

To Save & Protect

Answers to the 10 most commonly asked questions about taxes and estate planning



Tax planning and estate planning are important—especially for women. Since 80% of married women will outlive their husbands, combined with the possibility of a spouse's layoff, divorce, or remaining single, chances are high that all women will at some point in their lives become the head of household and sole breadwinner. So it's important that women develop tax strategies and estate plans that are beneficial to them and their families.

In this final installment of our Women & Money series, **BLACK ENTERPRISE** will answer the 10 most commonly asked questions by women about taxes and estate plans. The answers provide the information and resources needed to make informed decisions and help pass on wealth to future generations. ▶

By The Editors

YOUR ESTATE



Carol Frazer, 33

1. What happens if I die without a will?

Carol Frazer wants to leave something behind. "My will is the financial expression of my legacy," says the 33-year-old senior partnership marketing manager who lives in New York. "What you have built can only continue and manifest itself—in the way that you would like—with a will. There's no other way for it to carry on."

If you die intestate, or without a valid will, all your assets will be distributed according to the laws of the state in which you reside. But those laws may not reflect your final wishes, says Lori Anne Douglass, partner, primary practice area: trusts and estates at the New York-based law firm Moses & Singer L.L.P. A will is also the only legal document that allows parents with

minor children to designate a legal guardian. If you die without a will, then the state where you lived will distribute your assets in accordance with intestate succession. In New York state, for example, the entire estate would be left to the surviving spouse if the deceased had no children. If the deceased had children, then the surviving spouse is entitled to the first \$50,000 plus half of the remaining estate; the other half would go to the children. And if there is neither a surviving spouse nor children, the estate passes to the deceased's parents. That distribution often reflects the state's best guess as to how you might want your assets to be distributed, according to the American Bar Association.

Because Frazer is divorced and has no children, her parents would automatically inherit any remaining assets. Working with an attorney who specializes in estate planning, she instead chose to

leave a sizable share of her assets to her 6-year-old nieces, Reagan and Mariangel, as well as her father, Arturo, and siblings Arturo Jr. and Liza. She is also leaving money to Hogar de Amor, a Honduran orphanage, and her alma mater, Louisiana State University.

A lot of wealth has been lost because people don't know how to properly transfer it, says Douglass, adding that only a third of African Americans have a will, compared with 50% of Caucasians.

"Everyone should have a will, whether they have \$10 or \$10 million," says Wynne Whitman, estate planning attorney and partner with Schenck, Price, Smith & King L.L.P., and author of *Smart Women Protect Their Assets* (FT Press; \$16.99). She goes on to say that people of all ages should have a will and recommends drafting one as early as 18 years of age. "There are horrible things that happen to people every day. No one wants to think about it, but it's the responsible thing to do," says Whitman.

Getting organized is the key to getting over any fears or confusion about estate planning. The first step is to make a list of everything you own. Whitman insists there's nothing too small to list if it has monetary or even sentimental value. When planning your estate, be sure to think carefully about taxes and assets, and about those who will act on your behalf. Details matter. Designate whether or not each beneficiary will pay his or her own taxes, otherwise the state may decide how the taxes are paid.

2. Is it OK if I draft my own will?

The short answer is: probably not. "Every person I know who's tried to draft their own will or power of attorney failed miserably," says estate planning attorney Julie Garber. "I don't recommend it." This is because each state has different laws regarding wills. For example, Garber once had a client who lived in Baton Rouge, Louisiana, and owned property in the Florida Keys. He drafted a handwritten will called a holographic will—and had it witnessed outside of Baton Rouge; however, it was invalid in Florida. He was able to leave assets to his girlfriend, who

who lived in Louisiana, but she wasn't entitled to his Florida property—that went to his daughter.

Even using a book or software has pitfalls, because many use a one-size-fits-all approach. And states have yet to standardize laws regarding estate planning. There's a uniform code, but not all states have adopted it, though some have adopted parts of it.

Douglass agrees that creating a will shouldn't be a do-it-yourself project since each state has its own rules. Plus, there's a lot to consider: taxes, trusts, and beneficiary designations. Still, many people are afraid to plan for death.

3. How can I find a reputable estate planning attorney?

The first step is to simply ask those you know, including "family, friends, people you work with, your financial adviser, your accountant, or another attorney you've worked with," says estate planning attorney Garber. You can even contact your local courts. Make sure that estate planning is indeed the attorney's specialty. "You have attorneys out there who will write a will and won't know the rules because estate planning isn't their specialty," Garber warns.

