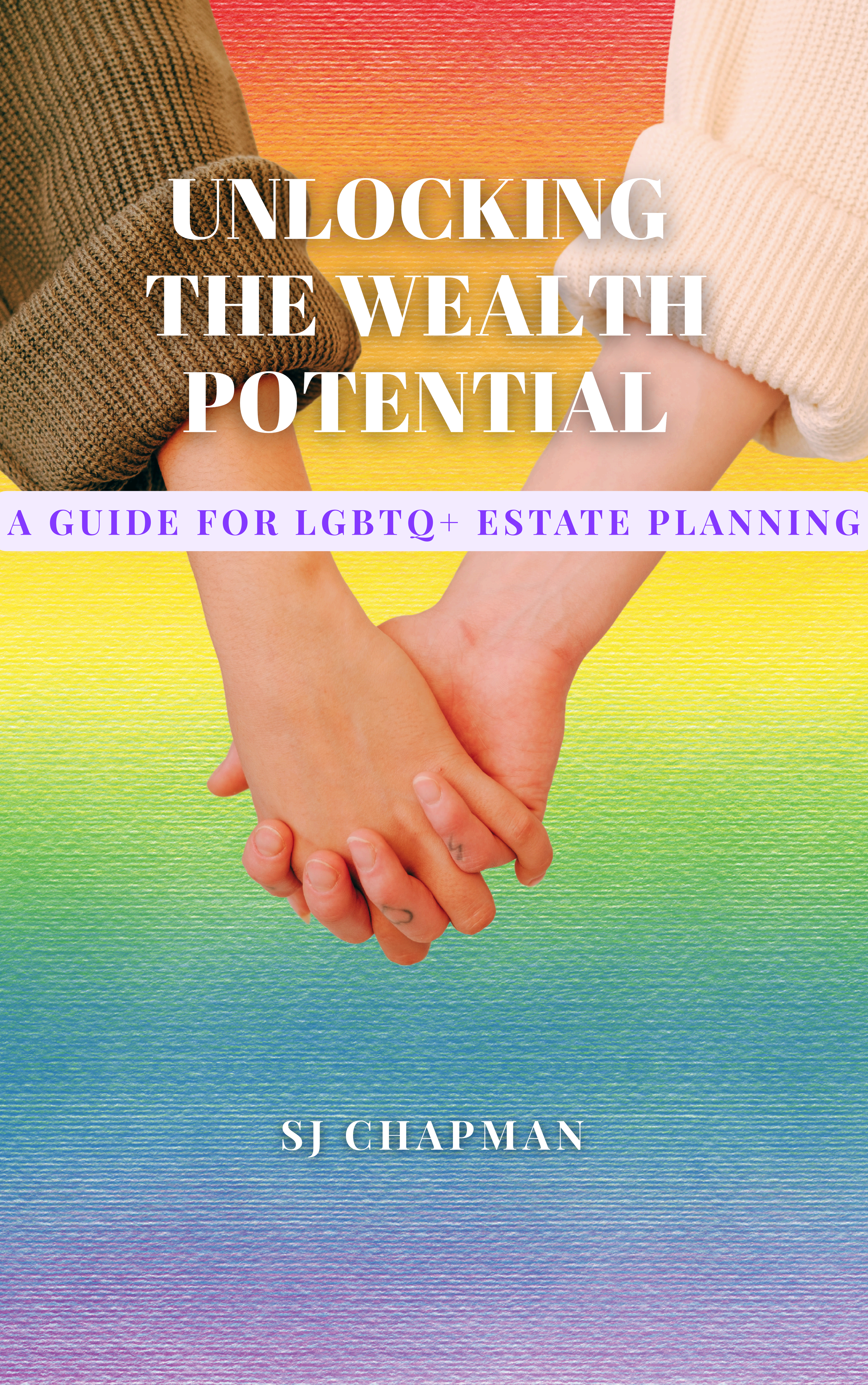

UNLOCKING THE WEALTH POTENTIAL

A GUIDE FOR LGBTQ+ ESTATE PLANNING

SJ CHAPMAN

Disclaimer. None of the content herein is legal advice. This is a general explanation of estate planning and there are numerous exceptions to much of the information contained herein. You should consult an attorney for advice on how to establish an estate plan for your unique goals, finances, and family.

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Preface – Salon

In the 90s, my mom hosted a monthly gathering in our living room called Salon. Salon was a black-tie conversation party. With simple eye contact and a nod of the head, guests beckoned a butler (first, my older brothers and eventually, me) to refill their champagne. As with any fabulous intellectual affair, Salon began to draw queer guests. By the time I was butler, several Salon regulars were radical faeries.

