

WILL/REVOCABLE TRUST DISPOSITIONS OF HOMESTEAD PROPERTY

Hidden Problems and Possible Solutions

[Assume Homestead Owned by Decedent Only]

SITUATION	GENERAL RESULT	HIDDEN PROBLEMS (see numbered list below)	POSSIBLE LIFETIME PLANNING SOLUTIONS (not exhaustive)
Spouse and no lineal descendants	Will go to spouse, with or without a provision	1, 2	Inter vivos gifts, inter vivos irrevocable trust, prenup/postnuptial agreement TBE okay to protect interests of other spouse, but not required
Spouse and minor kids	Not devisable - life estate (spouse) /remainder (descendants) (with tenants in common election option)	1, 2, 3a, 3b, 4, 5, 6	Inter vivos gifts (including TBE to avoid mandatory remainder interest in descendants, if not a mixed family) inter vivos irrevocable trust, prenup/postnuptial agreement
Spouse and no minor kids but are adult lineal descendants	CHOICE: Outright to spouse If no outright bequest to spouse, then life estate (spouse) /remainder (descendants) (with tenants in common election option)	1, 2 if don't leave outright to spouse then also 3b, 5, 7, 8	Inter vivos gifts, inter vivos irrevocable trust, prenup/postnuptial agreement TBE okay to protect interests of other spouse, but not required
No spouse and minor kids	Not devisable - Will go to descendants, with or without a provision	3a, 3b, 4, 5, 8	Inter vivos gifts, inter vivos irrevocable trust
No spouse and all adult lineal descendants	Freely devisable (to descendants if do not devise)	None!	N.A.

- 1 - Goes to surviving spouse, even if that is not desired
- 2 - Can't leave it in trust for surviving spouse - must go outright
- 3 - All children benefit:
 - 3a - Not just minor children
 - 3b - Can be a problem if mixed family/2nd marriage situation
- 4 - Guardian needed for minor descendant
- 5 - Can't put in trust for recipient descendant - must go outright
- 6 - Cannot give 100% to surviving spouse
- 7 - If you want it to go to lineal descendants, have to give to all *per stirpes* lineal descendants
- 8 - Can't leave to persons other than lineal descendants *per stirpes*