

McGowanGroup

ASSET MANAGEMENT

Estate Planning Package

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Do You Need an Estate Plan?

Estate planning is not just for the very wealthy.

You have an “estate”, but do you have an estate plan?

Regardless of the nature or value of your assets, every individual leaves an estate upon death. For one household that estate is real property, an investment portfolio, and a closely held business. For another it is a checking account, a vehicle, and personal belongings. The size of the balance sheet changes the complexity of the planning, not the need for it. Estate planning is the ongoing work of organizing what you own so that it supports you during life, remains manageable if you become unable to act, and reaches the people you intend after death. Done properly, it coordinates legal documents, account ownership, beneficiary designations, and tax elections so that the transfer follows your instructions at the lowest reasonable tax and administrative cost.

If the estate is small, should you still plan?

Size is not the issue; direction is. If you leave no instructions, state intestacy law determines who receives your property, in what shares, and who is appointed to administer the estate. That statutory default may not match what you would have chosen for a spouse, a child from a prior marriage, a sibling, or a charity. Even a modest estate can involve a home, a retirement account, a vehicle, and personal property carrying significant family meaning. A basic plan records your decisions and gives the people you name the legal authority to carry them out.

Do you HAVE to create an estate plan?

No law requires you to create one, but the absence of a plan is itself a decision with consequences. When there are no documents, a court applies the state’s default rules, appoints an administrator, and may require a bond and closer supervision of the estate. Families in that position often face avoidable delay, added administrative expenses, disagreement over who should serve and who should receive what, and too little available cash to cover debts, taxes, and final expenses without selling assets at an inconvenient time.

Why not just a will?

A will states your intentions, but it has no operative effect until a court admits it and authorizes an executor to act. Until that happens, property titled in your individual name cannot lawfully be transferred to the people you named. A will also governs only part of a typical balance sheet, because retirement accounts, life insurance, annuities, and pay-on-death or transfer-on-death registrations pass by contract or by title regardless of what the will says. A complete plan pairs the will with current beneficiary designations, appropriate account titling, and, where the circumstances justify it, a properly funded trust that allows assets to transfer without probate.

What is probate and how do you avoid assets going to probate?

Probate is the court-supervised process for validating a will, appointing the person authorized to act, settling creditor claims, and retitling property into the names of the people entitled to receive it. Whether an asset goes through that process depends almost entirely on how it is owned. Assets held in your individual name without a beneficiary designation or survivorship feature generally pass under the will and through probate, as does your share of property held as a tenant in common. Assets controlled by contract, by registration, or by a trust generally pass outside it, including life insurance and annuity contracts, IRAs and employer retirement plans, pay-on-death and transfer-on-death accounts, and property titled in a funded revocable trust. Directing more of the balance sheet through these non-probate channels can shorten administration, reduce cost, and give the named recipients access to funds sooner, but only if every designation and registration is current and consistent with the rest of the plan.

So, what is “advanced” estate planning?

The term generally refers to strategies used when a family’s wealth approaches or exceeds the amount that can pass free of federal transfer tax. With the 2026 basic exclusion amount at \$15,000,000 per individual, and up to \$30,000,000 for a married couple when portability is properly elected, that conversation typically begins as a balance sheet nears those thresholds or is expected to grow past them. The techniques include lifetime gifting, trusts designed to shift future appreciation, family entities, charitable structures, and life insurance held outside the estate. They also add valuation, reporting, and administrative obligations, so they belong in a plan only when the circumstances support them and counsel, the CPA, and the wealth manager are working from the same facts.

Where do you begin?

Speak with a qualified estate-planning attorney. McGowanGroup Asset Management can coordinate with your legal and tax professionals and provide information needed to help implement the plan.

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10 Key Steps to Upgrading Your Estate Plan

Few families enjoy the subject, and postponement is the most common outcome. The cost of delay falls on the people left behind, who inherit not only the assets but also whatever ambiguity, outdated paperwork, and unanswered questions remain. The steps below identify where existing plans most often need attention.

An Estate Planning Checklist

Estate planning is not a one-time document project. It is an ongoing coordination process among your family, estate-planning attorney, CPA, and wealth manager. The legal documents establish the plan, while account titling, beneficiary designations, fiduciary preparation, tax elections, and proper funding determine whether the plan works as intended. Review the plan regularly and after major life, family, financial, or legal changes.

1. Review beneficiary designations and distribution choices.

Confirm the primary and contingent beneficiaries on retirement accounts, annuities, life-insurance policies, and other beneficiary-controlled assets. Consider whether a per stirpes election is appropriate so a deceased beneficiary's share passes to that beneficiary's descendants. Coordinate every designation with the will or trust, and review the income-tax and required-distribution consequences for retirement-account beneficiaries.

2. Choose capable executors, trustees, agents, and successors.

Select fiduciaries based on judgment, availability, financial capability, family dynamics, and willingness to serve, not merely seniority or convenience. Name backups in case the first choice dies, becomes unable to serve, or declines. For a larger, long-duration, or conflict-prone trust, discuss whether a corporate or independent trustee would provide useful continuity and neutrality.

3. Decide whether the plan should rely on a will, a living trust, or both.

A will directs probate assets and names an executor, but it generally must be administered through the applicable probate process. A properly drafted and funded revocable living trust may provide continuity during incapacity and allow trust-owned assets to pass under the trust's terms without probate. Many trust-based plans also use a pour-over will for assets left outside the trust. The right structure depends on state law, asset ownership, family needs, privacy goals, and administrative preferences.

4. Prepare the successor trustee and other fiduciaries.

Naming a fiduciary is only the beginning. Make sure the person knows where the current documents are stored, understands whom to contact, and receives appropriate education about the role before a crisis occurs. Trustees have fiduciary duties and should understand the trust's terms, record keeping

expectations, distribution standards, and the need to coordinate with legal, tax, and investment professionals.

5. Coordinate the attorney, CPA, and wealth manager.

Provide the advisory team with the current estate documents and an accurate picture of assets, liabilities, ownership, and beneficiaries. After a death, coordinated attention may be needed for date-of-death values, income-tax basis records, retirement-account elections, estate administration, and a possible federal estate-tax return or portability election. Form 706 is generally due nine months after death, with a six-month extension available when properly requested; special late-election relief may apply to certain estates that were not otherwise required to file.

6. Create and maintain a complete estate balance sheet and secure information map.

List bank, brokerage, retirement, insurance, business, real-estate, mineral, digital, and valuable personal-property interests, along with mortgages, loans, guarantees, and other liabilities. Record ownership and beneficiary information and identify where deeds, titles, policies, entity agreements, tax returns, and estate documents are stored. Keep passwords, PINs, and sensitive identifiers in a secure system rather than an ordinary worksheet or email.

- Assets should include:
 - Bank accounts
 - Brokerage accounts
 - Retirement accounts
 - Insurance policies
 - Any other forms of investment
 - Real estate you own and its worth
 - Personal property items in your home, garage, backyard, warehouse, storage unit
 - Small business that has notable monetary worth
- Liabilities should include:
 - Credit card debts
 - Mortgage loans
 - Any other outstanding consumer loans

7. Evaluate charitable, gifting, and transfer-tax strategies.

For charitable families, donor-advised funds, charitable remainder trusts, and direct gifts may support different income, legacy, and tax objectives. For 2026, the federal estate and gift tax basic exclusion amount is \$15,000,000 per individual, the annual gift-tax exclusion is \$19,000 per recipient, and the top federal transfer-tax rate remains 40%. Larger gifts, family entities, and advanced trust strategies require coordinated legal, tax, appraisal, and administrative advice; tax benefits are not automatic.

8. Align real estate, business interests, and account titling with the plan.

A signed trust does not control an asset that was never transferred to it. Review deeds, account registrations, entity agreements, transfer restrictions, POD or TOD designations, and insurance ownership. Texas real property may sometimes be coordinated through a transfer-on-death deed or, when counsel deems appropriate, an enhanced life-estate deed commonly called a Lady Bird deed. These are distinct legal tools and should be prepared and reviewed by qualified Texas counsel.

9. Revisit the plan after life changes and define family expectations.

Review the plan after marriage, divorce, birth, death, incapacity, relocation, a business sale, a major change in wealth, or a change in charitable goals. Also address personal property and other assets that do not divide neatly. Putting instructions in writing and discussing the plan at an appropriate level can reduce ambiguity and help prevent family conflict.

10. Plan for administration, liquidity, and final distribution.

Map what should happen at incapacity and death: who acts, which assets pass by contract or title, which assets pass through probate or a trust, where expenses and taxes will be paid from, and how beneficiaries will receive information and distributions. Proper beneficiary designations may allow certain assets to transfer outside probate, while other assets may require an estate account, court administration, trust administration, tax filings, or creditor procedures. A coordinated team can help keep the process organized and aligned with the governing documents.

Immediate action checklist

Review every primary and contingent beneficiary designation, including per stirpes choices.

Put a current will or trust-based plan in place with qualified estate-planning counsel.

Give the wealth-management team the current signed documents and confirm account titling and funding.

Create a secure asset, liability, document, and digital-access map.

Confirm fiduciaries and successors, then prepare them for the responsibility.