Salon was a celebration of guests' unique existence and perspectives on issues running the gamut from Body Image, to Wrong vs. Right, all the way to some major 90's events like the OJ Trial or Monica Lewinsky. My mom led the discussion, and everyone was welcome to share their perspectives. Dressed in a tux or evening gown – whatever the preference – guests connected with one another on a human level. I mostly stayed in the kitchen, where the muffled sounds of laughter were occasionally overpowered by the loud pop of champagne. On one or two occasions I entered the room to someone speaking thoughtfully through tears.

Everything felt equal at Salon; a respite from the reality beyond our living room where members of the queer community were stigmatized and afraid. Starting in the 1980s and certainly into the mid-1990s, people had died and continued to die of AIDS unexpectedly without having the luxury of time to make a will or the privilege of equal marital rights. For the most part, by my observation, straight cis guests didn't have to worry so much about these things as firmly entrenched policies were at work that disproportionately favored heteronormative nuclear families or "normal" people. The law was set up to make sure that those hewing to the status quo, and their family members, were taken care of automatically. For the queer community, it simply wasn't so.

After college, and with Salon a distant memory, I worked for the General Counsel of the International Aids Vaccine Initiative in New York City where I saw first-hand how law and public policy could be shaped and harnessed for both helpful and harmful ends. I recall vividly the excitement when PrEP was first rolled out in clinical trials and the first wave of results came back positive.

I eventually returned to Chicago to attend law school in the hopes of generating positive change for the LGBTQ+ community.

At the time, marriage equality was literally all over the map. Our laws were a hodge-podge of rules that depended largely on geography. Progressive states tended to have more gay-friendly laws, while those states deemed conservative, tended to stigmatize LGBTQ+ citizens. Nefariously, states were taxing their LGBTQ+ citizens and using the money to fight against marriage equality.

In my life and especially since I got my degree, there has been progress against the stigmas and injustices of the recent past. In 2012 the FDA approved Truvada. In 2015 marriage equality became a mandate. I lobbied to change pronouns in legislation to make Illinois laws more inclusive, which happened in 2015 with amendments to the Parentage Act. In 2020, sexual orientation and gender identity received equal protection under the 14th amendment.

Hopefully this cultural momentum will continue. Increased visibility leads to increased rights which, in turn, leads to greater opportunity and wealth. And with estate planning, that wealth can be used to perpetuate positive change for the LGBTQ+ community.

Against this cultural backdrop, I focused my legal career on preserving wealth for LGBTQ+ clients through the use of estate planning, a tool historically geared only to the straight community.

Thankfully, we now live in a safer, more enlightened, and hopefully more welcoming world than the one I grew up in. But there's still a long way to go. This booklet calls on the LGBT+ community to use its collective voice. It is my hope that wide-spread use of estate planning can preserve queer wealth; ensuring that a client's hard-earned money goes only to people and causes near and dear to them. Otherwise, the risk is that the state will siphon your assets through estate taxes. States are as likely to use your money fighting against equal rights for the queer community as they are fighting for them. You worked hard for your money and assets. At the very least, you should have a say in what to do with it.

Chapter 1 – De-mystifying Estate Planning

Do you remember the first dollar you ever made? That was the start of your "estate." Do you remember deciding what to do with that money? That was the start of your estate plan. Estate planning, at its core, is choosing where your money goes during your life and after your death. As your earning power and financial health improves and becomes more complex, it is important to document your post-death wishes in a formal, written estate plan.

Deciding not to have an estate plan is risky business. Without such a plan, if you are injured to the point where you cannot manage your affairs, your family members can go to court to fight over who will make health and financial decisions for you. This is called "guardianship" (or "conservatorship" depending on the state you live in).

In a guardianship proceeding, any decision your guardian makes will need to be approved by a judge. Guardianship is, by turns, expensive, slow, and can be emotionally volatile. For instance, your mother and spouse may vehemently disagree on how you would want something addressed or even on what is or is not in your best interests. Each side will "lawyer up" and try to convince a judge that their position conforms with what is in your best interest. It is a protracted and expensive process. What's more, most of the money for these contested guardianship proceedings comes from your funds.

Without an estate plan, when you die, your state has a default plan in place for you, called "intestacy." You risk losing some of your hard-earned assets to estate taxes. A written estate plan can avoid both intestacy and estate taxes.

In an intestacy situation (again, where you die without a will), a court typically appoints a family member to carry out liquidation and distribution of your estate assets after your death. All the expenses incurred in this process come out of your estate -- your money. Everything you own is divided *per stirpes*. *Per Stirpes* distribution means your property is divided up among your nearest relatives, starting with 50% to your spouse and 50% to your children. If you don't have a spouse or children, everything you own is divided between your siblings and your parents. If you have a sibling who is deceased; your sibling's share would go to their kids (if your sibling had children). The default distribution scheme, codified in state probate statutes, accounts for just about every family contingency and composition.

