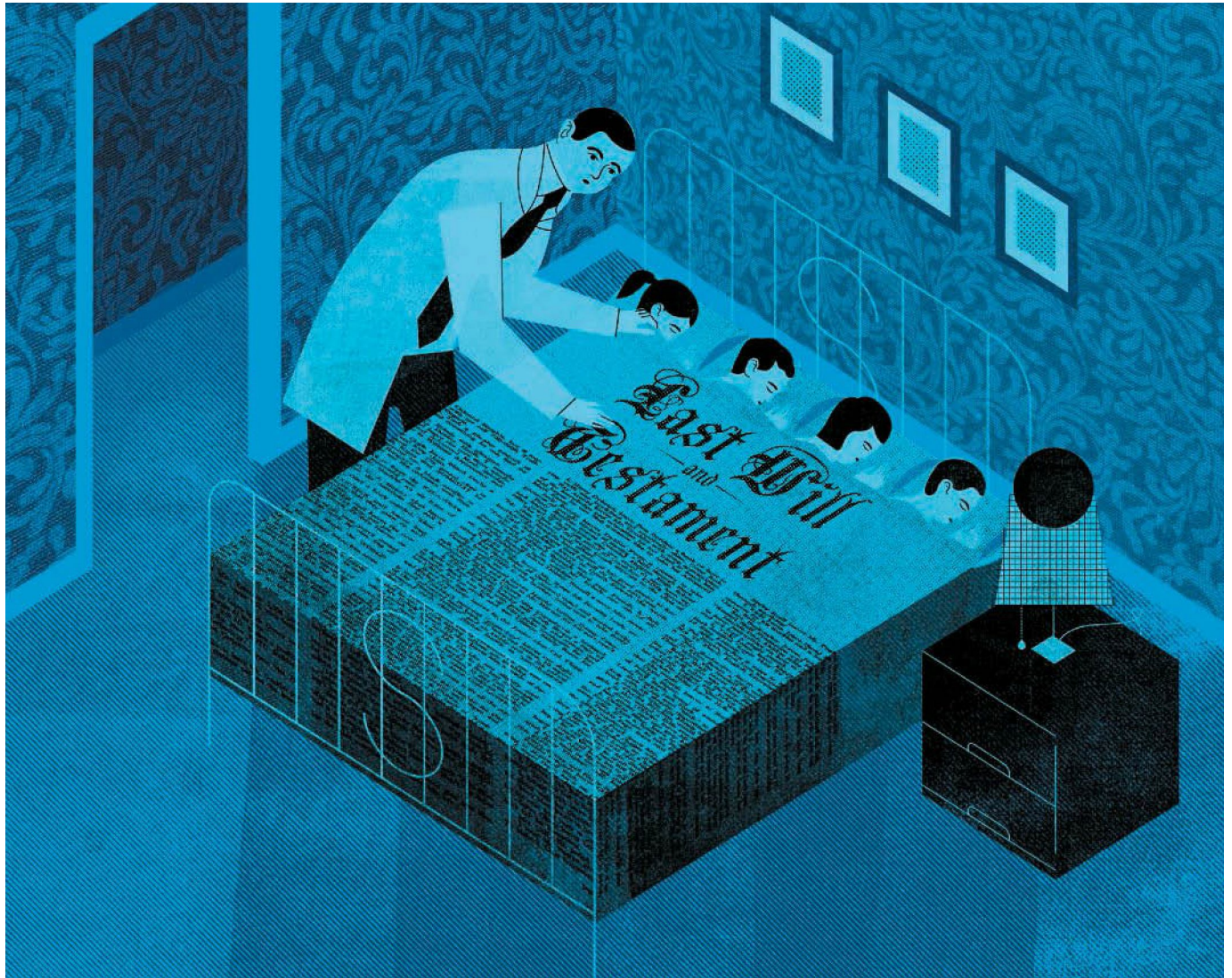


# You can't take it with you, so plan your estate carefully



HERE'S HOW TO MAKE SURE YOUR ASSETS ARE PROTECTED AND DISTRIBUTED THE WAY YOU WANT

[ By **STEVEN PODNOS, MD, CFP**, and **ERIK SHUMAN, JD** | Illustration by **KEITH NEGLEY** ]

**I**mplementing an estate plan is a crucial part of the process when we sit down to help doctors and their families with their financial lives. Developing an effective plan requires a skilled and specialized attorney and considers your state's laws.

