

Estate planning

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You need to put your house in order before you die. That was the essential message of the 2018 book, *The Gentle Art of Swedish Death Cleaning*, by Margareta Magnusson. Everyone has accumulated lots of stuff—and for the most part, no one else wants it. Children already have their own silverware and china, and their own furniture. Ridding the household of unnecessary possessions will make life easier for you and your heirs.

The success of *Death Cleaning* was such in 2022 Ms. Magnusson followed up with *The Swedish Art of Aging Exuberantly*. She died on March 12, at age 91. A third book on the approach to death is expected to be completed by her daughter Jane. The books are available at <https://www.margaretamagnusson.com>.

Spring cleaning is a great time to put personal death cleaning into practice. It's also a good time to review your estate plan.

Today's tax environment

The lifetime exemption from federal estate and gifts taxes is \$15 million per person, and the threshold will be adjusted for inflation in the future. This change, enacted last year, is permanent; there is no scheduled future reduction to worry about. It targets the federal estate tax at the very wealthiest estates—some three-quarters of federal estate taxes collected in 2023 (latest year available from the IRS) came from estates \$50 million and larger.



“ It can be both a lot of fun and a bit sad to go through photographs and letters, but one thing is certain: If you start with them, you will definitely get stuck down memory lane and may never get around to cleaning anything else.”

—Margareta Magnusson



State death taxes (estate taxes, inheritance taxes, or both) on the other hand, kick in at much lower levels. If you live in or own property in one of the 12 states with an estate tax or the five states with an inheritance tax, your estate planning should take this death tax obligation into account.

For many estates, tax planning could become basis planning. The tax basis of most inherited assets is stepped up to fair market value, so that heirs will not have to worry about income or capital gain taxes on the inheritance. The key exception is inheriting income in respect of a decedent, such as a retirement plan or IRA assets.

Other changes to consider

Taxes aren't the only reason for conducting a spring cleaning—they are just one spur to get the ride started. Personal developments that should be addressed include:

- ◇ birth of a child, grandchild or other potential heir;
- ◇ divorce;
- ◇ death of a beneficiary;
- ◇ marriage or remarriage;
- ◇ change in state of residence.

Other factors that can reduce the effectiveness of an estate plan happen more gradually, over a longer period of time, and so may be less obvious.

Changes in a beneficiary's needs or capabilities. Has a well-adjusted youngster become a troubled adult? Is a troubled adult of yesterday now making more money than you do? Changes in the lives of those around you need to be reflected in your estate plan.

Has your estate become less liquid? Will your estate have enough cash to meet expenses and tax obligations? If you have hard-to-sell assets, such as real estate, fine art or

family business interests, you'll need special planning to avoid the forced asset sales from your estate at bargain prices.

Are you satisfied with your selection for executor? Estate settlement can be a demanding job. Particularly in the case of a larger, more complex estate, the services of an experienced corporate fiduciary—a trust organization such as us—can be a welcome, cost-effective means to lift a difficult burden from the shoulders of a family member.

Spring cleaning for the entire estate plan

Your will only directs the disposition of the property that will pass through your probate estate. That may only be a portion—and perhaps a relatively small portion—of the total financial resources that will be available to your heirs. The most important types of nonprobate property are jointly held property, interests in qualified retirement plans and life insurance proceeds. You must take such assets into consideration as you evaluate the strength of your estate plan.

Joint interests. Joint ownership of the family homestead with rights of survivorship has long been customary for married couples. It's possible to have too much of a good thing—when investment accounts are also held in joint name, flexibility in estate planning is lost. There is no estate tax savings for jointly owned property, and there can be income tax costs.

Retirement plans. In most cases, a surviving spouse will be the beneficiary of a pension or retirement account at the owner's death.

Life insurance. Insurance proceeds pass directly to designated beneficiaries unless the beneficiaries have already died. A good alternative to explore is naming a trust as beneficiary, to provide the heir with professional investment assistance for this important sum. Ask us for details.

Who will lead?

Have you nominated a family member to serve as executor of your estate, or as your trustee? Are you confident that he or she has the ability to handle the job?

We have the skills, the experience and the knowledge to properly handle the job of estate settlement. Trusteeship is our everyday business. We are available, and we are impartial. We understand the nature of fiduciary responsibilities, and we know how to discharge them.

For all of these services, our fees are generally comparable to what an inexperienced individual would receive. In some cases, our experience will help to reduce estate shrinkage, increasing the amount available for beneficiaries.