Probate statutes' directives pose a host of challenges. A recurring issue involves a minor who inherits from a relative who dies. What is a minor going to do with an inheritance? They can't spend it until they turn 18 at which time, they have carte blanche to spend it however and on whatever they wish. What happens if someone inherits your property and then gets a divorce? Part of the wealth you spent a lifetime building could then be re-routed to their ex-spouse: someone who may not like or even really know. Another common (and avoidable) scenario: Suppose you have children from a previous marriage. They can lose out on 50% of your assets if your surviving spouse re-marries and leaves your 50% share to their next spouse instead of to your children.

By creating an estate plan, you make the directives as to who gets what, and you decide who carries those directives out.

Takeaway: Estate planning is important because it allows you to choose where your money goes during your life and after your death.

Chapter 2 – A Written Estate Plan

The four documents that are the cornerstone of your estate plan are: (1) a trust, (2) a will, (3) a power of attorney for property (Power of Attorney for Property), and (4) a power of attorney for health (Power of Attorney for Health).

Trust

A trust is a contract between you and your trustee that is effective during your life, even during a period of your incapacity, and after your death. Once you sign your trust, a lawyer helps you transfer property and money into the trust, and your property becomes "trust property." Your trust can hold any type of property that you can: bank accounts, retirement accounts, real estate, vehicles, jewelry, art, etc. Your trustee is bound by law to adhere to the instructions in your trust on how to manage trust property. During your life, you are the trustee, and you are allowed to do anything with the trust property that you wish.

The purpose of a trust is to benefit you during your lifetime, and then pass your property along to parties you designate as your beneficiaries after your death. On your death, your successor trustee takes control of the trust property and is legally bound to adhere to your pre-death instructions. Importantly, a successor trustee's authority begins immediately: they do not have to get court approval to act on your behalf. Many trustees don't even hire a lawyer, since all the instructions on what to do with your trust property are typically spelled out for them in the trust. In a well drafted trust, there is no ambiguity or "wiggle-room;" the trustee's duties should be clear.

With minor exceptions, you can put as many conditions on the distribution of your beneficiary's inheritance in your trust as you wish. Perhaps you want your trustee to use trust funds to benefit your partner or spouse for as long as they live, but then distribute the funds to your children from a prior relationship. Or maybe you want the trustee to use some of the funds to re-home and care for your pet. You may wish that your trustee donates a portion of the funds to a favorite charity, or gift certain amounts to friends or family. These scenarios plan for where your funds will go upon passing.

Trusts are a great way to "future proof" your estate; making sure that the savings and property you spent a lifetime building goes to the trust beneficiaries *only*… not their creditors, such as child support payments, credit card companies, money judgments, bankruptcy cases, or divorcing spouses.

Accordingly, trusts are often designed to leave money to beneficiaries with certain stipulations called "creditor protections." For minor beneficiaries, people will leave money to minors in trust with a direction to the trustee to use the money for the minor's health, education or support until the minor turns 25, at which point the minor can withdraw 1/3 of the principal for whatever purpose he/she/they want(s). At age 30, that erstwhile minor can then withdraw another 1/3, and at age 35 he/she/they can withdraw the rest. This is a great way to prevent creditors from reaching into a beneficiary's inheritance.

Trust creation gives you much latitude and flexibility over your assets. You can design a trust that is only accessible to your beneficiaries after they have traveled to Europe. You can design a trust that will give your beneficiary a monthly allowance for the rest of their life, but no access to principal. You can design a trust that establishes a new charity or that gives to an existing charity. You can leave $0 to charity, $10 to charity, or everything to charity.

Clients commonly ask, "but what if I change my mind?" There is flexibility here as well. Trusts are routinely and easily modified and can even be revoked in full. All that is required is that any trust amendment or revocation be signed by you.

Takeaway: A trust is a key estate planning tool that allows you to "future proof" your money by making sure it stays with your beneficiaries and not their creditors.

Will

A will is a contract between you and your executor (usually the same person as your successor trustee) that is effective only upon your death. A will distributes any property that is in your name on your death. **Importantly**, **this does not include trust property**. For those who have a trust, their will only handles property and other assets they did not transfer into the trust during their lifetime.

To follow a will's instructions, your executor must "open a probate estate" by filing your will in the courthouse located in the county of your death. Your executor must obtain a court appointment from a judge before they can act. Your executor must publish a notice in a public newspaper that your probate estate has been opened and provide your creditors with 6 months to file claims against your estate. During this time, no property may be distributed. Like their guardianship counterparts (see above), probate cases are expensive and time-consuming court proceedings. Probate proceedings are also public record; meaning that anyone can have access to your court file and creditor claims.

A will must be executed in a specific manner, with specific language from the probate law, and be the original version with wet-ink signatures to be effective. It must be executed in a room with two witnesses; no one may leave the room while the will is being signed, and your witnesses must sign an affidavit stating that these conditions were adhered to. There are rules regarding who can and cannot witness your will. Wills are difficult to amend.

