

A poorly worded apportionment clause can upend an estate plan

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Federal estate tax liability is no longer an issue for many families, now that the gift and estate tax exemption stands at \$11.4 million for 2019. However, there are still affluent individuals whose estates may be subject to hefty estate tax bills. If you anticipate your estate to have significant estate tax liability at your death, it's critical to include a tax apportionment clause in your will or revocable trust.

An apportionment clause specifies how the estate tax burden will be allocated among your beneficiaries. Omission of this clause, or failure to word it carefully, may result in unintended consequences.

How to apportion estate taxes

There are many ways to apportion estate taxes. One option is to have all of the taxes paid out of assets passing through your will. This means that beneficiaries receiving assets outside your will — such as IRAs, retirement plans or life insurance proceeds — won't bear any of the tax burden.

Another option is to allocate taxes among all beneficiaries, including those who receive assets outside your will. And yet another is to provide for the tax to be paid from your residuary estate — that is, the portion of your estate that remains after all specific gifts or bequests have been made and all expenses and liabilities have been paid.

Omission of an apportionment clause

What if your will doesn't have an apportionment clause? In that case, apportionment will be governed by applicable state law (although federal law covers certain situations).

Most states have some form of an "equitable apportionment" scheme. Essentially, this approach requires each beneficiary to pay the estate tax generated by the assets he or she receives. Some states provide for equitable apportionment among all beneficiaries while others limit apportionment to assets that pass through the will or to the residuary estate.

Often, state apportionment laws produce satisfactory results, but in some cases, they may be inconsistent with your wishes.

Avoid surprises

If you ignore tax apportionment when planning your estate, your wealth may not be distributed in the manner you intend. To avoid unpleasant surprises for your beneficiaries, be sure to include an apportionment clause that clearly spells out who will bear the burden of estate taxes. Please contact us with any questions regarding taxes or estate planning.

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