Schedule an annual review and an additional review after any major life or financial change.

Related McGowanGroup resource: [The 10 Stages of Estate Planning: A Wealth Manager's Guide for Dallas Area Families](#)

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2026 Federal Estate, Gift, and GST Tax Overview

What has happened with recent changes in Tax laws?

The Tax Cuts and Jobs Act of 2017 temporarily increased the federal estate and gift tax basic exclusion amount for 2018 through 2025. Subsequent legislation enacted in 2025 established a \$15,000,000 basic exclusion amount for individuals who die or make taxable gifts in 2026.

Citation: [IRS: What's New — Estate and Gift Tax](#)

For 2026, the federal estate and gift tax basic exclusion amount is \$15,000,000 per U.S. citizen or domiciliary. A married couple may potentially protect up to \$30,000,000 through each spouse's exclusion and, when properly elected, portability of a deceased spouse's unused exclusion.

Key federal transfer-tax rules for 2026:

- The 2026 lifetime federal estate and gift tax basic exclusion amount is \$15,000,000 per individual. The top federal estate, gift, and generation-skipping transfer tax rate remains 40%.
- The annual gift tax exclusion is \$19,000 per recipient for 2026. \$38,000 for married couples.

Citation: [IRS: Revenue Procedure 2025-32](#)

- The annual exclusion for qualifying present-interest gifts to a spouse who is not a U.S. citizen is \$190,000.

These rules provide substantial transfer-tax planning opportunities, but the exclusions are not automatic planning results.

The federal estate and gift tax exclusion may be portable between spouses if a valid election is made.

Portability may allow a surviving spouse to use a deceased spouse's unused exclusion amount, in addition to the surviving spouse's own available exclusion. This can increase the amount transferred free of federal estate and gift tax, but portability does not apply to the GST exemption and does not replace other estate-planning considerations.

If the first spouse to die has not used all of the available federal estate and gift tax exclusion, the executor may elect to transfer the deceased spousal unused exclusion amount to the surviving spouse. Based on the 2026 basic exclusion amount, a married couple may potentially shelter up to \$30,000,000 from federal estate and gift tax, subject to prior taxable gifts, a valid portability election, and later changes in law.

Portability is not automatic. The executor generally makes the election by filing a complete and properly prepared Form 706 within nine months after death, or by the extended due date if a valid six-month

extension is obtained. Certain estates not otherwise required to file Form 706 may qualify for the simplified late-election procedure under Revenue Procedure 2022-32 if the return is filed on or before the fifth anniversary of death.

Citation: [IRS: Instructions for Form 706 \(2026\)](#)

Transfers to qualifying charities may reduce the taxable estate through the federal estate tax charitable deduction when the statutory requirements are satisfied. Lifetime gifts of appreciated securities require separate analysis: the recipient generally takes a carryover basis, and any later gain is taxed to the recipient under the capital-gains rules applicable at the time of sale. The recipient's rate depends on taxable income and other circumstances; a 0% rate should not be assumed.

Annual-exclusion gifts may reduce a taxable estate without using the lifetime exclusion.

In 2026, an individual may generally give up to \$19,000 of present-interest property to each recipient per year without using the donor's lifetime exclusion. Married spouses may potentially transfer \$38,000 per recipient if each makes a qualifying gift or if they properly elect gift splitting on timely filed Forms 709. Amounts paid directly to an eligible educational institution for tuition or directly to a medical provider for qualifying medical care may be excluded separately from gift tax; payments for books, supplies, room, and board do not qualify for the tuition exclusion.

A gift exceeding the \$19,000 annual exclusion does not necessarily create an immediate gift-tax liability. The excess generally is reported on Form 709 and reduces the donor's remaining lifetime exclusion, unless another exclusion or deduction applies. Gift splitting, valuation, present-interest requirements, and prior taxable gifts can affect the result.

Is there still a need for bypass trusts?

Bypass or credit-shelter trusts may remain appropriate even with a high federal exclusion and portability. Potential reasons include state estate or inheritance taxes, preserving the first spouse's Generation Skipping Transfer (GST) exemption, protecting appreciation after the first death, creditor or remarriage concerns, and controlling the ultimate disposition of assets. The benefits and tradeoffs depend on state law, income-tax basis consequences, family objectives, and document design.

The 2026 exclusion may support lifetime-gifting and trust strategies, including grantor retained annuity trusts, sales or loans to family trusts, and properly structured family entities. These techniques involve valuation, retained-interest, income-tax, state-law, and administrative risks. They should be implemented only with coordinated advice from qualified estate-planning counsel, tax advisers, and valuation professionals.

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Wills versus Living Trust

Two documents, two different jobs — and why most Texas plans need both.

A will and a revocable living trust are frequently presented as alternatives, as though a family must choose one. They are better understood as two instruments with different jobs. A will has no legal effect until a court admits it to probate. A funded revocable trust operates continuously — during life, through incapacity, and after death — without court supervision. Neither one reduces federal estate tax by itself; tax results come from the provisions written inside the document. And neither one protects an asset it does not control, which is why funding and beneficiary designations matter more than the choice of instrument.

What each document actually does

A will is a set of instructions that takes effect only when a court accepts it. It names an executor, directs who receives the property that passes through the estate, and, critically for families with young children, names a guardian for minor children. Until it is admitted to probate, it is a piece of paper with no operative authority. A will also reaches only a narrow slice of most balance sheets: it governs assets held in the decedent's individual name without a beneficiary designation or survivorship feature. Retirement accounts, life insurance, annuities, and pay-on-death or transfer-on-death registrations pass by contract and ignore the will entirely.

A revocable living trust is a present-tense arrangement. The grantor transfers assets to a trustee — almost always themselves during life — who holds and manages the property under written terms. Because the trust owns the assets, there is no interruption in authority when the grantor becomes incapacitated or dies. The successor trustee named in the document simply steps in and continues administering the property under the same terms. The grantor retains full power to amend or revoke the trust at any time while competent, which is why the arrangement produces no income-tax or transfer-tax change by itself.

Probate in Texas deserves a realistic assessment

National commentary on living trusts tends to describe probate as uniformly slow, expensive, and public. That characterization does not describe Texas well. Texas offers independent administration, which allows an executor to administer an estate with minimal court involvement when the will grants that authority or the beneficiaries consent. Small estates, muniment of title proceedings, and affidavit procedures narrow the burden further in appropriate cases. For a Texas family whose assets are simple and whose beneficiary designations are current, probate is frequently a manageable process rather than a crisis.

The case for a trust in Texas therefore rests on facts other than cost avoidance alone. It becomes compelling when the family owns real property in more than one state, since each parcel would otherwise

require a separate ancillary proceeding in its own jurisdiction. It becomes compelling when privacy matters, because a probated will and inventory become part of the public record while a trust generally does not. It becomes compelling when the family anticipates a contested administration, when a beneficiary needs long-term oversight, or when the grantor wants a seamless management transition at incapacity that a power of attorney may not reliably deliver.

Authoritative reference: Texas Estates Code, Chapter 401 (independent administration) and Chapter 112 (creation of trusts),

<https://statutes.capitol.texas.gov/Docs/ES/htm/ES.401.htm>

<https://statutes.capitol.texas.gov/Docs/ES/htm/ES.112.htm>

Incapacity is where the trust earns its keep

A statutory durable power of attorney is an essential document and should be part of every plan. Its practical weakness is acceptance: financial institutions sometimes question older instruments, apply their own internal review standards, or insist on their proprietary forms. Texas law provides remedies for unreasonable refusal, but a remedy exercised months into a health crisis is cold comfort. A funded revocable trust sidesteps the question. The successor trustee's authority arises from the trust instrument and the account registration itself, so no third party is being asked to honor a delegation of someone else's authority. Assets held outside the trust — retirement accounts in particular, which cannot be retitled to a trust during life — still depend on the power of attorney, which is one reason both documents belong in the same plan.

Tax outcomes come from the terms, not the container

A revocable living trust is disregarded for federal income-tax purposes while the grantor is living; income is reported on the grantor's individual return, and the assets remain fully includible in the grantor's gross estate. Establishing a trust does not by itself reduce estate tax, shelter assets from creditors, or affect the basis adjustment at death. Estate-tax planning, when a family's circumstances warrant it, comes from the substantive provisions — a credit-shelter or bypass disposition, a marital trust, a generation-skipping allocation — that can be written into either a will or a trust. With the 2026 federal basic exclusion amount at \$15,000,000 per individual and portability available by election, most families now build these provisions for reasons other than federal transfer tax: preserving assets for children of a prior marriage, protecting a surviving spouse from pressure or remarriage risk, or controlling the ultimate remainder.

Funding is the step that determines the outcome

The most common failure in trust-based planning is not a drafting error. It is an unfunded trust. A signed trust that owns nothing governs nothing, and the assets left in the grantor's individual name pass through probate anyway — producing the cost the family paid to avoid, plus the cost of the trust. Funding means executing deeds for real property, changing account registrations at each custodian, assigning business and partnership interests where the governing documents allow it, and reviewing beneficiary designations so they coordinate with, rather than contradict, the trust terms. Some assets should deliberately stay outside: retirement accounts generally name individuals directly, and an ownership change to certain assets can trigger consequences that counsel should evaluate first.