In a well-executed estate plan, your will is a "pour-over will." This means that your executor goes to court, opens a probate estate, waits 6 months, pays any claims filed in your estate, and transfers anything in your name over to your trust, so that your trustee can distribute it in accordance with the trust.

Wills are by their nature formalistic and rigid documents. The need for a will is circumvented by transferring all your property into a trust during your life. A pre-death transfer of assets into a trust means that after your death, your affairs stay private and your money stays with your loved ones and out of the hands of probate lawyers and creditors.

Takeaway: A will specifically involves property in your name only. To avoid the time, expense and formalities of creating and filing a will, create a trust which will avoid the need for a probate proceeding.

Power of Attorney for Property

This document gives someone you designate as your agent the authority to make financial decisions for you during your lifetime. A Power of Attorney for Property is effective only during your lifetime and is extinguished on death.

A common misconception is that family members or spouses can automatically help with finances or communicate with medical care providers. This is not the case. Most people are surprised to learn that when a loved one is in an accident or unexpectedly incapacitated, he/she/they cannot help financially if there is no power of attorney appointed. In such a case (no power of attorney), the only way you can act for your vulnerable loved one is to open a guardianship case. As stated above, guardianship proceedings are expensive and emotional and should be avoided at all costs.

Like a will, a Power of Attorney for Property deals only with property that is not in your trust. Powers of Attorney for Property are useful if you are out of town when you want to sell real estate that you own. You can, for example, appoint someone to act as your agent to sign the sale documents on your behalf.

Powers of Attorney for Property are also instrumental in helping aging parents who don't have an estate plan with banking-related matters. Many people make the mistake of putting their children on accounts with them as a "convenience." Legally, this transfers 1/2 of the account ownership to the child. This puts a parent who is receiving Medicaid at risk of losing Medicaid coverage, and the property can be reached by the child's creditors. (Under Medicaid rules, Medicaid recipients who gift property to others will lose Medicaid coverage for a certain amount of time).

Power of Attorney for Health (Power of Attorney for Health)

Like its name suggests, this document gives your designee authority to make healthcare decisions for you during your lifetime if you become injured or disabled. Like a Power of Attorney for Property, a Power of Attorney for Health expires on your death.

Family members of injured relatives are often surprised that they cannot communicate with healthcare providers without a Power of Attorney for Health. Without a Power of Attorney for Health, the only way for a spouse or family member to communicate with your healthcare provider is to institute a guardianship proceeding in court.

People often pair a Power of Attorney for Health with a living will and a HIPAA authorization. A living will states that if you are suffering from a terminal, incurable and irreversible condition and that death is imminent except for death delaying procedures, such life-prolonging procedures should be withheld or withdrawn. A HIPAA authorization allows medical providers to share information and records with your designated Power of Attorney for Health agent.

Takeaway: Avoid costly guardianship proceedings by executing Powers of Attorney for Property and for Health so that in the event you become disabled, your agent can make important health and financial decisions without first seeking court approval.

Chapter 3 – Titling your Assets

A critical part of estate planning is called funding or "titling." If you own a car, you know that a car comes with a record of ownership called a title. A house comes with record of ownership too, called a deed. Title is the proof and record of ownership of property. If the title has your name on it, we say the property is "titled in your name." You can use titling to your advantage when you create a written estate plan.

Most of what you own does not come with a formal record of title, although estate planners still refer to these items as assets that form part of your estate. You own your household furniture, but it doesn't come with a formal title or deed.

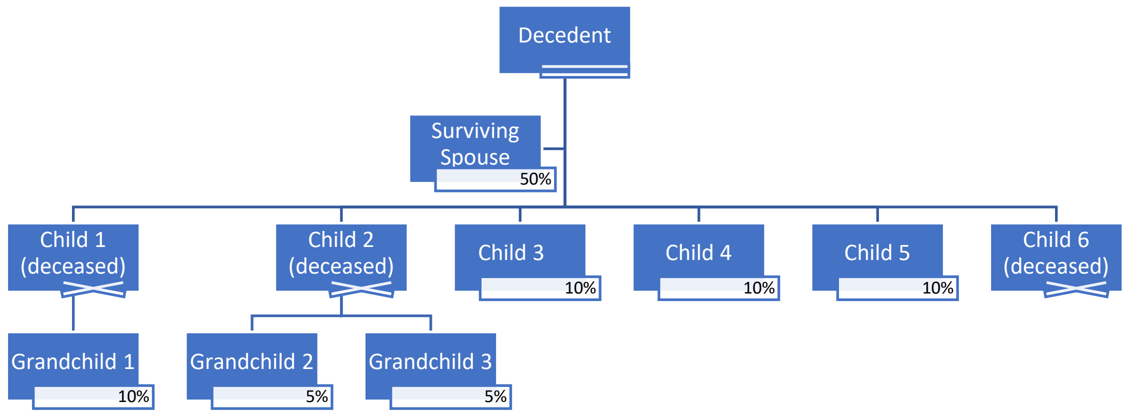
Beyond household objects, many assets do have formal titles. Bank accounts, retirement accounts, houses, condominiums, co-ops, boats, RVs, trademarks, are just some asset types that do have a formal record of ownership.