Think of an estate plan as governing what happens to your minor children and your money after you die. Estate plans also involve your will, trusts, and other documents that will guide your affairs in the event that you become in-

capacitated. Your estate plan is a “living” contract that you should change as your life—and the law—evolves.

## **WILLS**

Your will should name guardians for your children in case you were to die while they are still minors. It is prudent to name both an initial and a successor guardian. Note that the guardian of your child's money need not be the same as the person who cares for your child. ➔

The will also provides for the collection and distribution of assets by a personal representative (or executor). Wills generally do not dictate the distribution of assets that are held in trust or that automatically pass at death via beneficiary designations (as with life insurance or jointly owned property). Many wills specify that collected assets “pour over” into established trusts once the estate is settled.

**“When you establish a trust, you will need to name a succession of trustees who have the capacity, willingness, and wisdom to execute the duties required by the trust.”**

**DOCUMENTS YOU’LL NEED IF YOU BECOME INCAPACITATED**

Although most physicians are well aware of the ravages of physical and mental decline, many do not prepare for these inevitabilities in their own lives. Documents you can use to make your wishes known regarding life-extending medical care include:

**Durable power of attorney.** This document gives a designated person (your “agent” or “attorney in fact”) the authority to make legal and financial decisions on your behalf in the event you are no longer able to make these decisions yourself.

**Healthcare surrogate.** This is an adult you’ve appointed to make your healthcare decisions if you become mentally or physically incapacitated.

**Living will.** Also known as an advance directive, this is a written record that specifies your wishes regarding life-prolonging medical procedures if you become terminally ill and unable to speak for yourself.

**Pre-need guardian designation.** This document names those whom you wish to serve as guardians of your person and property should you become incapacitated.

**TRUSTS**

Misunderstandings about what trusts are and how they work are very common.

Think of a trust as a large bucket holding your money and property (your assets). Your trust document creates the bucket, and you can arrange for assets to be put into the trust during your lifetime or at your death. The trust has one or

more trustees (individuals or companies that control, but do not own, the assets) and spells out how the assets are to be administered and the identities of the beneficiaries who are the ultimate owners/recipients of the bucket’s contents.

Most trusts formed during your lifetime are revocable, meaning that assets can be added to or removed from the trust as you deem fit. This type of trust, often called a living trust, uses your Social Security number as its tax identification number.

Living trusts generally do not provide any asset protection and are reachable by your creditors. At your death, the trust becomes irrevocable, meaning that the terms cannot be changed and the trustee must follow strictly the trust terms in determining how the assets are administered, and for whom.

When you establish a trust, you will need to name a succession of trustees who have the capacity, willingness, and wisdom to execute the duties

required by the trust. In addition, you must determine how the money will be distributed. For example, a trust may specify that your spouse and children are initial beneficiaries. But what about your grandchildren? What if some of your children have offspring and some do not? Are distributions mandatory, triggered by certain events or attained ages, or are distributions allocated at the discretion of the trustee(s)? How much power should the trustees have? How long will the trust exist?

Estate planners use trusts for a variety of reasons including estate tax savings, financial management, and asset protection for heirs.

**Estate taxation.** You have three options for passing on assets tax-free after you die. First, you have the right to leave an unlimited sum to your U.S.-citizen spouse, either outright or in the form of certain types of trusts. Second, you can leave unlimited sums to charity.

