Each inserted photo should be numbered. This number can be included physically in the background when the photograph is taken or can later be inserted digitally. After the photograph has been assigned a number, the corresponding number for the photograph should be referenced directly in the item's description. The photo of the item should directly follow the written description. It is important to keep the description and the photo as close together as possible so no confusion or error of correspondence arises.

Continued on next page

1A



1B



**1A AND 1B ROLEX
White Gold Watch with
Black face**

3A



3A

**6 X 9 X 12 Inch
Green Snakeskin
Purse with
Gold Accents**

Tips

Below are some best practices to consider when taking the photo to be used in the will.

- Use a high-quality camera or smartphone. The higher the resolution, the greater the detail that will be captured.
- Ensure that the area in which the photo will be taken is well lit. Unnecessary shadows or glares could diminish the quality of the image and make identification of similar items difficult.
- Use a solid background behind/underneath the item. A solid color, that is unlike the colors of the photographed item, allows the display of an item's components and details without the conflict of its surroundings.
- Take multiple photographs with different angles of an item. This can be especially useful when dealing with an estate containing multiple items of a similar nature. For example, a wide shot of an entire ring, coupled with a close-up shot of the serial number engraved on the inside of the band, will be very useful in identification.
- If necessary, include a ruler or alternative metric to demonstrate the size of the item being photographed. Ensure that the metric is correctly scaled and the units of measurement can be easily read.
- Take special care to number the items and photos as they are taken. With the possibility of multiple images taken of multiple items, it is imperative that the items and images are numbered as they are produced to alleviate any future confusion.
- Save all photos to an alternate source, i.e., one that is different than the internal storage of the camera or phone used to take the photo. After downloading the photographs from the camera's memory card or from the smartphone, save digital copies. Create a separate folder and save all the images separately.

Given the untested nature of the photo insertion technique, the estate planner should not rely on the photo as the sole means of identifying a specific gift. Instead, the picture should complement an accurate text-based description. Using a photo in this manner has the potential of providing significant benefits to the estate planner, executor, and beneficiary with little downside risk. □



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