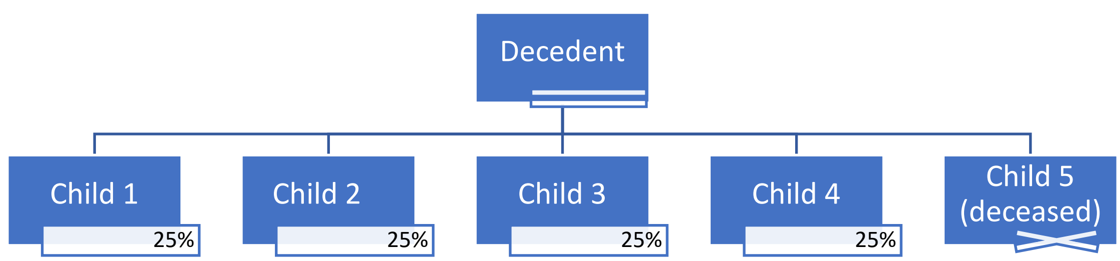
Your financial accounts are usually titled in your name. By looking at your bank statement, you can find out how your account is titled. Is it addressed to you? Then the account is titled in your name.

If an asset is titled in your name, and your name only, then it is part of your probate estate when you die and your will (if you have one) determines how your property is distributed. Under probate laws, a court will appoint a family member to carry out liquidation and distribution of anything titled in your name. All expenses entailed by this process comes out of your estate (meaning, you pay for it!).

If you don't have a will, everything you own is divided *per stirpes*, wherein every surviving family member inherits a share of your estate. Not every state has the same *per stirpes* distribution scheme.

Here are some examples or what *per stirpes* distribution looks like in Illinois, where property is divided first between spouse and children, then (if there is no spouse) just to children, then (if there is no spouse or children) to siblings and parents, and so on.





By re-titling assets into your trust, you will avoid a probate estate and can control how your assets are distributed at your death. You can do this by titling property in the name of your trust, or by naming your trust as beneficiary to your accounts.

Some people try to circumvent a written estate plan by adding joint owners onto their assets. This is done as a way to control who inherits their property when they die. This is often seen when parents add a child as a joint tenant on real estate, or a joint account holder on their bank accounts. When someone adds a joint owner to an account or an asset, they are actually giving up control over their property.

When you put someone else on title to your property, they become the legal owner of that property. During your lifetime, they can withdraw money from your accounts or sell their 1/2 of real estate, with or without your knowledge or approval. What's more, a joint-owner's creditors can collect from the joint owner out of your property. If your joint owner is sued, owes child support, gets divorced, or goes bankrupt, all your jointly owned property is considered to be owned by your joint owner.

The trick to keeping what you've spent a lifetime building under your control is to title assets in the name of your trust, and to name your trust as the beneficiary to your accounts. When you die, your trustee then takes control of all your assets and distributes it in accordance with the instructions you laid out in your trust.

Everything that is titled in your trust's name, or any account that names your trust as beneficiary, is accounted for by your trustee and distributed in exactly the manner you direct. Titling assets in your trust allows you to make targeted distributions of trust assets to your relatives or friends. You can even prevent third parties from reaching this property, if your beneficiary is sued, owes child support, gets divorced, or goes bankrupt. By the terms of your trust, the money can stay with your beneficiary and your beneficiary alone.

Takeaway: Avoid adding joint owners to your property. Instead, title property in your trust or name your trust as beneficiary on accounts that allow you to designate beneficiaries.

Chapter 4 – Business Succession Planning

For business owners, estate planning is crucial. As a business owner, you will own shares of stock (in a corporation), membership interests (in an LLC) or a partnership interest (a general or limited partnership). You also own the assets of the business, like inventory, real estate, leases, equipment and receivables. Like your personal assets, your business assets are also subject to court proceedings, if you die or are disabled without a written estate plan.

As stated above, without a documented estate plan, if you are disabled, your family members will have to file a guardianship proceeding to have a court-appointed guardian manage your business

The guardian will then have to make the decisions about how to run the business, subject to the judge's ultimate approval. If your business has multiple owners and you die or are disabled, your family could be in charge of the company with your co-owners. This is obviously risky if your family members lack the required business experience and acumen to run the business.

A good succession plan protects your business if someone else must step in your shoes if you are disabled or die. By retitling the ownership of the business in a trust, your trustee can manage your company without having to first get court permission.

In addition to a trust, all businesses with multiple owners should have a partnership agreement (for partnerships), operating agreement (for LLCs) or a shareholder agreement (for Corporations) in place. For simplicity, I refer to all these documents generically as partnership agreements.

