

# ESTATE PLANNING TODAY

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## Leaving a Legacy Beyond Wealth

*Estate planning usually focuses on preserving and transferring accumulated wealth to loved ones. While this objective is important, most people have spent a lifetime accumulating something much more precious than tangible wealth. Surprisingly few people make the effort to pass these treasures along to their families. By investing a little time to memorialize your values, beliefs, family history, and other important knowledge, you can pass along a legacy that no amount of money can ever replace. People who take the time to preserve and pass along their lifetime of wisdom leave their families an invaluable legacy.*

### Ethical Wills

As attorneys specializing in tax and estate planning, we focus our efforts on preparing Wills for our clients. A Will is a critically important legal document. It describes to whom and under what terms you want your assets to pass at death. It appoints someone (the independent executor) to be in charge of the distribution of your assets and the handling of other required matters. It can also provide important instructions and guidelines. A Will is a necessary and valuable legal document; however, it may not be the final statement that you want to make to your loved ones. It does not (and cannot) cover some very important matters.

*The Ethical Will.* There is another type of "Will" that has recently gained popularity, even though it has ancient origins. Your estate planning lawyer is not involved in the preparation of this type of Will. It is a very personal document that you prepare yourself. It has been called an "Ethical Will." An Ethical Will does not try to dispose of property or to address other legal issues. Instead, it allows you to pass on to your family members and other loved ones your values, beliefs, life lessons, family history, hopes for the future, and pearls of wisdom. Some people who have discussed and promoted the idea of writing these things down for your loved ones have labeled it a "Love Letter." However,

because it is usually written to be read upon a person's death, it has some similarities to a Will.

The Ethical Will comes from the Jewish tradition. Originally, the idea was to bequeath a spiritual legacy to family members and especially to children. In reality, the most precious thing we leave behind when we die is not our property, but our legacy of values and beliefs. We all hope that the lives we have led will reflect our values and beliefs and be a statement in and of itself. Yet, writing out our values and beliefs in a tangible document that can be passed on to loved ones can make these beliefs and values more permanent and special.

*How Do I Prepare an Ethical Will?* Perhaps the most important thing to keep in mind is that, with few exceptions, there is no right or wrong way to prepare an Ethical Will. Common themes in modern Ethical Wills include:

- C Personal values
- C Family values
- C Spiritual values and beliefs
- C Hopes and blessings for future generations
- C Life's lessons/pearls of wisdom
- C Family stories and family history
- C Family sayings, special words, and traditions
- C Humorous anecdotes or other bits of humor
- C Practical instructions, guidelines and recommendations
- C Praise and recognition
- C Encouragement
- C Thanksgiving and gratefulness
- C Forgiving others and asking for forgiveness

*Avoiding Negative Messages.* Proponents of Ethical Wills warn that these final documents can do harm as

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well as good. If the Ethical Will is written in such a way that it indicates a desire to control from the grave (instead of to teach or advise, for example), then it may not leave the desired legacy. Also, if it is hateful, verbally abusive or otherwise overly critical or negative, it can severely cripple the recipient and perhaps be permanently damaging. In extreme cases, negative statements can give rise to claims of libel against the estate of the writer of the document, even if it is read only after the writer is deceased.

*Preparing your Ethical Will.* Most Ethical Wills are either handwritten or typewritten. If an Ethical Will is handwritten, it will be best preserved if you use acid-free paper and a fountain pen (versus a ball point pen). There is no reason, however, why an Ethical Will could not be prepared on audio or video tape. Ethical Wills might even include photographs, drawings or other graphic material. Because Ethical Wills are personal, not legal, documents, there are no rules or restrictions on the length, content or format—your Ethical Will can be whatever you want it to be. Just remember that if the final words from you are basically positive, they will truly be treasured by your recipients.

As an example, here is an excerpt from an Ethical Will written by a mother to her children:

... I hope I shall have given all of you something which is more precious than gold and jewels.

I hope and pray that during the years we have had together I have given you a love of our faith, a trust in God, from whom all blessings flow, a devotion to righteousness, to justice and to peace...

These are the jewels more precious than rubies which I hope will make your lives rich in all that is worthwhile for many years to come as I think they have made mine.

May God shower you with His blessings and may you share your blessings with others.

God bless all of you,  
Your Mother,  
Sadie S. Kulakofsky  
April 24, 1953.

*Important Precaution.* Although an Ethical Will is not a legal document, a carelessly prepared Ethical Will can accidentally amend your real Will or other estate planning documents. To reduce this risk, do not include any gifts of property in your Ethical Will. Also, consider adding this postscript to your Ethical Will: "P.S. This is

an Ethical Will. It is not a Will or Codicil or other amendment to any other estate planning document."

Finally, don't forget to tell someone that you have written an Ethical Will and where it is located.

*Resources for Ethical Wills.* How do you get more information about Ethical Wills? Seminars have been held in Houston at The Cenacle Retreat House led jointly by Jewish, Catholic and Protestant leaders. Numerous books have appeared in recent years discussing Ethical Wills and many Internet sites also have information on Ethical Wills. Here are some Ethical Will resources:

© SO THAT YOUR VALUES LIVE ON -- ETHICAL WILLS AND HOW TO PREPARE THEM, by Jack Reimer and Nathaniel Stampfer (Jewish Lights Publishing, Woodstock, Vermont, 1991)

© [www.ethicalwill.com](http://www.ethicalwill.com), a commercial site that offers Ethical Will workbooks and other resources for sale. (The site also has links to other web sites that may be of interest).

## Organ Donation

Many of our clients express an interest in donating body organs, bone, corneas or other tissues (or all of the above) upon their death. Like an Ethical Will, organ donation is a matter that you handle personally, without your estate planning lawyer. Arranging for organ donation is first and foremost a matter of discussing the issue with your family members so that they will be aware of, and ready to honor, your desires when the time comes.