Why most plans include both

Even a diligently funded trust rarely captures everything. A vehicle purchased after the trust was signed, a final paycheck, a refund check, an unclaimed-property recovery, or a newly opened account can all end up in the individual name. A pour-over will addresses that remainder: it directs whatever is left in the estate into the trust so that all of it is distributed under one consistent set of terms. The will also does work the trust cannot — naming an executor and designating a guardian for minor children. The two documents are complementary, not redundant.

How to decide

A will-based plan with a durable power of attorney, medical power of attorney, and current beneficiary designations is often sufficient for a Texas family with straightforward assets in one state, uncomplicated family relationships, and no privacy concern. A trust-based plan is generally the better fit when there is out-of-state real property, a blended family, a beneficiary who needs oversight, a closely held business, meaningful likelihood of a contest, or a strong preference for privacy and administrative continuity. The decision should be made with Texas estate-planning counsel and revisited after any marriage, divorce, birth, death, relocation, business transaction, or significant change in wealth. McGowanGroup Asset Management will coordinate with your attorney and CPA on titling, funding, and beneficiary designations so the structure you select operates the way it was designed to.

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Naming a Trust as the IRA Beneficiary

Key insights

- A trust named as IRA beneficiary can add control, creditor protection, and continuity that an outright designation cannot, but it does not improve the income-tax result and often worsens it.
- Under the SECURE Act and the final required minimum distribution regulations, the payout period depends on how the trust is drafted and on who its countable beneficiaries are, not on the account owner's intent.
- Conduit and accumulation trusts produce materially different tax and control outcomes, and the difference should be a deliberate drafting decision.
- Any trust named as an IRA beneficiary before 2020 should be reviewed. Language written for the old life-expectancy "stretch" may now produce an unintended result.

Why an IRA owner might name a trust

An outright beneficiary designation gives the inheritor immediate and unrestricted access to the account. A trust interposes a fiduciary and a set of written standards. That structure is typically considered when a beneficiary is a minor, has a disability and relies on means-tested benefits, faces creditor or divorce exposure, lacks experience managing a significant sum, or when the owner wants the remainder to pass to a particular branch of the family — a common concern in blended families. The trust also provides continuity if a beneficiary later becomes incapacitated.

How the distribution rules apply

A trust is not an individual, so it cannot itself be a designated beneficiary. Federal regulations provide a look-through rule: if the trust satisfies the "see-through" requirements, the IRS disregards the trust wrapper and tests the payout schedule against the individuals behind it. The trust must be valid under state law, must be irrevocable or become irrevocable at the owner's death, and its beneficiaries with respect to the retirement account must be identifiable from the instrument. The final regulations, effective for distributions beginning January 1, 2025, retained this framework and eliminated the requirement that a trustee deliver trust documentation to an IRA custodian, although plan administrators may still request a beneficiary listing for employer plan accounts. [\[IRS: Publication 590-B\]](#), [\[federalregister.gov\]](https://www.federalregister.gov)

If the trust qualifies, the individuals behind it are sorted into the same categories that apply to any beneficiary. Eligible designated beneficiaries — a surviving spouse, a minor child of the account owner, a disabled or chronically ill individual, or a person not more than ten years younger than the owner — may still be able to use a life-expectancy payout. Most other individuals fall under the ten-year rule, which requires the inherited account to be fully distributed by December 31 of the tenth year following the year of death. If the owner died on or after the required beginning date, annual distributions are also required in years one through nine. [\[IRS: RMD FAQs\]](#), [\[irs.gov\]](https://www.irs.gov)

If the trust fails the see-through requirements, the account is treated as having no designated beneficiary. The result is a five-year payout when the owner died before the required beginning date, or distributions over the owner's remaining life expectancy when death occurred after it. [\[irs.gov\]](https://www.irs.gov)

Conduit versus accumulation design

A conduit trust requires the trustee to pass every distribution received from the IRA through to the current beneficiary. Income is taxed to that individual at individual rates, but the trustee cannot hold the money back — which defeats much of the protection the trust was created to provide once the ten-year window closes.

An accumulation trust permits the trustee to retain distributions inside the trust. Control and creditor protection are preserved, but retained income is taxed at compressed fiduciary rates. For 2026, a non-grantor trust reaches the top 37% federal bracket on taxable income above \$16,000, before any net investment income tax, while an individual does not reach that rate until \$640,600 (single) or \$768,700 (married filing jointly). Concentrating ten years of IRA distributions inside an accumulation trust can therefore cost substantially more tax than the same distributions paid to the beneficiaries directly. Whether the added protection justifies that cost is a planning judgment, not a default. [\[irs.gov\]](https://www.irs.gov), [\[IRS: Rev. Proc. 2025-32\]](https://www.irs.gov/retirement-topics/beneficiary)

Tradeoffs to weigh

The design must be drafted, funded through a correct beneficiary form, and administered. That means legal fees, trustee involvement, fiduciary income-tax returns, and recordkeeping. The trust generally becomes irrevocable at death, so errors in drafting are difficult to correct afterward. Remainder beneficiaries, powers of appointment, and charitable gifts written into the trust can affect which individuals are counted for payout purposes and can inadvertently shorten the distribution period. A Roth IRA payable to a trust changes the analysis considerably, because qualified distributions are not taxable and the compressed brackets are far less punishing.

Bottom line

A trust is the right IRA beneficiary when a specific, identifiable need — protection, oversight, special-needs eligibility, or control of the ultimate remainder — outweighs the tax and administrative cost. It is rarely the right answer simply because the family already has a trust. The beneficiary designation, the trust language, and the estate plan must be read together, and the combination should be reviewed with qualified legal, tax, and investment advisers after any change in family circumstances or in the retirement-account rules.

Citation: [IRS: Required Minimum Distributions, Final Regulations \(T.D. 10001\)](https://www.irs.gov/retirement-topics/beneficiary) Citation: [IRS: Retirement Topics — Beneficiary](https://www.irs.gov/retirement-topics/beneficiary) Citation: [IRS: Revenue Procedure 2025-32 \[federalregister.gov\]](https://www.federalregister.gov)

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Family Limited Partnerships and Intentionally Defective Grantor Trust

Tools to transfer wealth to the next generation at lower tax cost.

Family Limited Partnerships:

A family limited partnership (FLP) is a state-law entity that may hold family business or investment assets. Family members may own general-partner and limited-partner interests with rights defined by the partnership agreement and applicable law. An FLP does not automatically create tax savings, creditor protection, or retained control.

When supported by substantial non-tax purposes, an FLP may help organize shared assets, establish governance, centralize investment or business management, and facilitate succession planning. Federal transfer-tax treatment depends on the facts, valuation, retained rights, administration, and compliance with the partnership agreement.

The IRS and courts scrutinize family entities, particularly when the transferor retains possession, enjoyment, voting rights, or control; when personal expenses are paid from entity assets; when formalities are ignored; or when the arrangement lacks a bona fide non-tax purpose. Internal Revenue Code sections 2036 and 2038 may cause transferred property to be included in the transferor's gross estate.

Citation: <https://www.law.cornell.edu/uscode/text/26/2036>

The FLP structure.

An FLP is formed under state law and should have a written agreement, valid business or investment purposes, separate records and accounts, properly titled assets, and administration consistent with the agreement. Contributions and transfers of interests should be documented and valued by qualified professionals when appropriate.

Rights and control depend on the partnership agreement, state law, ownership percentages, fiduciary duties, and any separate management entity. A transferor who retains excessive rights or practical enjoyment may undermine the intended transfer-tax result. No statement of "100% control" should be assumed without legal review.

What the FLP accomplishes.

A completed gift of a partnership interest may shift future appreciation, but the transferred value is not automatically excluded from the donor's estate. Gift-tax reporting, adequate disclosure, valuation, retained-interest rules, and the donor's continuing relationship to the assets must be evaluated. Use of the federal exclusion may reduce the exclusion remaining at death.

Income-tax allocations must have substantial economic effect and follow federal partnership-tax rules. The assignment-of-income doctrine, grantor-trust rules, fiduciary income-tax rules, and the tax circumstances of each owner may affect the result. An FLP should not be presented primarily as a way to shift income to lower-bracket family members.

Creditor protection varies by state, asset type, ownership, fraudulent-transfer law, and the facts of a claim. An FLP is not a guarantee against creditors, litigation, divorce, bankruptcy, or government claims. Obtain state-specific legal advice before transferring assets.

An FLP should have a genuine purpose.

An FLP should have documented ongoing non-tax purposes and should be administered as a real entity. Real estate may be appropriate in some circumstances, but operating businesses, personal-use property, retirement accounts, S corporation stock, and assets with liabilities require specialized review. Entity funds should not be used as a personal account.

Governance may include family members, trusts, management entities, or independent fiduciaries when consistent with state law and the agreement. An independent appraiser, not the general partner, ordinarily determines fair market value for transfer-tax reporting. Valuation discounts are fact-specific and are not automatic.

If you have thought about a FLP, move carefully.

