



NASE Answer Desk

## **EstateTalk™**

Estate Planning Advice  
From Licensed Attorneys



Estate planning isn't just for those who want to protect their wealth. It's also for those who want to build wealth through their micro-businesses.

Let the attorneys at EstateTalk help you plan for your future.

Online:

- Go to [www.NASE.org](http://www.NASE.org)
- In the Quick Link box, enter "EstateTalk"

## Estate planning isn't usually at the top of an entrepreneur's to-do list. But it should be.

For micro-business owners, personal assets and company assets can be uniquely tied together. Building personal wealth and business wealth can go hand in hand. And planning for the future is as important for your family as it is for your business.

The licensed attorneys at EstateTalk understand all of those complexities and more.

The experienced attorneys can help you navigate your estate planning options. They can show you the differences between wills and trusts. They can guide you in making decisions about guardianships for minor children. They can walk you through the process of developing a comprehensive estate plan.

How can your heirs avoid selling the family business to pay estate taxes? EstateTalk has the answers. Do you need a living will? The attorneys can help you decide. How much money can you give to your children today without paying gift taxes? The EstateTalk attorneys will help you find the answer.

And those are just a few of the questions that EstateTalk handles every day.

**NOTE:** The purpose of NASE EstateTalk is to provide basic estate planning information. EstateTalk is neither intended to be a complete estate planning service nor to replace the role of attorneys or other estate planning professionals. Probate and related laws vary from state to state, and you should consult a local professional for advice regarding your specific facts and circumstances.

## Why You Need A Will

### **What happens if I die without a will?**

An individual who dies without a will is said to have died intestate. Contrary to popular rumor, it's not true that if you die without a will, the state takes your assets.

Every state has intestacy laws. These laws provide a fixed formula for distributing your assets to your closest relatives.

For example, in most states, if a married woman dies intestate, her husband gets half of the value of her estate, and her children get the remaining half divided equally among them.

If you don't have a will, the state where you live will distribute your assets when you die, but it will be done strictly by the applicable intestacy laws. Since a simple will isn't usually expensive, you should consider having a will drawn.

# Protect Your Children

## **My husband and I have three children under age six. Do we need wills?**

You should each have a will, especially to help your children.

If one of you dies, the surviving parent will continue as the children's natural guardian. But if both of you die, your children will need a guardian.

Your individual wills allow you to name that guardian, someone who you believe to be the best person to care for your children. You can also name an alternate guardian in case your first choice can't serve.

Another reason to have a will is that, in the event that you both die, you could have your assets placed in a trust. The children's guardian, or a separate person named as trustee of the trust, could spend your assets on your children as their needs required, instead of simply dividing your assets equally among the kids.

People generally spend money based on family needs as they arise. They may spend more on one child than on another because of circumstances. If both parents die, they usually want the family assets to continue to be used in the same way. By creating a testamentary trust at the death of the second parent, the trustee can be directed to use those assets to meet the needs of the minor children just as the parents would have if they had survived.

## Inheritance Taxes

### **What's the difference between estate taxes and inheritance taxes?**

Estate taxes are levied on the value of the assets that were owned by a deceased individual. They are usually paid out of the estate before it's distributed.

Inheritance taxes are levied on the portion of an estate inherited by a specific individual. These taxes are the responsibility of the individual who inherits.

The federal government levies a federal estate tax, but not an inheritance tax. Some states also levy estate taxes, although the federal estate tax, if applicable, is the largest tax levied. Relatively few states have inheritance taxes.

# Estate Taxes

## **My wife and I are worth about \$4 million. We have two adult daughters. How can I avoid estate taxes when I die?**

When either you or your wife dies, there won't be any tax on the decedent's half of the estate. However, if the survivor inherited the decedent's portion, and then died before 2009, there could be a federal estate tax of \$900,000 or more, depending on the value of your estate.

A/B trusts provide an easy way to avoid paying such taxes even though your joint estate exceeds the current exclusionary amount of \$2 million. You (person A) and your wife (person B) should each have a will that leaves the decedent's half of the estate to your daughters. To assure that the survivor is adequately provided for, each will should contain a provision that any income generated by the decedent's half of the estate goes to the surviving spouse until his or her death.

This arrangement ensures that the surviving spouse will own only half of the estate when he or she passes. Since that half of the estate would be sheltered by the federal exclusion, the estate will have avoided all federal estate tax.