A partnership agreement spells out what happens in the event any of the co-owners are disabled or die. Savvy estate planners understand that businesspeople enter into partnership agreements because they value the client and want to protect their business.

Your partnership agreement should contain a "buy-sell agreement" coupled with life insurance. The former spells out who can own the company if one partner dies or is disabled. The latter, life insurance section typically states that if one business owner dies, life insurance proceeds will go to his/her family, as a way of buying them out of any inherited shares in the business. For this plan to work, the business partners must work with a life insurance agent to pay the premiums and ensure the policy remains in force.

Takeaways: If you own your own business, transfer your business assets into your trust, and protect any partners in your business with a partnership agreement.

Chapter 5 – Taxes

Even though you spend your entire life paying income, property, and sales taxes, another tax – the estate tax – comes into play when you die.

An estate plan can reduce or at least delay the amount of tax your estate incurs.

Estates are taxed at both the state and federal levels. These taxes are only imposed above a certain level of wealth. For 2022, the federal estate tax exemption is $12.92 million. The estate tax is "unified" meaning that if you meet the tax threshold with lifetime gifts (i.e., you make gifts totaling at least $12.92 million during life), you will still be taxed on death.

The threshold wealth level for taxation changes as our country swings from Democratic to Republican presidencies and congresses. In 1997, anyone with over $600,000 owed estate tax. In 2009, anyone with over $1,000,000 owed estate tax. In 2011 the threshold jumped to $5,000,000. In 2017 the threshold jumped to $11,700,000, but it's scheduled to go back to $5,000,000 in 2026.

The first question to ask yourself is: what is my estate worth right now? Your estate includes everything you own, including life insurance proceeds, annuity death benefits, your business, vehicles, art, jewelry, bank accounts, retirement accounts, etc.

You should then consider whether your estate will be worth more than $600,000 when you die? This is an important question because in just a 20-year time frame, the estate tax exemption has fluctuated from $600,000 to almost $13,000,000. Estate tax levels are highly dependent not only on the president's political party, but who controls congress.

Once you've answered those questions, it's time to decide how to construct a written estate plan that will be flexible enough to preserve your wealth while you're alive and avoid taxation after you die. Trusts permit estate planners to utilize creative strategies to transfer your wealth while, at the same time, minimizing your tax liability.

A good illustration is a common method used among spouses to take advantage of a common estate tax exception: the "unlimited marital deduction" combined with a "credit shelter trust." When a person dies, they can transfer anything they own to their spouse. The transfer is not taxed until the surviving spouse dies. In such a scenario, everything transferred becomes part of the surviving spouse's estate and potentially subject to taxation on that spouse's death.

With an estate plan, through a "credit shelter trust," a spouse can transfer anything above the applicable exemption amount to their spouse, outright. The credit shelter trust beneficiary is the spouse during his/her lifetime. That spouse then inherits the surplus (the amount in excess of the exemption amount) gifted to them. When the surviving spouse dies, he/she/they will only pay estate taxes on assets over and above what is in the credit shelter trust. If the surviving spouse's estate is under the threshold for estate taxation, no tax payment is due. Essentially this is a way to double the estate tax exemption between spouses.

While not all estates can avoid estate taxation, it’s worth exploring the possibilities through estate planning.

Takeaway: Using estate planning, more wealth is transferred to families instead of the government via onerous taxes.

Conclusion

The information herein applies to everyone but is specifically important for folx who don't live a heteronormative lifestyle. People who are single or who have multiple long-term partners should create an estate plan to make sure that there are decision makers in place who will advocate for them and support their lifestyle. Trans folx especially need to appoint Powers of Attorney and Trustees who will advocate for gender affirming care during periods of disability.

With advance planning for disability and death, we can work together to form a supportive and wealthy queer community.

GLOSSARY OF TERMS

This is a glossary of estate planning terms from the Human Rights Campaign Foundation

A

ADVANCE HEALTHCARE DIRECTIVE Your advance healthcare directive usually consists of two documents: a living will and a healthcare power of attorney. These documents reflect your wishes concerning your healthcare if you are unable to make your own decisions. You name someone to make these decisions on your behalf if you are unable to communicate with your healthcare providers.

ANCILLARY PROBATE If you own real estate in states other than your domicile state, your executor will need to file with the probate court where that real estate is located; this is referred to as "ancillary probate."

B

BENEFICIARIES The people or institutions you name to inherit specific assets, such as life insurance policies, retirement accounts, and accounts designated payable on death (POD) or transfer on death (TOD). The people or institutions who receive distributions from a trust are beneficiaries of that trust.

BEQUEST A gift of personal property, such as money, jewelry or art, that you make in your will. Also called a legacy.

BRIDGE GUARDIAN A guardian, named in your will, who takes care of your minor children until the court determines who should be the permanent guardian.

C

CHARITABLE REMAINDER TRUST An irrevocable trust that provides income to its beneficiaries for their lives; after the last income beneficiary dies, the remaining trust assets are transferred to a named charity.