Would you like to learn more? Please call on us for more details about our fiduciary services.



Who pays the federal estate tax?

Statistics on federal estate tax collections may be found at <https://www.irs.gov/statistics/soi-tax-stats-estate-tax-filing-year-tables>. The most recent data is for tax year 2023, which means that most of the deaths happened in 2022, when the amount excluded from federal estate tax was \$12.06 million. According to the CDC, some 3.28 million Americans died that year, and the IRS reports that 9,024 of the resulting estates filed an estate tax return. Put another way, only one estate in 363 filed an estate tax return—0.27% of all estates.

Of those 9,024 estate tax returns, a majority—5,335 estates worth a total of nearly \$145 billion—were nontaxable, including 404 estates worth \$50 million or more. A combination of the unlimited marital deduction, unlimited charitable deduction, and the federal estate tax credit (plus smaller deductions for administration expenses and state death taxes) was responsible for bringing the tax liability down to zero.

Some 41% of the taxable estates were worth between \$10 million and \$20 million. Only 16.8% were worth more than \$50 million, but they provided over 70% of the federal estate tax revenue. Thus, the increase in the amount exempt to \$15 million this year will have a relatively small effect on net estate tax collections.

Some 638 estate tax returns were filed by estates below the tax filing threshold. Such filings were likely made in order to claim the Deceased Spousal Unused Exclusion (DSUE). Here's an example of how that works. Husband dies with an estate of \$20 million, leaving it all to Wife. With the unlimited marital deduction, there would be no

federal estate tax, so Husband's estate would have used none of his exclusion. Wife inherits the unused exclusion, which will be applied in her estate after her death, as well as her own exclusion. In that way, the couple gets the advantage of two estate tax exclusions instead of just one. But to get that benefit, an estate tax return must be filed, and an election made.

Over \$7.7 billion of DSUEs were claimed on 2023 estate tax returns, with 61% found on the nontaxable returns.

Of the 9,024 estate tax returns, 5,657 (62.6%) were for men. The aggregate value of men's estates was \$257.5 billion, which generated \$30.2 billion in estate taxes, an 11.7% effective tax rate. Women's estates were worth \$89.6 billion, and they paid \$14.2 billion in estate taxes, or 15.8% of the value of the estate. The higher effective tax rate for women may be attributed to their longer lives, leading to dying without a surviving spouse, and therefore no marital deduction for the estate.

The IRS also categorized the occupations of the 2022 decedents wealthy enough to file an estate tax return. The top ten categories are listed in the table below. Note that "Retired" means that no specific occupation was listed—in fact, most of the decedents were retired.

Total estate tax collections, according to the report, came to \$44.4 billion in 2023, an amount that is scarcely a rounding error in the multitrillion-dollar federal budget. But to the 3,690 families required to come up with that tax payment, it was a very big deal indeed. That's why estate planning remains very important.



Decedent occupations from 2023 federal estate tax returns

| Occupation | Men | | Women | |
|---|--------|------------------------|--------|------------------------|
| | Number | Net worth (\$millions) | Number | Net worth (\$millions) |
| Business and financial operations | 2,200 | \$131,131 | 488 | \$15,822 |
| Management | 608 | \$30,685 | 146 | \$3,1824 |
| Health care practitioners | 369 | \$9,306 | 113 | \$3,041 |
| Arts, design, entertainment, sports and media | 132 | \$4,556 | 148 | \$4,959 |
| Legal | 341 | \$8,297 | 66 | \$1,368 |
| Education, training and library | 97 | \$2,499 | 240 | \$5,088 |
| Office and administrative support | 25 | \$455 | 96 | \$1,912 |
| Farming, fishing and forestry | 267 | \$6,544 | 68 | \$1,400 |
| Sales and sales related | 288 | \$10,898 | 93 | \$1,963 |
| Retired, no occupation listed | 357 | \$11,309 | 988 | \$26,143 |

Source: <https://www.irs.gov/statistics/soi-tax-stats-estate-tax-filing-year-tables>; M.A. Co.

The future for estate planners

The permanent increase in the amount exempt from federal estate and gift taxes to \$15 million per person (which translates to \$30 million for married couples) seems to have caught estate planners by surprise. At the annual Heckerling Institute on Estate Planning last January, the estimates for how many families need to worry about federal transfer taxes ranged from 0.25% to as high as 0.70%. Perhaps about 200,000 families have more than \$30 million in assets.