Before creating an FLP, confer with the tax and legal professionals you retain, or find trusted tax and legal professionals through referral. With their input, you can determine whether the FLP is an appropriate asset transfer and estate planning tool for your family.

Intentionally Defective Grantor Trust (IDGT):

What is an Intentionally Defective Grantor Trust? An intentionally defective grantor trust, commonly called an IDGT, is an irrevocable trust designed to produce different results under the federal income-tax and transfer-tax rules. If properly drafted and administered, the transfer to the trust may be complete for gift and estate-tax purposes, while selected retained powers cause the grantor to remain the owner for federal income-tax purposes. The word “defective” therefore refers to the trust’s intentional grantor-trust status; it does not mean that the trust was drafted incorrectly.

How an IDGT works. The grantor may fund the trust with a completed gift or may make an initial gift and later sell appreciating assets to the trust in exchange for a promissory note. The note should reflect fair market value and commercially reasonable terms, and closely held business, partnership, or real-estate interests ordinarily require qualified valuation work. If the transferred assets appreciate at a rate greater than the note’s interest rate, that excess growth may accumulate for the beneficiaries outside the grantor’s taxable estate. The trustee must follow the trust agreement, keep separate records, make required note payments, and administer the arrangement as a genuine trust and transaction.

Tax implications. Because the IDGT is treated as owned by the grantor for federal income-tax purposes, the trust's income, deductions, and credits generally are reported by the grantor. Transactions between a grantor and the grantor trust are generally disregarded for federal income-tax purposes while grantor-trust status continues. The grantor's payment of the income tax allows trust assets to remain invested for the beneficiaries, but it also creates a continuing personal cash-flow obligation. A completed gift to the trust may require a timely federal gift-tax return and may use part of the grantor's lifetime estate and gift-tax exclusion. A sale for a properly valued note generally replaces the transferred property in the grantor's estate with the note, leaving future appreciation above the note economics in the trust.

There is also an important basis tradeoff. Property that is outside the grantor's gross estate at death generally does not receive a basis adjustment under Internal Revenue Code section 1014 merely because the grantor was treated as the owner for income-tax purposes. Appreciated assets in the trust may therefore carry significant unrealized gain to the beneficiaries. Estate-tax savings should be compared with the possible loss of a basis adjustment, expected capital-gain exposure, state income and estate taxes, and the grantor's ability to continue paying the trust's income taxes.

When might an IDGT be appropriate? An IDGT may be considered when a family expects substantial future appreciation in a closely held business, real estate, investment interests, or other assets and wants to transfer that appreciation to children or later generations. It may also be useful when the grantor has sufficient assets and cash flow outside the trust, is comfortable making an irrevocable transfer, and wants to retain defined administrative powers without retaining rights that would cause estate inclusion. The strategy is generally less attractive when the estate is unlikely to face transfer tax, the assets have substantial built-in gain and a basis adjustment is a higher priority, the grantor may need the transferred property, or the family cannot support the legal, appraisal, tax-return, and administrative requirements.

Potential advantages. When properly structured, an IDGT may shift future appreciation outside the grantor's taxable estate, permit the grantor to pay the income tax attributable to trust assets, provide long-term management and distribution standards for beneficiaries, and support transfers of difficult-to-divide family or business interests. A sale structure may also allow the grantor to receive scheduled note payments while transferring future growth potential.

Potential disadvantages. The trust is irrevocable, so the grantor generally cannot simply take the assets back. The grantor may owe income tax without receiving the trust's cash flow, and the arrangement can create meaningful legal, appraisal, accounting, trustee, and tax-compliance costs. Valuation errors, poorly documented note terms, missed payments, retained enjoyment or control, or inconsistent administration can undermine the intended result. Assets excluded from the estate may not receive a basis adjustment at death, and changes in family circumstances, asset performance, interest rates, or tax law may reduce the strategy's benefit. An IDGT should be designed and implemented only through coordinated estate-planning, tax, valuation, and investment advice.

Citation: [IRS: Grantors Treated as Owners of Trusts and Rev. Rul. 85-13](#)

Citation: [IRS: Revenue Ruling 2023-2, Basis of Assets Outside the Gross Estate](#)

Authoritative references for this section:

1. Internal Revenue Code §2036, Transfers with Retained Life Estate (Cornell Legal Information Institute), <https://www.law.cornell.edu/uscode/text/26/2036>
2. Internal Revenue Service, Internal Revenue Manual 4.25.2, Estate and Gift Tax Examinations, https://www.irs.gov/irm/part4/irm_04-025-002r

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Charitable Giving

Converting a concentrated position into income, diversification, and a legacy.

A concentrated, low-basis position creates a familiar dilemma. Selling it funds retirement but triggers capital-gains tax on decades of appreciation. Holding it preserves the basis step-up at death but leaves the family exposed to a single company. For a charitably inclined household, a charitable remainder trust can address both problems at once by converting the position into a diversified income stream without an immediate tax on the sale.

What a charitable remainder trust is

A charitable remainder trust is an irrevocable split-interest trust governed by Internal Revenue Code section 664. The donor transfers assets to the trust; the trust pays an income stream to one or more non-charitable beneficiaries for a fixed term or for life; and whatever remains at the end passes to one or more qualified charitable organizations. The trust itself is exempt from income tax, so it may sell a contributed appreciated asset and reinvest the entire proceeds rather than the after-tax remainder.

Two statutory tests govern the structure. The annual payout to the income beneficiaries must fall between 5% and 50% of the applicable trust value, and the projected charitable remainder must equal at least 10% of the net fair market value contributed. A term-of-years trust may not exceed twenty years; a lifetime trust runs for the lives of beneficiaries living when the trust is created. A trust that fails either test does not qualify.

Citation: Internal Revenue Service, Charitable Remainder Trusts, <https://www.irs.gov/charities-non-profits/charitable-remainder-trusts> ; Internal Revenue Code section 664, <https://www.law.cornell.edu/uscode/text/26/664>

Annuity trust or unitrust

A charitable remainder annuity trust pays a fixed dollar amount determined at funding. The payment does not change, which provides predictability but no inflation protection, and no additional contributions may be made after the trust is funded. A charitable remainder unitrust instead pays a fixed percentage of trust assets revalued each year, so the payment rises and falls with investment results and additional contributions are permitted. Net-income and flip variations of the unitrust are available when the contributed asset is illiquid, such as real estate or a closely held interest, and cannot support a payout until it is sold.

How the income tax works

The donor may claim a charitable income-tax deduction in the funding year equal to the present value of the charity's remainder interest, calculated using the section 7520 rate in effect for that month. The

deduction is subject to the ordinary percentage-of-AGI ceilings and to the two rules that take effect for tax years beginning in 2026: itemizers may deduct charitable contributions only to the extent total gifts exceed 0.5% of adjusted gross income, and the value of itemized deductions is capped at 35 cents per dollar for taxpayers in the top bracket. Amounts above the applicable AGI ceiling carry forward for up to five additional years.

The capital-gains tax on a sale inside the trust is deferred, not forgiven. Distributions carry out the trust's income under a four-tier ordering rule: ordinary income first, then capital gain, then other income including tax-exempt income, and finally a tax-free return of corpus. A beneficiary receiving payments from a trust funded with a low-basis position should therefore expect those payments to be substantially taxable, often as capital gain, for many years. The economic advantage comes from investing the full pre-tax amount and spreading the tax over the payout term, not from eliminating it.

What the trust does not do

The word that governs the decision is irrevocable. Once assets are transferred, the donor cannot reclaim them, change the charitable remainder to a family beneficiary, or unwind the arrangement if circumstances change. The family must have sufficient assets outside the trust to meet its own needs without relying on the contributed property. A charitable remainder trust also requires a trustee, annual valuations for a unitrust, investment management, and a Form 5227 information return each year. Unrelated business taxable income earned by the trust is subject to a 100% excise tax, which makes certain operating-business and leveraged real-estate contributions unsuitable without careful review.

Addressing the inheritance concern

Families frequently ask whether funding a charitable remainder trust disinherits their children, since the remainder is committed to charity and removed from the taxable estate. One common response is to pair the trust with an irrevocable life insurance trust funded from the income stream or from the tax savings produced by the charitable deduction. If the death benefit is sized to approximate the value of the property contributed, the children receive an amount comparable to what they would otherwise have inherited, generally free of federal income tax, while the charity receives the trust remainder. This approach depends on the donor being insurable at an acceptable cost, and the premium outlay should be measured against the trust's projected benefit before either arrangement is executed. Both trusts should be drafted by qualified counsel and coordinated with your CPA.

Donor Advised Fund (DAF)

What is a Donor Advised Fund?

A donor advised fund is a charitable giving account established at a sponsoring public charity, such as a community foundation or the charitable affiliate of a brokerage firm. You contribute cash, appreciated securities, or other eligible assets, and the sponsoring charity takes legal ownership of them. The contribution is irrevocable and cannot be returned. What you retain are advisory privileges: you may recommend how the account is invested and which qualified charities receive grants, and the sponsor approves those recommendations. In practical terms, a DAF separates the decision of when to give from the decision of where to give.

Citation: [IRS: Donor-Advised Funds](#)

How a DAF works.

