



Toledo
Community
Foundation

Inspiring and Connecting Thoughtful Giving

"Giving" Advice

Toledo Community Foundation

300 Madison Avenue
Suite 1300
Toledo, Ohio 43604
P.419-241-5049
F.419-242-5549

VISIT OUR WEBSITE

About Your Foundation

Since 1973, the **Toledo Community Foundation** has provided individuals, families and businesses interested in the well-being of our community with an *efficient, effective, low-cost, professionally managed* mechanism to achieve their charitable goals.

For philanthropists wishing to maximize the impact and life of their charitable gifts, the Foundation provides *resources for thoughtful giving*. Using its expertise and personalized services, **Toledo Community Foundation** helps donors transform their philanthropic impulse to measurable community impact. Beyond the gifting of assets, the Foundation helps donors identify issues of importance to them and *inspires engagement* with community organizations addressing these issues, thereby maximizing the impact of charitable gifts and creating a greater sense of fulfillment.

[<< Back to Front Page](#)

[Forward this article](#)

[>> Print this Article](#)



Rejecting an Inheritance?

Copyright 2010 The New York Times Company. All Rights Reserved.

The New York Times

TURNING down an inheritance may seem to be an alien concept. But with the estate tax in flux, this process, called disclaiming, can provide needed flexibility.

People who disclaim are generally treated as if they had died before the person from whom they are inheriting. The assets then go to the individual or trust next in line under the estate plan. Or, if the plan makes no such provision, assets are distributed according to state law.

Historically, lawyers have recommended disclaimers to repair estate planning oversights that bring negative tax consequences -- as when parents left money to already affluent adult children. In such a case, the children could disclaim, so the inheritance would go their own children instead, rather than facing the possibility that this money might be taxed in their own estates.

Now, with Congress having allowed the estate tax (and the generation-skipping transfer tax, on assets given to grandchildren) to expire on Jan. 1 -- for one year only -- disclaimers are emerging as a stopgap measure. Both taxes are scheduled to return in 2011 under a decade-old plan that exempts the first \$1 million from each tax and applies a 55 percent levy to the rest.

Another possibility -- some experts in the field say a likelihood -- is that Congress will restore the taxes retroactively to the system that applied in 2009: a \$3.5 million exemption and a 45 percent rate for each of the

two taxes. But if political logjams persist, it is conceivable that 2010 will be a year without either tax.

In this environment, "using disclaimers is like playing checkers with your fingers still on the piece," said Joshua S. Rubenstein, a lawyer with Katten Muchin Rosenman in New York, in reference to a technique that allows you to try a move and then take it back.

The problems that disclaimers can solve stem in large part from the use of formula clauses, in which lawyers use phrases like "that portion" or "that amount" in documents allocating money among heirs or trusts.

These formula clauses were often used to divide the pie among grandchildren and adult children or between family and charity. But they were most common when setting up bypass or family trusts, which are intended to preserve the estate tax exemption for both spouses.

But what if there is no estate tax? Then a formula clause could wind up allocating all the money to one pot or the other, rather than dividing it between the two. These unintended consequences are most likely to arise if someone dies in 2010 and Congress does not restore the estate tax. A disclaimer can correct the problem.

Let's say a will sets up both a marital trust to provide for the spouse and a separate family trust to provide for the spouse and other relatives. Douglas L. Siegler, a lawyer with Sutherland, a Washington-based firm, would have all the assets initially go to the trust for the spouse. That way, if there is an estate tax when someone dies, the spouse could disclaim all or part of the inheritance -- up to whatever the tax-free amount happens to be -- and have it go to the family trust.

Mr. Rubenstein achieves a similar effect by encouraging clients to leave everything to the spouse outright, rather than in a marital trust. But he, too, would have a family trust ready to receive assets that are disclaimed.

Both approaches postpone the decision about how much goes into the family trust until someone dies. And when it is not clear whether there will be an estate tax, that is an attractive option. By anticipating the possibility of a disclaimer, "you don't have to be a soothsayer at the time you do your documents," Mr. Rubenstein said, adding, "Your spouse can wait and see what happens."

Some wills are already set up so that disclaimers would achieve the desired effect. In other cases they may need to be amended. With careful drafting, plans put in place now can remain workable, no matter what Congress does this year or in future ones. To give wealthy families maximum flexibility, some lawyers lay the groundwork in estate planning documents for heirs to disclaim from trust to trust until assets end up in the trust most favorable under the estate-tax plan in effect when someone dies.

Retirement assets are different: they are not covered by a will but by the beneficiary designation form submitted to the financial institution that holds them. So if you want your heirs to have the option of disclaiming them, you must spell it out on that form, said Natalie B. Choate, a lawyer with Nutter McClennen & Fish in Boston.

Unless you use this form to direct that a spouse can disclaim her interest and have it go to a family trust, she will

not have this flexibility, Ms. Choate said. Just be warned that when a spouse disclaims into a family trust, certain income tax benefits will be lost, Ms. Choate added.

With all disclaimers, potential pitfalls arise. Heirs must disclaim within nine months of your death, and it may be difficult to make this financial decision during a time of grief, said Dennis I. Belcher, a lawyer with McGuireWoods in Richmond, Va.

Another trap: generally, someone who disclaims cannot have accepted an interest in the asset or any of its benefits. Innocent mistakes, like depositing a dividend check in one's own account, could preclude an heir from disclaiming.

As useful as disclaimers seem in theory, in practice family dynamics tend to trump them, Mr. Belcher said. It is unrealistic to expect a spouse to disclaim to your children from a previous marriage, for instance. Skeptical colleagues joke about the five-word lie spouses routinely tell each other when they prepare their estate plans: "Honey, I promise to disclaim."

PHOTO: OPTIONS LEFT OPEN: Joshua Rubenstein, a lawyer, likes strategies that let his clients change their minds, because "you don't have to be a soothsayer." (PHOTOGRAPH BY SUZANNE DECHILLO/THE NEW YORK TIMES)

© Factiva, Inc. All rights reserved.

[Terms of Use](#)

[Unsubscribe](#)

This newsletter is provided by the above listed firm which is a registered investment adviser ("RIA"), qualifies for an exemption or exclusion from registration requirements, or does not fall within the definition of an RIA under the Investment Advisers Act of 1940 (the "Act") or any applicable state laws. Any subsequent, direct communication by the firm with a prospective client shall be conducted by a representative that is registered, qualifies for an exemption or exclusion from registration in the state where the prospective client resides, or is not defined as an investment adviser representative under the Act or any applicable state laws. This newsletter contains general information that is not suitable for everyone. The information contained herein should not be construed as personalized investment advice. There is no guarantee that the views and opinions expressed in this newsletter will come to pass. Investing in financial markets involves gains and losses and may not be suitable for all investors. Information presented herein is subject to change without notice and should not be considered as a solicitation to buy or sell any security.

POWERED BY **hnw**