CODICIL A document, executed like a will, that modifies or revokes a previously executed will.

CONFLICT OF INTEREST A conflict of interest arises when a person has obligations to more than one person but cannot fulfill these obligations because the interests of the parties are opposed to each other, or may be in the future. In life and estate planning, a conflict of interest can arise in a joint representation, where the lawyer would be unable to maximize the benefit given to one party without potentially or actually harming the other party, such as when negotiating a pre- or postnuptial agreement.

COTENANTS Owners of real estate in a tenancy in common.

CONTINGENT BEQUEST A gift by will that takes effect only if a specified condition occurs. See also general bequest and specific bequest.

D

DECEDENT A person who has died.

DEED The document that shows who owns your real estate and, if it is jointly owned, the type of joint ownership.

DEVISE A gift of real estate (real property) that you make in your will. The recipient of a devise is referred to as a devisee. See also bequest and legacy.

DEVISEE The recipient of a gift of real property made in your will.

DOMICILE Your state of permanent residence; where you intend to remain for an indeterminate duration. This is usually the state where you register to vote, register your car or have a driver's license. You may have more than one residence state (e.g., if you own more than one home), but you have only one domicile state at any time. Your life and estate plan are controlled by the laws of your domicile state, except in regard to real estate that you may own in another state.

DURABLE POWER OF ATTORNEY A form of power of attorney that allows you to name an agent to manage your finances or other matters during your lifetime if you are unable to act on your own behalf. It is effective until your death. You can limit the agent's authority and restrict when the power comes into effect.

E

EXECUTOR The person named in your will to manage your estate and carry out your wishes as expressed in your will. In some states, the terms personal representative or administrator may be used.

F

FIDUCIARY DUTY Your attorney-in-fact, executor or trustee has a special, or fiduciary, duty to manage your finances to implement your wishes and may be held personally responsible if he or she fails to act reasonably to meet those obligations.

G

GENERAL BEQUEST A gift of a sum of money made in your will. See also specific bequest and contingent bequest.
GRANTOR The person who establishes a trust by transferring title to property to the trust; also referred to as the settlor.
GUARDIAN A person you name to care for your minor children until they reach the age of 18. The court will appoint a guardian if you fail to name one; the named person is unable to serve; or the court determines that the named person is not an appropriate guardian. Guardians can also be appointed for adults who are incompetent or disabled.

H

HEALTHCARE POWER OF ATTORNEY A durable power of attorney that covers your wishes for your medical care if you are unable to make them known.
HEIRS The people entitled by law to inherit your estate if you die without a will. Your heirs include your descendants, and may include other relatives as well.
HIPAA The Health Insurance Portability and Accountability Act. Among other things, HIPAA controls privacy of your medical records. Your HIPAA authorization accompanies your advance healthcare directive, allowing your doctors to discuss your medical needs with your appointed agent.

I

INTESTATE / INTESTACY If you die without a will, you are said to have died intestate, and your domicile state's laws of intestacy or intestate succession determine how your estate is distributed.
INTESTATE SUCCESSION The process, defined in state law, by which the estate of a person who died intestate is distributed.
IRREVOCABLE LIVING TRUST A form of trust established during your lifetime whose terms cannot be changed after the document is executed. A life insurance trust is a form of irrevocable living trust.

J

JOINT TENANCY A form of concurrent ownership in which, in most states, the owners have equal interests in the property, each with full rights to the property. A joint tenancy is distinguished from a tenancy in common primarily by the right of survivorship, which provides that if one owner dies, the remaining owners automatically assume the deceased owner's interest in the property, by operation of law.

L

LEGACY Another term for bequest. The recipient of a legacy is referred to as a legatee.
LEGATEE The recipient of a gift of personal property made in your will. See also devisee.
LIFE INSURANCE TRUST An irrevocable living trust that is the owner and beneficiary of one or more life insurance policies.
LIVING WILL A document providing directions to your physician explaining under what circumstances you wish to stop treatment to prolong your life, which becomes effective if you are unconscious and there is no reasonable chance of your recovery.
LONG-TERM CARE INSURANCE A type of insurance policy that covers nursing home and similar care, which prevents depletion of your estate.

N

NON-PROBATE ASSET Property you own that, when you die, is not covered by your will and for which you have named a beneficiary, such as life insurance and retirement accounts. Also property that you own jointly with right of survivorship, such as real estate or financial accounts held as joint tenants with right of survivorship. This property passes to the named beneficiary or surviving joint owner outside the terms of your will and without going through probate.

P

PAYABLE ON DEATH (POD) ACCOUNT A bank account for which, when the account is created, you have named someone to receive the account at your death. You have complete control of the account and can change the beneficiary designation at any time. This form of bank account is a non-probate asset.
POUR-OVER WILL A form of will used in concert with a revocable living trust. In a pour over will, all assets not already transferred to the trust are transferred at your death—your estate is said to "pour over" into the trust.
POWER OF ATTORNEY A document that grants a person, referred to as an agent or attorney- in-fact, authority to act on your behalf in legal matters. With a durable power of attorney, that authority will continue even if you become disabled. It is important to select someone you trust to serve in this role.

