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All Collections > Using Document Builder > Creating your estate plan >
Asset distribution guide: outright vs in trust >
Should I leave my assets in trust or outright to my spouse?

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Updated over 2 months ago

When considering whether to give your spouse assets outright or in trust at your death, you should consider a number of factors, such as:

Creditor protection

By placing the assets in a trust that becomes irrevocable at your death, it provides a layer of protection for your assets that is not available if your spouse or kids receive those assets outright.

For example, if your spouse is a professional (e.g. doctor, lawyer, etc.), and is sued in their personal capacity, their individually owned assets may be subject to the claims of the creditor. Another example would be if your spouse was in a car accident and was sued by the injured party; their individually owned assets may be subject to the claims of the creditor. If assets were left to the spouse in an irrevocable trust, those assets would be protected from such claims.

Additionally, if your spouse remarries, any assets in trust will be protected from division in a divorce.

Control over remaining assets

By placing the assets in trust, you can control who receives the remainder of the trust at your spouse's death.

For example, if you have children from a prior relationship, and you want to provide for your spouse during his or her lifetime but then ensure that your children receive the assets after your spouse passes away, a trust allows you to direct the trustee to distribute assets to your spouse for their needs and then that the remaining assets in the trust go to your children at your spouse's death.

If your spouse receives the assets outright, your spouse will be free to spend or give away the assets to whomever they please during life and at their death according to their own estate plan.

Tax planning

If you're married, a trust with certain strategic provisions allows you to maximize the benefit of your estate tax exemptions at the first death, which you may otherwise be unable to fully use if you gave your spouse the assets outright.

It is important to note that if you leave your spouse assets in trust, the trust has to be drafted to ensure that it qualifies for the unlimited marital deduction between spouses. If the trust does not contain specific provisions, it may inadvertently result in the trust not qualifying for the unlimited marital deduction, therefore leaving the assets subject to estate tax at the first spouse's death.

Vanilla Document Builder trust packages allow the user to create a marital trust for their spouse that qualifies for the unlimited marital deduction and provides the benefits above.

[Learn more about marital trusts.](#)

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