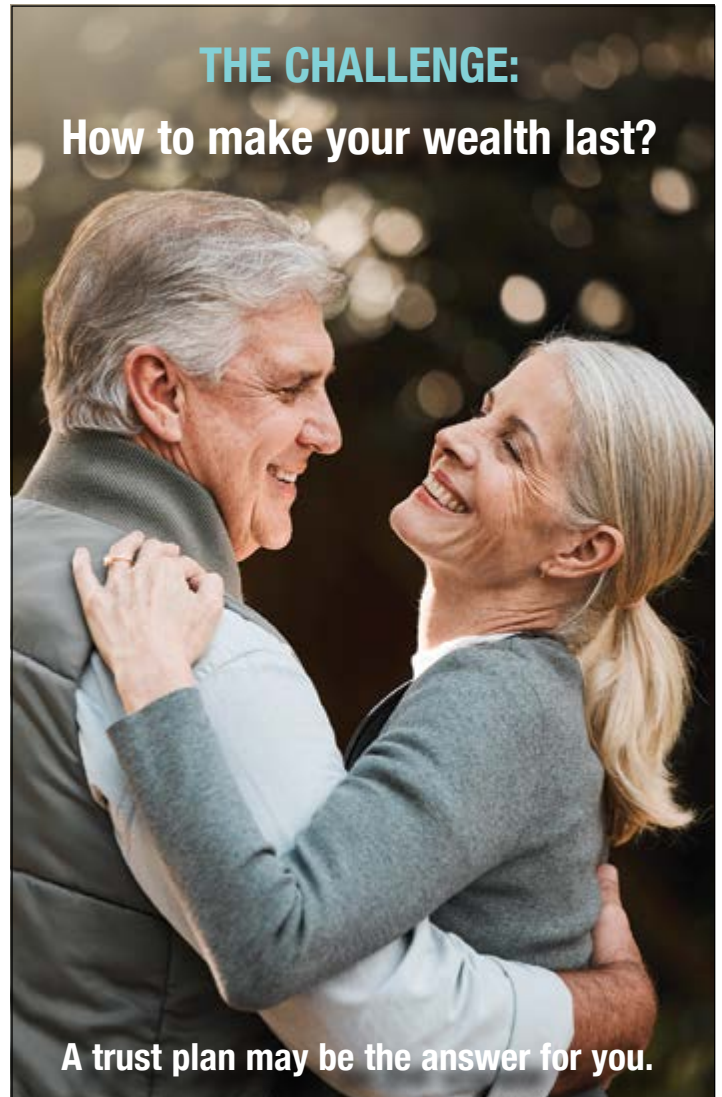
The estate planning focus for the other 99% of families will likely shift to areas such as:

- **Income tax planning.** Instead of transferring assets to younger generations, seniors may be encouraged to hold onto appreciated assets until death, to secure the step-up in tax basis that cancels capital gain tax exposure.
- **Planning for state death taxes.** Inheritance and estate taxes kick in at much lower levels in the minority of states that continue to treat death as a taxable opportunity.
- **Asset protection trusts.** Several states now permit moving assets to a self-settled trust to protect them from claims of future creditors.
- **Choice of trust situs.** In the competition for trust business, states have been modifying trust laws, including stretching or abolishing the rule against perpetuities for private trusts and allowing trust “decanting,” which is the movement of assets from an irrevocable trust to a new trust with more favorable terms given changes in tax law or family circumstances.

On the other hand, estate planner Steven Malach foresees “The Coming Probate Storm: How America’s Demographic Shifts are Reshaping Litigation Over Estates,” published in the March/April edition of *Probate and Property* by the American Bar Association. Baby Boomers control an estimated \$78 trillion. They are living longer than earlier generations, but that comes with longer periods of chronic illness and cognitive decline. Situations where Attorney Malach has seen more probate litigation include:

- challenges to testamentary capacity by disappointed heirs;
- using guardianship as a weapon;
- housing as a flashpoint when it represents a large part of an estate’s value;
- heirs who refuse to sell, preventing the orderly settlement of an estate;
- the rise of elder abuse;
- digital forgery and exploitation;
- failure of trust administration by private trustees.

Lawsuits over such issues can happen at wealth levels well below the death tax thresholds. A sound estate plan can head off many of these problems, but the details need to be communicated in advance to the heirs, so that their inheritance expectations will be reasonable.



THE CHALLENGE:
How to make your wealth last?

A trust plan may be the answer for you.

Come see us today.