Funding is straightforward. Assets are transferred to the sponsoring charity, contributed securities are generally sold inside the account, and the proceeds are invested among the options the sponsor makes available. Growth inside the account is not taxable to you, and no additional deduction is available when grants are later paid out; the deduction occurs when the account was funded. Grants must go to qualified 501(c)(3) organizations. They may not be paid to individuals, used to satisfy a legally binding pledge, or used to purchase gala tickets, auction items, or anything else conferring more than an incidental benefit on the donor or a related party. Federal law does not impose a minimum annual payout on a DAF, although sponsors commonly set their own activity requirements, account minimums, and minimum grant amounts.

Tax implications.

A contribution to a DAF is deductible in the year it is made, provided you itemize. Cash contributions are generally deductible up to 60% of adjusted gross income, and long-term appreciated capital gain property, such as publicly traded stock held more than one year, is generally deductible at fair market value up to 30% of AGI. Amounts above the applicable ceiling carry forward for up to five additional tax years. Contributing appreciated securities rather than cash avoids recognition of the built-in capital gain while still supporting a fair-market-value deduction, which is frequently the single largest advantage of the vehicle. Closely held business interests and real estate may be accepted by some sponsors but generally require a qualified appraisal.

Citation: [IRS: Publication 526, Charitable Contributions](#)

Two rules effective for tax years beginning in 2026 change the arithmetic. Itemizers may deduct charitable contributions only to the extent total gifts exceed 0.5% of adjusted gross income, so the first half-percent of giving produces no federal benefit. In addition, the value of itemized deductions, including charitable gifts, is capped at 35 cents per dollar for taxpayers in the top bracket. The new deduction available to non-itemizers — \$1,000 for single filers and \$2,000 for married couples filing jointly — does not apply to gifts made to a donor advised fund, and a qualified charitable distribution from an IRA may not be directed to a DAF. Taken together, these rules reward concentrated giving over small, level annual gifts.

When to use a DAF.

A DAF is most valuable in a year of unusually high income — a business sale, a large bonus, exercised options, a Roth conversion, or the sale of a concentrated low-basis position — when a deduction is worth the most and the AGI floor is easily cleared. It is also the natural tool for “bunching”: funding several years of intended giving in a single tax year in order to itemize, then taking the standard deduction in the following years while grants continue to reach charities on the family’s normal schedule. Families who wish to involve children in grantmaking, donors who prefer to give anonymously, and those who find a private foundation too costly or administratively demanding often find the DAF a simpler alternative.

A DAF is not a substitute for every charitable strategy. It does not generate an income stream, as a charitable remainder trust can, and it does not satisfy a required minimum distribution, as a qualified charitable distribution can. It works comfortably alongside both. Because the transfer is irrevocable, you should contribute only assets you are certain you intend for charity, and the size, asset mix, and timing of the gift should be coordinated with your tax professional before the account is funded.

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Special Needs Trusts and ABLE Accounts

Providing lifetime support without disrupting public benefits.

A family supporting a child or adult relative with a disability is planning across a lifetime rather than a market cycle. Public programs such as Supplemental Security Income and Medicaid cover a defined set of basic needs, and they are means tested. They are rarely sufficient on their own, and assets transferred directly to the individual can reduce or eliminate the benefits the family was counting on.

A special needs trust is designed to resolve that conflict. It is an irrevocable trust holding assets for the benefit of an individual with a disability, administered by a trustee who may apply trust property to supplemental needs that public benefits do not cover, such as therapies, education, equipment, transportation, travel, and quality-of-life expenses. Because the trustee controls the property and the beneficiary cannot demand it, a properly drafted trust generally is not treated as the beneficiary's own resource for eligibility purposes.

Why families at every wealth level use them.

Recent CDC surveillance estimates that about 1 in 31 U.S. children age 8 (3.2%) were identified with autism spectrum disorder in 2022. The cost of lifetime care varies widely based on support needs, co-occurring conditions, available public benefits, insurance coverage, education, housing, and caregiving requirements; therefore, families should develop individualized projections rather than rely on a single national average. A special needs trust may be an important part of that planning.

Citation: [CDC: Autism Data and Statistics](#)

Congress gave first-party trusts of this kind statutory recognition in 1993 under 42 U.S.C. § 1396p(d)(4); before that, families relied on case law and administrative guidance. The statutory framework gives families a durable structure for long-term support in place of informal arrangements that frequently fail.

Two informal approaches remain common and both carry real risk. In the first, a sibling or parent simply holds money on an understanding that it will be spent for the individual with a disability. Those assets legally belong to the holder, which exposes them to that person's creditors, a divorce, a lawsuit, a bankruptcy, or an unexpected death without matching estate documents, and they carry no enforceable obligation to the intended beneficiary. In the second, a parent leaves an equal share to every child and relies on the others to provide support. That arrangement preserves benefit eligibility only by accident, depends entirely on continued family cooperation, and often produces disagreement about how much of the shared money belongs to whom. A funded trust with written distribution standards and a named trustee replaces goodwill with an enforceable obligation.

Assets held in a properly drafted special needs trust are generally protected from the beneficiary's creditors and are not counted as the beneficiary's resources, so the beneficiary can continue to qualify for social services programs and medical benefits.

What is a Special Needs Trust and how does it function?

A special needs trust holds and manages assets for a beneficiary with a disability while helping coordinate eligibility for means-tested public benefits. The three principal types are first-party, third-party, and pooled trusts. A first-party trust is funded with the beneficiary's assets and generally must include a Medicaid-reimbursement provision. A third-party trust is funded by others and generally does not require Medicaid reimbursement. A pooled trust is managed by a nonprofit organization, which maintains a separate account for each beneficiary while combining funds for investment and administration. Because eligibility and distribution requirements vary by jurisdiction, families should obtain state-specific legal advice.

Trust assets may be invested and used to pay for the beneficiary's supplemental needs. Distributions should complement—not automatically replace—government benefits and must be evaluated under the rules of each applicable program.

The trustee should coordinate distributions with the rules governing SSI, Medicaid, housing assistance, and other public benefits. Payments for food, shelter, cash, or cash equivalents may reduce benefits or affect eligibility, while other supplemental expenses may receive different treatment. A properly drafted trust alone does not preserve eligibility; careful administration is equally important.

Special needs trusts may be funded with life insurance, gifts or inheritances from parents or grandparents, the beneficiary's own assets, or settlement proceeds. The source of the assets determines the type of trust, applicable Medicaid-reimbursement requirements, and who may establish or amend the arrangement.

Parents may establish a special needs trust during life but fund it at death through a will or revocable trust. The special needs trust may also be named as the beneficiary of life insurance, retirement accounts, or other assets when appropriate. Beneficiary designations should be coordinated with the estate plan and reviewed by qualified legal and tax advisers.

Which requirements must be kept in mind?

For 2026, an SSI recipient generally may have no more than \$2,000 in countable resources (\$3,000 for an eligible couple), although many assets are excluded and state Medicaid rules may differ. The beneficiary's age is not a universal eligibility requirement for every special needs trust. Rather, a first-party special needs trust under 42 U.S.C. § 1396p(d)(4)(A) must be established for an individual with a disability who is under age 65 and must satisfy the statute's other requirements, including Medicaid reimbursement at death. Third-party special needs trusts follow different rules and are not subject to that federal under-65 establishment requirement.

Citation: [SSA: SSI Resources, 2026 Edition](#)

A first-party special needs trust funded with the beneficiary's own assets generally must reimburse the state Medicaid program at the beneficiary's death, up to the amount of medical assistance paid on the beneficiary's behalf. By contrast, a properly drafted third-party special needs trust funded by parents,

grandparents, or others generally has no federal Medicaid payback requirement. Any remaining assets may pass to the remainder beneficiaries named in the trust, subject to its terms and applicable state law.

Citation: Social Security Administration, POMS SI 01120.203, Exceptions to Counting Trusts,
<https://secure.ssa.gov/poms.nsf/lnx/0501120203>

The trust should be drafted by counsel familiar with special-needs planning, public benefits, tax rules, and the beneficiary's state of residence. Gift-tax annual-exclusion treatment depends on whether a transfer is a present-interest gift and should not be assumed merely because a trust is used.

For a family committed to supporting a relative with a disability over a lifetime, a properly drafted and carefully administered trust is usually the most reliable way to deliver that support without putting essential public benefits at risk.

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Planning for Health Issues and Financial Management

Helping a parent with money management as capacity declines.

The Alzheimer's Association estimates that 7.4 million Americans age 65 and older are living with Alzheimer's disease in 2026—about 1 in 9 people in that age group—and 74% are age 75 or older. National health and long-term care costs for people with Alzheimer's or other dementias are projected to reach \$409 billion in 2026. Social Security Administration life tables also indicate substantial longevity at age 65, reinforcing the need to plan for the possibility of many years of health care, caregiving, and financial-management needs. These trends can materially affect family wealth and long-term planning.

Citation: [Alzheimer's Association: 2026 Facts and Figures](#)

Sources: [Alzheimer's Association — 2026 Alzheimer's Disease Facts and Figures](#); [Social Security Administration — Actuarial Life Table used in the 2026 Trustees Report](#).