Your third option is to make gifts to

**POWER POINTS**

A durable power of attorney, healthcare surrogate, and living will can protect you and your heirs if you become incapacitated.

To shield your money and other assets, put them in a trust that names beneficiaries and specifies how your assets will be distributed.

The astute use of gifts and trusts can help you sidestep estate taxes and leave more of your estate to your heirs.

Be sure to update your estate plan at least once every 5 years, especially if your financial situation or family makeup changes.

your heirs up to the limit of the gift tax exemption. The exemption amount currently is \$5 million per person over a lifetime, but it is scheduled to drop to \$1 million in 2013.

In addition, for 2012 and possibly beyond, both spouses may take advantage of the exemption, meaning that up to \$10 million can pass to heirs without being subject to estate taxation. Assets greater than the exemption amount are taxed at a rate of 35%—an amount scheduled to increase to 55% in 2013.

Until 2011, married couples with combined assets in excess of the estate tax exemption amount were advised to establish a “bypass” trust upon the death of the first spouse. The bypass trust, which is designed to maintain the exemption amount upon the death of the second spouse, preserves the ability of both spouses to use their legally allowed monetary exclusion from the estate tax.

With the new \$10 million (combined) exclusion amount, however, some advisers have stopped recommending bypass trusts. Several excellent reasons to have them still exist, however. First, they will be very useful if the exclusion amount drops significantly, as is currently planned to occur. Second, they provide important asset protection and control of funds. Bypass trusts also shield heirs from certain state estate taxes (most states have their own estate tax rules).

Note that not all taxes due in an estate are estate taxes. Income in respect to a decedent refers to income taxes due on assets that have never been taxed. Usually these assets are in individual retirement accounts and other retirement plans. An income tax assessment is made at the time of the asset owner's death, and if the same assets also are subject to estate taxes, a future income tax deduction is available to ease the sting of the double taxation.

**Control of assets.** Trusts funded either during your lifetime or at your death become irrevocable at the time of your death, and their function from then on is determined by the trust document. This document usually is written in a way that controls and protects assets.

Regarding control, the trust document indicates how and when assets are to be paid out to beneficiaries. If you fear that a beneficiary may squander his or her inheritance, the trust may be structured to pay out assets in a very controlled manner to avoid waste and loss. Incentives can be built into the trust document that reward certain behaviors, such as educational milestones, charity work, or gainful employment.

**Asset protection.** Generally, you must decide on a balance between the control and the protection of assets left to heirs. Many options are available, and you should discuss this matter with your estate-planning attorney.

As noted above, properly drafted trusts offer significant asset-control features. An irrevocable trust requires the trustee's approval prior to dispersing assets to a beneficiary's creditor. Because the beneficiary is not in control of trust assets, creditors usually will fail in their efforts to access the trust assets to satisfy their claims against a beneficiary.

If a beneficiary also serves as a trust's sole trustee (or, in some cases, as a co-trustee), however, it may be possible for a creditor to “pierce” the trust and attach the beneficiary's assets. Any mandatory distributions are available to creditors once distributed to the beneficiary.

Age-triggered distributions, in which an inheriting child receives portions of the trust principal upon reaching certain ages, are especially common. As an alternative, you might decide it would be



## WHY BE AN EMPLOYEE



## WHEN YOU COULD BE THE BOSS?



Join the fastest  
growing urgent care  
network in the world.  
Secure your future and  
change the world!

Prime sites are waiting for you. Financing is available. Doctors Express has a proven operating model and physician leadership with a long track record of success in urgent care medicine. Call or visit online to get started.