Here's the current federal estate tax, based on year of death and taxable estate (TE) value:

- 2007 and 2008: First \$2 million of TE excluded, balance taxed at 45 percent
- 2009: First \$3.5 million of TE excluded, balance taxed at 45 percent
- 2010: There is no federal estate tax if one dies in 2010
- 2011: First \$1 million of TE excluded, balance taxed at 45 percent

## Living Wills And Trusts

### **What's the difference between living trusts and living wills?**

A living will is essentially a health care directive. In some states, it's called an "advance health care directive." By contrast, a living trust is a document that can be used instead of a last will and testament.

In the event that you become incompetent, a living will tells your loved ones and your physician what your wishes are with respect to medical treatment or the desire not to have medical treatment. For example, you can indicate whether or not you want artificial means used to prolong your life.

The requirements for a valid living will vary from state to state, and many states have specific forms for drawing up a living will.

Living trusts, on the other hand, are most often used to avoid a lengthy and expensive probate process. A living trust requires that you place some or all of your assets in a trust, usually a revocable trust, for your own benefit while you're alive. After you die, the living trust directs how those same assets will be used for the benefit of your heirs.

# Revocable Living Trust

## **What is a revocable living trust?**

A revocable living trust is a trust created and effective during the life of its creator, who, by the trust language, determines how assets placed in the trust will be managed while he or she is alive, and to whom the assets will pass when he or she dies.

Because it is revocable, the terms of the trust can be changed until its creator dies or becomes legally incompetent. The principal reason most individuals use a living trust is to avoid probate. After its creator's death, a living trust can also dictate how the trustee should use trust assets for the benefit of the heirs.

Although a living trust avoids probate, that's only true with respect to assets that are in the trust. A trust creator may accidentally or intentionally leave some assets out of the trust. For that reason, a living trust should be accompanied by a pour-over will to distribute assets not included in the trust.

A pour-over will requires probate. You can't avoid probate unless the living will contains all of your assets. The living trust or the pour-over will should also name guardians if the grantor has minor children.

The principal disadvantages of a living trust are the costs of establishing and administering the trust, including filing trust tax returns in some cases. It can also be more difficult to manage one's personal affairs if most assets are in the living trust.

## Gift Taxes

### **We'd like to begin giving some of our estate away to our children. How can we do that without paying gift taxes?**

If you gift money to individuals, whether or not they are related to you, you can give up to \$12,000 a year without paying any gift tax or being required to file a gift tax return. And you can give that amount to as many people as you want.

You can gift the same amount to them next year as well, and every year until the \$12,000 limit is changed.

You can also give more than \$12,000 to any individual in a year, up to a fixed limit. That limit, known as the lifetime federal gift tax exclusion, for any individual is currently \$1 million. If you make a gift to anyone in excess of \$12,000 in a single year, you must file a federal gift tax return. However, you won't be subject to any federal gift tax until the total of your gifts exceeds the \$1 million federal gift tax exclusion amount.

# Charitable Donations

## **My wife and I would like to give some of our estate to charity. What are the rules?**

The IRS divides charities into two general groups: 50-percent charities and 30-percent charities.

Generally, churches, schools, hospitals, governmental units and certain qualifying foundations are considered 50-percent charities. Other organizations that don't qualify as 50-percent charities are considered 30-percent charities.

Gifts to qualifying charities are subject to different rules and depend upon the gross income of the donor, whether or not the donor is an individual or a corporation, the type of property donated, and whether the donee is a 50-percent or a 30-percent charity.

If you, as an individual, want to donate cash to a 50-percent charity, the total available deduction is limited to 50 percent of your adjusted gross income (with a five year carryover). If you donate cash to a 30-percent charity, the total deduction is limited to 30 percent of your adjusted gross income (with a five year carryover.)

If you wish to donate property, the limitations depend upon whether the property is ordinary income property, long-term capital gain property or tangible personal property unrelated to the charity's purposes.

Qualified appraisals are usually required for non-cash gifts valued at more than \$5,000 and closely-held stock worth more than \$10,000.

## Titles To Assets

**My husband and I have real estate and other assets. Some assets are titled in our names as joint tenants, but most just have both of our names on the titles. What should we do for estate planning purposes?**

You've asked for help in a complex area of the law. The difficulty arises from the fact that different states recognize different kinds of property titles, and those titles sometimes mean different things.

But correctly titling assets is important for estate planning, because the way assets are titled determines how those assets are handled when the owner or owners die.

Some common forms of title are single ownership, community property, joint tenancy with right of survivorship, tenancy-in-common and tenancy by the entirety.

You should consult with an attorney in your state about titling your assets so that they're distributed as you want when either you or your husband dies.

# Community Property

## **Can you tell me how community property is handled for purposes of inheritance?**

Community property states are Alaska (both spouses must sign an agreement using specific language), Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin.