Your choices.

Assistance with a parent's finances generally falls along a spectrum. At the informal end, an adult child monitors the situation, confirms that bills and insurance premiums are paid on time, and watches for missed deadlines or unusual transactions, without holding any legal authority. Assuming formal authority is a different step, and there are two principal paths depending on whether the parent still has the capacity to grant it.

Option 1: Act under a durable power of attorney while the parent still has capacity.

A power of attorney is a legal document that grants an agent specifically defined authority to manage financial matters on another person's behalf. Without a valid power of attorney, a financial institution may refuse to recognize your authority to act for a parent.

Citation: [Texas Estates Code: Durable Powers of Attorney](#)

A durable power of attorney lets you handle the financial matters of another person immediately. The alternative - a springing power of attorney - only takes effect when a medical diagnosis confirms that person's incapacity under applicable law. Copies of the power of attorney should be sent to any financial institution at which your parents have accounts or policies. It may be wise to get a durable power of attorney before your parent is unable to make financial decisions; many investment firms require the original account owner to sign a form to allow another party access to an account owner's invested assets.

An agent acting under a power of attorney will need an accurate picture of the parent's financial life, including:

- The sources of income, such as Social Security, pensions, annuities, and investment accounts
- The location of wills, deeds, titles, and trust documents

- Current beneficiary designations on insurance policies, IRAs, and employer retirement plans
- The attorney, CPA, insurance agent, and wealth manager already working with the parent, each of whom should be introduced to the agent in advance
- The crucial information: financial institutions, account types, insurance policies, recurring obligations, and the location of secure credential records. Do not place passwords, PINs, or Social Security numbers in an unsecured worksheet or distribute them by ordinary email.
- Relevant medical history, treating physicians, and current prescriptions

If capacity has already declined to the point that the parent can no longer validly execute a power of attorney, that option is closed and a court proceeding becomes the remaining alternative.

Option 2: Seek a court-appointed guardianship or conservatorship of the estate.

This path runs through the probate court. A family member, or counsel acting for the family, files an application asking the court to appoint someone to manage the person's financial affairs. The applicant must establish incapacity through evidence, which ordinarily includes a physician's written examination or certificate describing the person's condition and its effect on financial decision making. In Texas the proceeding is a guardianship of the estate; other states use the term conservatorship.

The court reviews the relevant evidence, may interview the parties, and typically conducts a background check on the proposed conservator before holding a hearing. If the court appoints a conservator, that person receives authority to manage some or all of the protected person's income and assets, subject to the court order and ongoing oversight.

How do conservatorships differ from guardianships?

Terminology varies by state, but a guardian generally makes personal, medical, and residential decisions for a protected person, while a conservator generally manages the person's finances and property. A court may appoint one individual to serve in both roles or assign the responsibilities to different people.

Citation: [Texas Estates Code: Guardianship](#)

What if I don't want to assume this kind of responsibility?

Daily money management services exist for families who cannot take on the routine work themselves. Providers assist with bill paying, medical claim filing, recordkeeping, and similar recurring tasks, and some wealth management firms offer comparable support within a broader family office service. Because these providers gain access to sensitive accounts and documents, verify credentials, references, insurance, and background information before engaging anyone. The American Association of Daily Money Managers maintains a directory at aadmm.com.

The other choice is to give a relative, a financial services professional, or a family lawyer durable or springing power of attorney or limited or full conservatorship. Such a decision must not be made lightly.

Guard against financial exploitation.

Legal authority alone does not prevent elder financial abuse. Warning signs include a new acquaintance who becomes closely involved in financial matters, sudden changes to beneficiary designations or account access, unexplained withdrawals, and reluctance to discuss finances that were previously open. Monitoring statements, keeping a second trusted person informed, and asking the custodian about

trusted-contact and account-alert features all reduce the risk. If something appears wrong, investigate promptly and involve counsel or Adult Protective Services when warranted.

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Avoiding the Family Feud

Why the most expensive estate plan is the one that ends up in court.

Most estate plans are built to answer two questions: who receives the property, and how much tax will be paid along the way. A third question receives far less attention and frequently proves the most costly: will the people left behind be able to carry out the plan without turning on one another? Family disputes rarely begin with a defective document. They begin with an ambiguity, a perceived slight, a fiduciary who communicates poorly, or a relative who believes a parent was not acting freely. Once a disagreement reaches a courtroom, legal fees are typically paid from the very assets the family is arguing over, administration stalls, and relationships that took decades to build can be damaged beyond repair.

Key insights

- The first empirical study of trust litigation found that roughly three-quarters of contested cases arose after the grantor's death, during the successor trustee's administration, and that most pitted siblings against one another.
- Naming one child as trustee over siblings who share in the same trust is among the most reliable predictors of conflict.
- Sophisticated plans fail at the point of transition: the Buffett marital trust stalled over co-trustee control and income, and the Ford family entities stalled over who decides that the founder is incapacitated.
- Clear fiduciary rules, a defined incapacity process, early family communication, and mediation do more to prevent litigation than no-contest or arbitration clauses.

A trust is not a peace treaty

The conventional advice has long been that a revocable living trust keeps a family out of court. The first empirical study of trust litigation, published in the Washington University Law Review in 2026, shows the picture is more complicated. Professors David Horton, Reid Kress Weisbord, and Christopher J. Ryan, Jr. reviewed thousands of civil filings to identify every contested trust proceeding calendared in San Francisco Superior Court from 2014 through 2020, producing a dataset of 640 petitions. Their central finding is that the feature that makes a revocable trust attractive, a successor trustee who can manage property privately for years after the grantor's death, is also the source of most of the litigation. Roughly three-quarters of the cases grew out of that post-death administration process.

The disputes were not, for the most part, nuisance claims filed to extract a quick payment. The authors found little evidence of fast, low-value settlements. Instead, the cases often set siblings against one another and appeared to be driven as much by family history as by legal merit. Nearly a quarter involved a descendant beneficiary suing another descendant who was serving as trustee while also sharing in the trust. A trustee was accused of misconduct, most often a breach of the duty of care or loyalty, in 74% of the cases, and nearly a third of the petitions demanded a detailed accounting, a strong signal that

beneficiaries suspected the money was being mismanaged. The average matter, including those that settled, lasted 481 days.

The size of the estate is not a reliable predictor of conflict. The study opens with the estate of a San Francisco widower whose most valuable asset was the family home. He signed a revocable trust specifically so his three children could inherit without going through probate, and the estate nonetheless became the subject of extended litigation among them. The authors also singled out one arrangement as a particular source of trouble: naming one child as trustee with discretion over distributions to siblings who share in the same trust. That structure layers a real imbalance of power on top of ordinary sibling rivalry and can deepen any existing sense that a parent played favorites.

Citation: Horton, Weisbord & Ryan, Trust Litigation, 104 Wash. U. L. Rev. 1 (2026), <https://washulawreview.org/trust-litigation/>

Citation: CNBC, New study reveals the estate-planning choices that are likely to pit heirs against each other (Sept. 25, 2026), <https://www.cnbc.com/2026/09/25/study-estate-planning-heirs-legal-battles.html>

When a well-built plan meets an unworkable partnership

The estate of Jimmy Buffett, who died in September 2023, shows that a carefully structured plan can still end up in court. Buffett directed assets estimated at \$275 million into a marital trust naming Jane Buffett, his wife of 46 years, as the sole lifetime beneficiary, with the couple's three children as remainder beneficiaries. Rather than give her sole authority, he named his longtime business manager, Richard Mozenter, to serve as co-trustee alongside her. According to court filings, the trust holds roughly \$35 million of real estate, an approximately 20% stake in the Margaritaville business valued near \$85 million, and interests in aircraft, vehicles, and music equipment. On paper, the design reflected conventional planning: lifetime support for a surviving spouse, professional oversight, and a defined remainder for the next generation.

The partnership broke down. Mrs. Buffett has alleged that her co-trustee withheld financial information, excluded her from decisions about assets held for her benefit, and charged the trust millions of dollars in fees. Mr. Mozenter has denied any mismanagement and maintains that Buffett deliberately limited his wife's authority. Income became a central flashpoint. In early 2025, Mr. Mozenter estimated the trust would generate less than \$2 million of net income a year, explaining that most of its value sat in real estate that produced no rent and in stock that paid no dividends, and that much of Buffett's income had come from touring and merchandise that largely ended at his death. In 2025, Mr. Mozenter sued in Palm Beach County, Florida, to remove Mrs. Buffett as co-trustee, and she counterclaimed to remove him. He has since sought to decant the assets into a new trust that would remove her as co-trustee and give Buffett's sister veto power over her decisions about the children's inheritances, a step Mrs. Buffett has opposed. A Florida appellate court has upheld a ruling allowing the co-trustee to bill the trust for reasonable attorneys' fees, and the case is headed for trial in January.

The conflict has also reached the next generation. Court filings include text messages in which Mrs. Buffett, frustrated with her eldest daughter, who had sided with the co-trustee, suggested the daughter's expected inheritance was at risk. Mrs. Buffett has denied any plan to disinherit her daughter. The presiding judge observed that the case lacked the usual hallmarks of an estate fight and instead set a longtime financial adviser against a 46-year marriage. The allegations on both sides remain unresolved, and their mention here is not a finding that any party acted improperly.