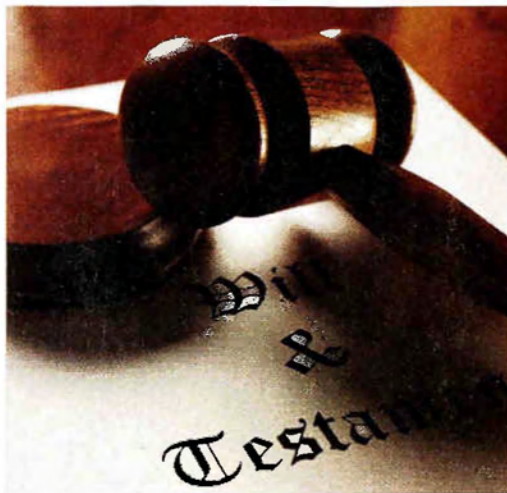
You can also take your search online. Visit the American College of Trust and Estate Counsel (www.actec.org), which provides referrals for attorneys in all 50 states broken down by city; and WealthCouncil L.L.C. (www.wealthcouncil.com), an organization that facilitates estate planning. An attorney doesn't need a specific degree to do estate planning, though some states offer board certification. These board certified attorneys can have documents tested, and they know what works and what doesn't. "There are a lot of resources and forms for attorneys who do not specialize in estate planning that tell them how to put a will together," says Garber. These forms aren't usually available to the general public.

Garber insists that estate planning doesn't have to be complicated, as long as you work with a lawyer you trust. "If you're not comfortable, you're going to hold something back," Garber warns. In that case, the attorney simply can't help you. Know that when the estate planning

is done, it's not over. It helps to periodically review the will or power of attorney and update it. Because once you're gone, it's going to be too late.

4. Am I responsible for my husband's bills when he dies?

Quite simply, it depends on the level of responsibility you decide to accept. "If you accept responsibility for the estate as the executor, then you have the responsibility," Whitman says. After your spouse dies, it's important to gather important documents such as insurance policies, tax returns, and bank statements, among other financial documents, in order to take care of any commitments. If you



are the executor, you need to pay off any debt your spouse owes before his beneficiaries can receive any assets. You are also responsible for any debt that you acquired jointly (e.g., credit cards, mortgage payments, etc.). Although you need to accept responsibility once your spouse is deceased, there are a few precautions you can take while he is living, in order to ease the financial burden later.

Above all, Whitman advises against co-signing for any reason. "Be sensible and don't sign something for a parent or spouse if it's not your debt." If you sign on as a guarantor and your spouse passes away, you are responsible for paying their debt. Whitman also says that if you are married but estranged from your husband, be sure that you don't have any joint assets. Consult a matrimonial attorney for advisement about which assets can and

can't be divided. Whitman says having something in writing is important even if the divorce is mutual.

5. How can I disinherit my children or spouse?

Disinheriting someone in your will means that you are specifically stating that a particular person won't receive any of your assets. If you are concerned about your will being contested, you can clarify the reasons for your decision.

If you'd prefer to leave your assets to people other than your children, spell it out. "You're not obligated to leave your children anything," says Douglass. She explains further that some parents would prefer to give the money to charity or to their grandchildren. So if, for example, your will already includes your children but you now prefer to leave your assets to a new grandchild, you can simply have it updated.

Disinheriting a spouse is more complex because of elective share statutes; most states require the affected spouse to sign a waiver at the time the will is signed stating that he or she is consenting to the disinheritance. If such a waiver hasn't been signed, then the surviving spouse can file a petition to receive the elective share. "There are sound reasons why someone might not include his or her spouse in a will," Douglass says.

"Many want to give money to their children for tax reasons." Or, as blended families become increasingly common, some spouses may opt to keep the peace by passing assets to their children rather than to one another.

If you want to provide for your spouse but not give him or her control over your assets, consider putting money into a living trust, says Whitman. The trust allots money for their provision and well being, such as payments for nursing home care, but nothing else. Whitman says this is a wise choice if your spouse is not the parent of your children.

Whitman encourages women to see the division of their estate as a personal decision. "If your children are a disappointment, you don't have to give them anything. An inheritance is a gift, not an entitlement, and you should give your gift to whomever you want." ▶

MOSES & SINGER LLP

Disclaimer

Viewing this document or contacting Moses & Singer LLP does not create an attorney-client relationship.

This document is intended as a general comment on certain developments in the law. It does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This document contains information that may be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this general guide in structuring or analyzing individual transactions or matters but that professional advice be sought in connection with any such transaction or matter.

Attorney Advertising

It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

Copyright © 2010 Moses & Singer LLP
All Rights Reserved