In these states (excluding Alaska), assets acquired by either spouse during the course of a marriage are considered community property. But, assets acquired by one spouse as an individual, or outside the marriage (such as gifts and inheritances), are not considered community property.

As a rule, non-community property becomes community property if the two are mixed. For example, non-community property money placed in a community-property bank account becomes community property.

For purposes of inheritance, each spouse in a community property state owns his or her half of the community property and can dispose of that half by will or living trust. It does not automatically pass to the surviving spouse. However, the surviving spouse continues to own his or her separate half.

Recently, five states have provided a new way for married couples in community property states to own property. It's called community property with right of survivorship (W.R.O.S.). Property held in this way passes to the surviving spouse directly and without probate. The five community property W.R.O.S states are Arizona, California, Nevada, Texas and Wisconsin.

# Get Your Questions Answered

## How To Ask EstateTalk Your Questions

Go to the NASE Web site at [www.NASE.org](http://www.NASE.org). In the NASE Quick Link box, enter "EstateTalk."

Or you can:

Go to the NASE Web site at [www.NASE.org](http://www.NASE.org). On the Business Resources tab drop down menu, click "EstateTalk."

Use EstateTalk as an NASE Member or guest.

Fill in your contact information and ask your question.

You'll receive an e-mail when your EstateTalk reply is ready. Follow the link in the e-mail to your secure online answer.

It's that easy!



# Get More Answers From The NASE

## Business Advice From ShopTalk 800

The professional consultants at ShopTalk 800 offer straightforward answers to the most perplexing micro-business questions.

- **Should I incorporate?**
- **How do I choose a retirement plan?**
- **Can I get a grant or loan for my business?**
- **What's a low-cost way to market my business?**
- **How do I pay myself?**

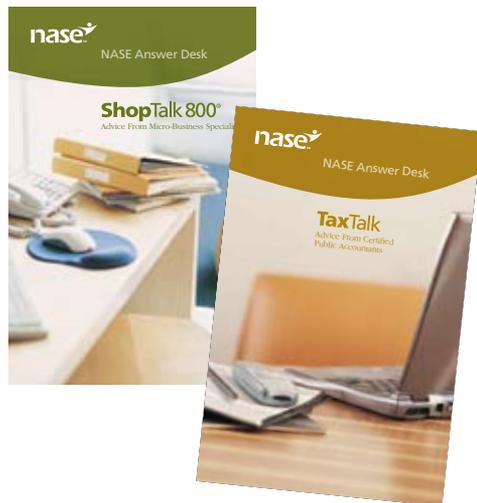
NASE Members can ask specific questions and get confidential answers via e-mail or telephone. Best of all, an NASE Membership gives you unlimited access to the ShopTalk 800 consultants at no additional cost.

## Tax Advice From TaxTalk

Get confidential answers to your tax questions from certified public accountants who understand micro-businesses.

- **How do I take the home office deduction?**
- **Do I have to pay estimated taxes?**
- **Can I deduct travel costs as a business expense?**
- **What tax forms do I file as a sole proprietor?**
- **Do I need to pay self-employment taxes?**

With an NASE Membership, you have unlimited access to the TaxTalk CPAs at no additional cost. Simply ask your questions and receive answers via e-mail within one business day.



# Five Reasons You Should Join The NASE

The NASE delivers the tools, benefits and resources you need to succeed as an entrepreneur.

## Accounting Advice From ABCs Of Finance

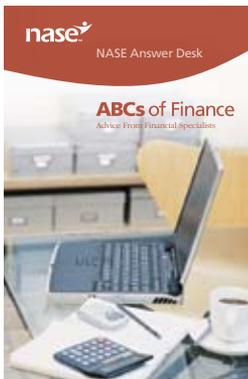
If you have questions about accounting, bookkeeping and cash management issues, ABCs of Finance has the answers.

- **How can I improve my cash flow?**
- **Is it better to lease or buy equipment for my business?**
- **How do I create a business budget?**
- **What financial documents do I need for a bank loan?**
- **What's the best way to track accounts receivable?**

NASE Members have unlimited access to this financial advice at no additional cost. Submit your question using the online form and you'll receive a complete answer within business one day.

- 1. Unlimited access to professional consultants who can answer your business questions, at no additional cost**
- 2. Savings on technology, payroll services, e-commerce solutions and more to help your micro-business grow**
- 3. Access to affordable health insurance and life insurance to protect you and your family**
- 4. Roadside assistance, identity theft protection and home office coverage to give you a safety net when you need it most**
- 5. Emergency room and hospital confinement benefits to assist you if the unexpected happens**

Become part of an association that serves more than 200,000 members nationwide. Make a smart choice for you and your micro-business.





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for the Self-Employed**

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