The lesson is not that the planning was careless. Three practical points stand out:

Income must match expectations. A trust meant to support a surviving spouse has to produce the cash flow that spouse expects. An asset mix concentrated in non-income-producing real estate and closely held stock can meet the plan's transfer goals while leaving the beneficiary short of income, and the gap tends to surface only after death. Modeling the trust's expected income with the wealth manager before it is funded can expose the problem while it can still be fixed.

Co-trustees need written rules. A co-trustee arrangement can provide valuable checks and balances, but only if the document addresses how information is shared, how decisions are made, how a deadlock is broken, and how a trustee is removed. Without those rules, a safeguard can become a standoff.

The trust usually pays for the fight. Reasonable trustee legal fees are often payable from trust assets, so the beneficiaries the trust was meant to protect end up funding both sides of the dispute. Explaining the reasons for the structure to the spouse and children while the grantor is alive is one of the most effective ways to keep that from happening.

Citation: The Wall Street Journal, Lost in Margaritaville: The Messy Drama Over Jimmy Buffett's \$275 Million Trust, <https://www.wsj.com/style/lost-in-margaritaville-drama-jimmy-buffett-275-million-dollar-trust-65710c8d>

When capacity and control are called into question

A Dallas family illustrates a different and increasingly common trigger: a dispute over whether the founder can still make his own decisions. The Wall Street Journal reported in August 2026 that Gerald J. Ford, the banking veteran who built Hilltop Holdings, the roughly \$2.2 billion parent of PlainsCapital Bank, PrimeLending, and Hilltop Securities, is in litigation with four of his adult children over his stake of more than 26% in the company, valued at about \$600 million. The plaintiffs include his son Jeremy, who succeeded him as chairman in 2025 and also serves as chief executive.

The family had already done much of the conventional planning. Most of the economic benefit of the shares had been shifted to the children through family entities, while voting control and management of the stock remained with their father. The entity documents also contained a clause allowing a buyout of his interests if he became incapacitated. In April 2025, Jeremy Ford invoked that clause, asserting that his father had suffered a traumatic brain injury in 2017 and had experienced progressive cognitive decline since, and alleging that his father was being taken advantage of by his wife, Kelli O. Ford, and an executive of his family office. Mr. Ford's side denied that he was incapacitated and declined a cognitive test, and the children sued to force a transfer of voting control and to prevent the assets from being liquidated.

The parties reached a term sheet under which Mr. Ford would give up control of certain family entities in exchange for payouts valued at roughly \$185 million, while keeping part of the stock along with personal assets and privileges. That agreement then collapsed. Mr. Ford's lawyers asked the court to enforce it, and the children responded that it was never binding. In July 2026, Mr. Ford withheld his votes for the entire Hilltop board, leaving three directors without a majority, and the children disputed his authority to vote shares held by a family investment vehicle. Mr. Ford, his wife, and his children from his second marriage reject the claims of decline and undue influence and describe the suit as an effort to obtain more than the older children have already been given. The Wall Street Journal noted that if Mr. Ford, now 82, were to die, it is unclear who would hold voting control of the stake. These are contested allegations, and the courts have not resolved them.

Blended families, a concentrated family business, unequal lifetime gifts, and questions about capacity are among the most combustible ingredients in estate planning. The Ford dispute shows that a plan can be well advanced and still fail at the point of transition. Three practical points stand out:

Define incapacity before it is in question. An incapacity clause that does not specify who makes the determination, what evidence is required, and what happens if the person declines an examination invites exactly the fight it was meant to prevent. Naming one or more independent physicians, setting a clear certification process, and providing a tie-breaking mechanism give the family an objective path instead of a lawsuit.

Plan for voting control, not just economic value. Shifting the economic benefit of a business interest to the next generation is a common and effective strategy, but someone must still vote the shares. The documents should state who holds that authority if the founder becomes incapacitated or dies, so that control of a business does not become the prize in a family dispute.

Keep governance documents current and settlements in binding form. Family entity agreements, buy-sell provisions, and succession arrangements should be reviewed together with the estate plan while the founder's capacity is unquestioned and documented at the time of signing. When a family does negotiate a resolution, a term sheet that the parties later dispute can prolong the conflict rather than end it.

Citation: The Wall Street Journal, A Texas Banking Billionaire and His Children Are Locked in a Bitter Succession Drama (Aug. 2026), <https://www.wsj.com/business/a-texas-banking-billionaire-and-his-children-are-locked-in-a-bitter-succession-drama-0b39ffaa>

Common sources of family conflict

The research and the cases above point to a recurring set of circumstances that put a plan at risk:

- One child serving as trustee or executor over siblings who share in the same estate or trust.
- Unequal distributions, or lifetime gifts and loans that were never documented or equalized.
- Blended families, second marriages, and children from different relationships.
- Late-life changes to documents, particularly changes that favor a caregiver, a new spouse, or an adviser.
- Co-fiduciaries appointed without clear rules for decision-making, compensation, and deadlock.
- A trust whose investments do not produce the income the lifetime beneficiary expects to live on.
- Incapacity clauses or buyout triggers that do not say who decides, on what evidence, or what happens if an examination is refused.
- Economic ownership shifted to the next generation while voting control remains with the founder, with no named successor for that vote.
- A trustee who does not communicate, provide statements, or make distributions on a predictable schedule.
- A family home, ranch, business interest, or treasured personal property that cannot be divided neatly.

Steps that reduce the risk of a dispute

1. Choose fiduciaries for temperament and neutrality, not birth order. The person who administers the plan matters as much as the plan itself. When naming a family member would place that person in a conflict with siblings, consider an independent individual or corporate trustee, or a structure that separates investment management from distribution decisions.

2. Explain the reasons behind the plan. Unequal treatment is often perfectly sensible, but unexplained differences invite suspicion. A written statement of intent, prepared with counsel, can help beneficiaries understand that a decision was deliberate rather than the product of pressure or oversight.

3. Communicate while you are able to. A family meeting, held with the attorney or wealth manager present, gives heirs the chance to hear the plan directly, ask questions, and meet the fiduciaries before emotions run high. Surprises discovered after death are a leading cause of litigation.

4. Protect the record of capacity and independence. Work with experienced counsel, keep beneficiaries out of drafting meetings, and, for older clients or sensitive changes, consider a contemporaneous medical evaluation. Any incapacity standard in a trust or entity agreement should name who makes the determination and how. These steps make it far harder to challenge a document later on grounds of incapacity or undue influence, the core issue in the Ford litigation.

5. Build transparency into administration. Require the trustee to provide regular statements and accountings, define distribution standards clearly, and set expectations for timing. Beneficiaries who can see what is happening are less likely to assume the worst.

6. Plan for deadlock and dispute resolution. Include tie-breaking mechanisms for co-trustees, a process for removing and replacing a fiduciary, and a requirement to mediate before litigating. The Buffett dispute shows how quickly co-trustees without those rules can end up seeking to remove each other in court. In the San Francisco study, no-contest and arbitration clauses played almost no role in the cases, while court-sponsored mediation reliably produced settlements.

7. Keep every document and designation consistent. A will, a trust, beneficiary designations, account titling, and business agreements that point in different directions invite conflict. Review them together after any marriage, divorce, birth, death, or significant change in wealth.

8. Provide liquidity and a plan for hard-to-divide assets. Buy-sell agreements, life insurance, specific bequests of personal property, and clear instructions for a family home or business can prevent heirs from being forced into co-ownership they never wanted.

9. Match the trust's investments to its purpose. A trust created to support a surviving spouse should be modeled for expected income before it is funded. Non-income-producing real estate and closely held stock may serve long-term transfer goals but leave a lifetime beneficiary short of cash, which is the kind of gap that turned the Buffett trust into a dispute.

Citation: Horton, Weisbord & Ryan, Trust Litigation, 104 Wash. U. L. Rev. 1 (2026), <https://washulawreview.org/trust-litigation/>

Texas considerations

Texas law gives beneficiaries meaningful tools to monitor a trustee. A trustee owes a duty of full disclosure of material facts, and a beneficiary may demand a written accounting under Section 113.151 of the Texas Property Code. Texas also enforces no-contest, or forfeiture, provisions in wills and trusts, but generally will not enforce them against a beneficiary who brought the action with probable or just cause and in good faith. These clauses can discourage weak claims, but they do not replace a well-chosen fiduciary,

clear documents, and open communication. Families should review the enforceability and scope of any such provision with Texas estate-planning counsel.

Citation: Texas Property Code, Chapter 113 (trustee powers, duties, and accountings),

<https://statutes.capitol.texas.gov/Docs/PR/htm/PR.113.htm>

Citation: Texas Estates Code, Section 254.005 (forfeiture clauses in wills),

<https://statutes.capitol.texas.gov/Docs/ES/htm/ES.254.htm>

Citation: Texas Property Code, Section 112.038 (forfeiture clauses in trusts),

<https://statutes.capitol.texas.gov/Docs/PR/htm/PR.112.htm>

Bottom line

A family feud is rarely about money alone. It is usually about control, fairness, and the feeling of having been left out. The research and the Buffett and Ford disputes point to the same conclusion: the plans that end up in court are often well drafted but silent on the hard questions of who decides, how disagreements are resolved, and whether the family understood the plan before it took effect. The most effective protection is a plan that is current, internally consistent, administered by the right people, and explained to the family before it is needed. McGowanGroup Asset Management will coordinate with your attorney and CPA to keep account titling, beneficiary designations, and fiduciary arrangements aligned with your documents, and can help facilitate family conversations so that the plan you design is the plan your family carries out.