PROBATE The formal court procedure, established by state law, by which your will is validated and administered under the court's jurisdiction. Your executor handles the probate process, gathers the probate assets, pays the estate's bills and distributes the assets as directed by your will (or according to state law, if you have no will).
PROBATE ASSETS All assets that are titled in your sole name without a designated beneficiary and that are distributed pursuant to the terms of your will, or as specified by state law if you die intestate.

R

RESIDENCE A state in which you live. The state that is your permanent residence is your domicile state. You may have more than one residence, but only one domicile state.
RESIDUARY ESTATE The portion of your probate assets for which you have not given specific instructions in your will by a specific bequest or a general bequest. The residuary clause of your will specifies how the remainder of your estate is to be distributed.
REVOCABLE LIVING TRUST A trust you create during your lifetime. This is often used in life and estate planning as a mechanism to manage your assets during your lifetime during any period of incapacity and to simplify probate for your estate. Normally, you are the trustee and primary beneficiary during your lifetime. You also name a successor trustee to manage the trust if you are incapacitated and after your death, and the beneficiaries who will receive the trust assets after your death.
RIGHT OF SURVIVORSHIP A provision on the title of jointly held property that ensures that when one owner dies, his share automatically passes to the other owners. Normally property held as a joint tenancy includes a right of survivorship.

S

SETTLOR The person who establishes a trust by transferring title to property to the trust; also referred to as the grantor.
SPECIAL NEEDS TRUST A form of irrevocable living trust that ensures support for someone who is disabled and receiving government benefits.
SPECIFIC BEQUEST A gift of a unique item of personal property made via your will. If the item is not part of your estate when you die (e.g., has been sold), then the gift fails. See also general bequest and contingent bequest.

T

TENANCY BY THE ENTIRETY A variation of joint tenancy, available in some states, for married couples. Unlike a joint tenancy, an interest in property held as tenancy by the entirety can be transferred only with the agreement of both owners; only creditors of both spouses jointly can file a lien against the property.
TENANCY IN COMMON The default form of concurrent ownership, by which two or more parties own interests in property, each with full rights to the property. Unlike a joint tenancy, there is no right of survivorship, so an owner's interest in the property can be passed on by will to someone else.
TERM LIFE INSURANCE A life insurance policy that lasts for a specific period of time during which premiums are paid. If you die during the term of the policy, your beneficiaries receive the sum specified in the policy. If you survive the term of the policy, then the policy lapses and you get nothing. See also whole life insurance.
TESTAMENTARY TRUST A trust created upon your death through provisions of your will or your revocable living trust. This type of trust is often used to provide for a minor child. Unlike a guardianship that ends when the child turns 18, these trusts can continue past that age. Testamentary trusts are also used when you want to provide for a surviving spouse, partner or other adult beneficiary for his or her lifetime and direct the ultimate disposition of your assets at his or her subsequent death. Testamentary trusts may also be used for tax planning purposes.
TESTATE If you die with a valid will in place, you are said to have died testate. See also testator and intestate.
TESTATOR The person who makes a will.
TRANSFER ON DEATH (TOD) DESIGNATION A form of title document for property that specifies a person to receive the property upon your death, allowing the property to be a non-probate asset. Stock and other securities can be registered TOD in most states. Some states allow you to register your car TOD or create TOD deeds for your real estate.
TRUST A legal instrument by which property is managed for the benefit of another. You decide what property goes into the trust and what rules govern the trust. When you transfer property to establish a trust, you are the settlor or grantor. You name a trustee to manage the trust property according to the trust terms. There are many forms of trusts, such as revocable or irrevocable living trusts, charitable trusts, special needs trusts and life insurance trusts. Assets transferred to a trust are non-probate assets.
TRUSTEE A person who manages and administers your trust. In a revocable living trust, you can serve as the trustee. In an irrevocable living trust, you may be able to serve as the trustee, depending on the type of trust and analysis of tax consequences. You also name a successor trustee to take over if you are incapacitated or after your death.

W

WHOLE LIFE INSURANCE A life insurance policy that lasts for your entire life. Depending on the type of policy, premiums may be paid in a single lump sum, over a period of years or for your entire life. Unlike term life insurance, whole life insurance is an asset with a cash value related to the amount of premiums paid and is sometimes used as a form of investment.

WILL Describes your wishes for managing your estate after your death. Primarily, this involves a plan for distribution of your probate assets, but a will often addresses other matters, such as provisions for your minor children.
WILL SUBSTITUTE Refers to non-probate assets, especially revocable living trusts, which are used to pass your assets to your beneficiaries outside your will and are independent of the probate process.