In addition to these discussions, you can sign a donor intent card, or register with a donor procurement/disbursement organization (such as the Living Bank). You may want to place a sticker on the *front* of your driver's license indicating that you are an organ donor, and carry an organ donor card. Sample donor cards with stickers can be obtained from our office, or from organizations like LifeGift, which has several locations throughout Texas. The telephone number in Houston is (713) 523-4438, or you can call toll free (800) 633-6562, for free forms and further information. Additional information and registration forms can be found at the Living Bank website, [www.livingbank.org](http://www.livingbank.org). If you do not have internet access and would like our office to provide you with a form, please let us know.

There are more than 77,000 people currently on waiting lists for organ donations, and every day, more than fifteen people die for want of an organ. Most of the world's religions encourage and bless the donation of organs at death. You should feel free to discuss this matter with your minister, priest, rabbi or other spiritual

advisor. Such a gift truly is life giving and does not violate rules against mutilation of the body or against suicide because the organs and other tissues are removed for transplantation only *after* the donor has died. Here is a poem that beautifully addresses organ donation:

"To Remember Me"

by Robert Test

The day will come when my body will lie upon a white sheet neatly tucked under four corners of a mattress located in a hospital busily occupied with the living and the dying. At a certain moment a doctor will determine that my brain has ceased to function and that, for all intents and purposes, my life has stopped.

When that happens, do not attempt to instill artificial life into my body by the use of a machine. And don't call this my deathbed. Let it be called the Bed of Life, and let my body be taken from it to help others lead fuller lives.

Give my sight to the man who has never seen a sunrise, a baby's face or love in the eyes of a woman.

Give my heart to a person whose own heart has caused nothing but endless days of pain.

Give my blood to the teenager who was pulled from the wreckage of his car. So that he might live to see his grandchildren play.

Give my kidneys to one who depends on a machine to exist from week to week.

Take my bones, every muscle, every fiber and nerve in my body and find a way to make a crippled child walk. Explore every corner of my brain. Take my cells, if necessary, and let them grow so that, someday, a speechless boy will shout at the crack of a bat and a deaf girl will hear the sound of rain against her window.

Your family does not pay for the organ and tissue donation. All costs related to the donation are paid by the organ donor organization or the transplant center (and eventually by the recipients of the organs and tissues). Almost anyone of any age can be considered for donation. While some age guidelines exist for organ donation, tissue and bone donation is not as limited.

So often families are approached in an emergency room situation and asked to donate organs of a loved one and it is the first time they have heard of this. In many instances they will not agree to donate because they aren't knowledgeable about the wishes of the loved

one and they don't feel comfortable making that difficult decision. Registration with an organ donation organization helps to make that decision process go more smoothly. It also speeds up the process of notification in situations where family members are separated by hundreds of miles.

Most important of all, if you want to be an organ donor, let your family members know of your desire now. When the time comes and if the circumstances are right, your final gift may bring life to many people.

## Instructions to Executors

The best way for you to be sure that your family is aware of your desires and that none of your assets are overlooked is to prepare a detailed Letter of Instruction. Such a letter should be kept in an accessible place so it can be updated on a regular basis, and its existence and location should be made known to the people that you have named as executor, and perhaps to other close family members.

The letter might contain a variety of useful information for your executor and family members. For example, it might include the names, addresses and phone numbers of your attorney, accountant, banker, stockbroker, insurance agent, business associates, and other individuals whose assistance may prove helpful.

The letter of instruction might also let your executor know the whereabouts of important papers, such as your original Will; birth, adoption, or baptismal certificates; marriage certificate; divorce decree or separation agreement; safe deposit box and keys; bank passbooks; brokerage statements; stock certificates; insurance policies; vehicle titles; income and gift tax returns; and cemetery site deed.

Occasionally, the letter of instruction will also contain an inventory of assets and liabilities, including items such as bank names, addresses, and account numbers; savings bond amounts and numbers; stock, bond and mutual fund names; real estate descriptions; pension/profit sharing account information; insurance policy information; motor vehicle title information; and mortgage and loan amounts and information.

Finally, the letter may contain instructions as to funeral arrangements. However, the letter generally should not include instructions as to disposition of particular personal effects or other property, because of the risk of inadvertently amending your Will.

## Personal Effects Memo

Many people have very specific desires about the disposition of jewelry, furnishings, china, silver, and other personal effects. Sometimes these wishes are set forth in the person's Will. Other people prefer to leave

a handwritten memo outlining their wishes. Written instructions disposing of personal effects may or may not be legally binding, depending upon a number of factors. Many people use this method of describing their wishes since a letter is much more easily revised than a Will. In addition, during probate, a Will becomes a public record and its contents may be viewed by curious persons, while a letter frequently remains private.

To be binding, a personal effects memo must be entirely in your handwriting and signed by you. To avoid complications, it should be carefully written and coordinated with your Will. Before you prepare a personal effects memo you should contact the attorney who prepared your Will and ask about specific instructions to follow.

### Funeral Arrangements

Based on various religious, sentimental or personal reasons, people often ask whether they may place specific burial instructions in their Wills. While this is an option, there is a strong likelihood that interment, in whatever fashion selected by the surviving family, will occur prior to the reading or discovery of the Will. It is better if you actually make your own funeral

arrangements prior to your death, and advise your family members of your wishes. If you are concerned that certain family members may not honor your wishes, you can sign an "Appointment of Agent to Control Disposition of Remains," a special power of attorney provided for under the Texas Health and Safety Code. This document allows you to designate one or more agents to control your burial arrangements.

### Contact Us:

Feel free to contact us at the address and phone number shown below. You can also reach us by e-mail:

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