Important disclosure: This material is for general educational and discussion purposes only. It is not individualized investment, legal, accounting, or tax advice and cannot be relied upon to avoid tax penalties. Estate-planning outcomes depend on federal and state law, document drafting, asset ownership, beneficiary designations, family circumstances, and proper implementation. Descriptions of litigation are based on published reports of allegations that may be disputed and have not been finally resolved. McGowan Group Asset Management, Inc. is an SEC-registered investment adviser. Registration does not imply a particular level of skill or training. The firm does not practice law or public accounting and will coordinate with a client's chosen attorney and tax professional. Information is believed reliable as of October 2026 but may change. Clients should obtain current professional advice before acting.

Power of Attorney and Advance Directives

*Planning for the period when you are alive but unable to act
for yourself.*

Every estate plan eventually confronts a period in which the client is alive but unable to act. Wills and trusts govern what happens at death; powers of attorney and advance directives govern the interval before it. In practice this interval is where families encounter the most friction, because the documents must be accepted by third parties — banks, custodians, hospitals, and physicians — who were not involved in drafting them and who apply their own review standards.

The financial power of attorney

A financial power of attorney is a written delegation of authority. The person granting it is the principal; the person receiving it is the agent. Texas provides a statutory durable power of attorney form under Chapter 752 of the Estates Code, and an instrument that substantially conforms to that form carries meaningful practical advantages when presented to a financial institution.

The instruments differ in when and how long they operate. A nondurable power of attorney terminates if the principal becomes incapacitated, which limits it to discrete transactions such as a real-estate closing or an extended absence. A durable power of attorney contains language stating that it survives the principal's later incapacity; it is effective on execution and continues until revoked or until the principal's death. A springing power of attorney becomes effective only when a triggering event occurs, ordinarily a written certification of incapacity by one or more physicians. Springing instruments appeal to clients uncomfortable with granting immediate authority, but they introduce delay and a medical-certification step precisely when speed matters. Most Texas planning today favors an immediately effective durable instrument delivered to an agent the principal genuinely trusts.

Citation: Texas Estates Code, Chapter 752, Statutory Durable Power of Attorney,
<https://statutes.capitol.texas.gov/Docs/ES/htm/ES.752.htm>

What the agent may and may not do

Subject to the document's terms and applicable law, an agent may be authorized to pay bills, manage bank and brokerage accounts, buy and sell real property, operate a business interest, file tax returns, deal with insurance and retirement-plan administrators, and handle government benefits. Certain powers are not implied and must be expressly granted in the instrument — most importantly the authority to make gifts, to create or amend a trust, to change beneficiary designations, or to create rights of survivorship.

Counsel should make these choices deliberately, because a broad gifting power can be misused and a missing one can block legitimate planning during incapacity.

An agent is a fiduciary. The agent must act in the principal's interest, keep the principal's property separate from the agent's own, maintain records, and account when required. An agent may not write or revoke the principal's will, and using the principal's assets for the agent's own benefit outside the document's terms may constitute financial exploitation of an elder or incapacitated person. Granting the power to more than one agent, or naming a successor and requiring periodic accountings to a third party, can add a layer of oversight where family circumstances warrant it.

The acceptance problem

A properly executed power of attorney is only useful if it is honored. Institutions sometimes hesitate over instruments executed many years earlier, request their own proprietary forms, or route the document through internal legal review. Texas law establishes a process for presenting a durable power of attorney, permits an institution to request an agent's certification or an opinion of counsel within a defined period, and provides remedies when acceptance is unreasonably refused. A remedy pursued during a health crisis is nonetheless a poor substitute for preparation. Deliver copies to each custodian, bank, and insurer in advance, confirm in writing that the form will be accepted, and re-execute the document periodically so no institution can object to its age.

Advance directives for health care

Texas health-care documents are governed by the Advance Directives Act, Chapter 166 of the Health and Safety Code, which recognizes three principal instruments. A medical power of attorney designates a health-care agent to make treatment decisions and takes effect when the attending physician certifies in writing that the principal is unable to make those decisions. A directive to physicians, commonly called a living will, states the principal's own instructions about life-sustaining treatment in the event of a terminal or irreversible condition. An out-of-hospital do-not-resuscitate order instructs emergency personnel outside a hospital setting.

These documents are complementary rather than interchangeable. The medical power of attorney appoints a decision-maker for the full range of medical decisions; the directive to physicians expresses the principal's own wishes in the narrower end-of-life circumstances it describes. Executing both reduces the chance that an agent is left guessing, and discussing the instructions with the named agent beforehand matters as much as the signatures.

Citation: Texas Health and Safety Code, Chapter 166, Advance Directives, <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm> ; Texas Health and Human Services, Advance Directives forms, <https://fhhb.hhs.texas.gov/forms/advance-directives>

HIPAA authorization

The HIPAA Privacy Rule restricts a covered health-care provider from disclosing protected health information without the patient's authorization or another permitted basis. An agent who cannot obtain medical information may be unable to make an informed decision or to satisfy a certification requirement. For that reason, health-care documents should be paired with a separate written HIPAA authorization naming the agent and any other individuals who should receive information. Keep the authorization current and give copies to treating physicians and any facility involved in care.

Citation: U.S. Department of Health and Human Services, HIPAA Privacy Rule, <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

Execution, storage, and review

Execution requirements differ by document and by state. Texas permits a medical power of attorney, directive to physicians, and out-of-hospital DNR order to be signed before two qualifying witnesses or, alternatively, acknowledged before a notary, and it recognizes digital and electronic signatures when statutory conditions are met. The statutory durable power of attorney must be acknowledged before a notary. Store signed originals where the agent can reach them, not in a safe-deposit box the agent cannot open, and distribute copies to the agent, successor agents, treating physicians, and each financial institution.

Review the package after any marriage, divorce, death, relocation to another state, serious diagnosis, or change in the relationship with a named agent. A designation naming a spouse as medical agent is automatically revoked in Texas if the marriage is dissolved, annulled, or declared void unless the document provides otherwise — a detail that is easy to overlook after a divorce.

Where to begin

These documents should be drafted by Texas counsel experienced in estate planning or elder law, not assembled from generic forms. McGowanGroup Asset Management will coordinate with your attorney and tax professional, confirm that each custodian holding your accounts has the current instrument on file, and keep the designations aligned with the rest of your estate plan.

Authoritative references for this section:

1. Consumer Financial Protection Bureau, Managing Someone Else's Money: Guides for agents under a power of attorney, <https://www.consumerfinance.gov/consumer-tools/managing-someone-elses-money/>
2. Texas Estates Code, Chapter 752, Statutory Durable Power of Attorney, <https://statutes.capitol.texas.gov/Docs/ES/htm/ES.752.htm>
3. U.S. Department of Health and Human Services, Summary of the HIPAA Privacy Rule, <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>
4. Texas Health and Safety Code, Chapter 166, Advance Directives, <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm>
5. Texas Health and Human Services, Advance Directives forms, <https://fthb.hhs.texas.gov/forms/advance-directives>

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2026 Authoritative Sources and Annual Review Notes

This section identifies primary or authoritative sources used for the 2026 review. Dollar limits and legal requirements should be rechecked each year and after material federal or state-law changes.

Topic	Primary reference
Federal estate, gift, and GST tax	Internal Revenue Service, Revenue Procedure 2025-32; 2026 Instructions for Forms 706 and 709; IRS Estate and Gift Tax guidance.
Portability	Internal Revenue Service, Form 706 instructions and Revenue Procedure 2022-32, including available simplified procedures for certain late portability elections.
Retirement-account beneficiaries	Internal Revenue Service, Publication 590-B and final required-minimum-distribution regulations under the SECURE Act framework.
Special needs and SSI	Social Security Administration, 2026 SSI Resources guidance and Program Operations Manual System provisions addressing trusts and ABLE accounts.
ABLE accounts	Social Security Administration, 2026 ABLE Account Spotlight. Beginning January 1, 2026, the disability-onset requirement expanded from before age 26 to before age 46; the 2026 standard contribution limit is \$20,000, subject to additional rules for certain working beneficiaries.
HIPAA	U.S. Department of Health and Human Services, Summary of the HIPAA Privacy Rule and current authorization guidance.
Alzheimer's statistics	Alzheimer's Association, 2026 Alzheimer's Disease Facts and Figures.
Family entities	Internal Revenue Code sections 2036 and 2038, applicable Treasury regulations, IRS estate-and-gift-tax examination guidance, state partnership law, and current case law.
Charitable remainder trusts	Internal Revenue Code section 664, applicable Treasury regulations, and current IRS charitable-trust guidance.