

The Corsaro Commentary

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WHO GETS MY PROPERTY WHEN I DIE? (Part 2 of 2)

Part 1 of this article reviewed general estate planning objectives and asset transfer mechanisms. Part 2 will review the estate planning tools you can use to carry out your objectives.

A “**last will and testament**” is the document most frequently used to direct the disposition of one’s estate at death. It is also used to designate a guardian for the testator (i.e., the person making the will) and for the testator’s spouse and/or children. In Ohio (as in most states), a will means that probate proceedings will be instituted upon death, but it does little to provide for the management of one’s estate during life. A will only affects assets owned in the testator’s name; it has no effect on property held jointly or on property for which there is a designated beneficiary.

The primary tool for most people with substantial estates is a **revocable trust**, commonly called a “living trust”. A revocable trust can work in place of a will to provide for the management and disposition of your estate both during life and after death. You are the grantor (or creator) of the trust. Initially, you are also the trustee and the beneficiary.

Additional documents may include a **power of attorney for health**, a **financial power of attorney**, a directive regarding artificial life support (i.e., a “**living will**”), and **funeral and burial instructions**.

If transfer taxes apply, if family members have special needs, or if asset-protection is desired, more complex planning may be required, such as one or more of the following:

- An A/B Trust or an A/B/C trust that preserves the applicable estate tax exclusion after the first spouse’s death.
- **Irrevocable trusts**, such as a education trusts, life insurance trusts, generation-skipping trusts, supplemental needs trusts (for elderly parents and beneficiaries with disabilities), and charitable trusts.
- Estate-freezing techniques, which may involve grantor retained interest trusts (e.g., a grantor retained annuity trust or a qualified personal residence trust) or may involve the creation or adoption of business entities, perhaps involving installment sales, private annuities, or sales to a grantor trust.
- Asset protection techniques, such as placing assets in **limited liability entities** (e.g., a limited partnership or a limited liability company), **spendthrift trusts**, and/or a variety of other types of protective trusts (e.g., Delaware or Alaska trusts).

The basic estate plan begins with a will or revocable trust. If that does not accomplish all your goals, then you should consider advanced planning techniques.

After you have finished reading Parts 1 and 2 of this article, you should review your assets, review your objectives and contact Corsaro & Associates to assist you in devising the right plan for you. While you may not be able to “take it with you,” you can control who/what gets it after you die.