**Doctors  
Express**

**888-330-DRX1**

DoctorsExpressFranchise.com

*p.s. Bring your  
A-Game!*

## ADDITIONAL Estate-planning OPTIONS

Your personal or professional circumstances sometimes may require the use of unusual estate-planning tools. Here are a few to consider if you find that more conventional tools don't meet your needs:

### Tenancy by the entireties

In several states this type of concurrent ownership—which is available only to husbands and wives—protects assets from all except for joint creditors. That means tenancy by the entireties can be used to shield assets from a malpractice lawsuit against the physician's spouse. We have seen cases in which assets have been put into a nonphysician spouse's name to protect them from malpractice suits. This practice, however, left the assets vulnerable to joint creditors and other creditors of the spouse owning the assets.

A significant drawback of tenancy by the entireties ownership is that, in the event of divorce or the death of a spouse, the assets go to the surviving spouse, not to the tenancy owner's heirs.

### QTIP trusts for second marriages

A qualified terminal interest property (QTIP) trust allows a spousal transfer of assets at death that comes with more control and asset protection than an outright transfer or a typical marital trust. The QTIP trust allows the spouse with children from a prior marriage to leave some combination of interest and principal to the new spouse while leaving the remaining assets to the children from the first marriage.

### QTIP trusts for inheriting physicians

You might consider the use of QTIP trusts if your spouse

dies and leaves you the sole owner of significant assets while you are still practicing. If you were to be named in a malpractice suit during that time, the inherited assets are vulnerable. If instead your deceased spouse's assets are placed in trust for you, they may be protected from creditors. QTIP trusts qualify for the marital estate tax deduction while still allowing beneficiaries significant control over, and protection for, their assets.

### Living trusts

Holding your assets in living trust ownership provides for a smooth transition to another trustee should you become unable to manage your affairs. At the same time, assets already in a trust at the time of your death avoid probate and are not visible as public records. Putting assets in a living trust makes them much more vulnerable to creditors than other forms of ownership, however, and provides for less protection than tenancy by the entireties.

### Trust protectors

Some trusts add the position of trust protector—an individual or corporate fiduciary who watches over the trustee(s) and is permitted, within specified limits, to change the trust document. Consider naming a trust protector if you have some doubts about your trustees and their capabilities. A trust protector also is valuable when a trust becomes irrevocable and you are no longer able to change its terms.

**"An income tax assessment is made at the time of the asset owner's death, and if the same assets also are subject to estate taxes, a future income tax deduction is available to ease the sting of the double taxation."**

better to have the trustee make all distributions at his or her discretion.

### LIFE INSURANCE AND LIFE INSURANCE TRUSTS

The death benefit of life insurance passes to the beneficiary, free from income taxation. But if the decedent owned the policy, the death benefit is included in the taxable estate. For this reason, life insurance policies with significant face value usually are owned by someone other than the insured.

If a family has significant assets exposed to possible estate taxation, the family's attorney might recommend an irrevocable life insurance trust (ILIT). The ILIT owns the policy, and premiums are paid from annual gifts made to the trust. When the insured dies, the death benefit is paid to the ILIT, and the assets are distributed according to the terms of the trust. To avoid any incidents of ownership, the insured cannot be a trustee of an ILIT.

### TIMES FOR UPDATING YOUR ESTATE PLAN

We recommend having an estate planning attorney review your estate plan at least every 5 years. Ideally, you will have a relationship with trusted advisers who can alert you to tax law or other changes that should trigger a review.

Triggers for a review might include changes in your economic status or in tax laws, and/or significant life events such as the birth of a child, a divorce, or the death of any person named in your documents. Such reviews will help preserve your hard-earned assets and ensure that they pass as quickly as possible to your heirs. ■



*Podnos, top, is the principal of Wealth Care LLC, a registered investment adviser in Merritt Island, Florida.*



*Shuman is a partner with GrayRobinson, a Florida-based corporate law firm. Send your feedback to [medec@advanstar.com](mailto:medec@advanstar.com). Also engage at [www.twitter.com/MedEconomics](http://www.twitter.com/MedEconomics) and [www.facebook.com/MedicalEconomics](http://www.facebook.com/MedicalEconomics).*