



BENEFITS OF DISCLAIMERS IN POST-MORTEM ESTATE PLANNING

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When considering the creation of a will or a trust, one usually thinks about pre-death planning.

However, the beneficiaries have an opportunity where post-mortem planning comes into play. Let's look at an important post-mortem planning tool – **the disclaimer**.

A disclaimer is a refusal to accept an interest in or a power over property – involving an Estate or Trust beneficiary refusing to accept all or a portion of the inheritance or trust benefits to which they would have been entitled to. In short, a beneficiary is saying, "I do not want the inheritance the decedent left me."

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WHY WOULD ANYONE EVER RENOUNCE THEIR INHERITANCE?

This normally occurs when a parent passes away and gives a portion of the estate to a child, and the child would rather have it go directly to their child or children. The disclaimer tells the Executor to give their share **as if he or she died before the decedent**. This may allow for the estate to pass to the grandchildren without any additional tax. In other words, the next level of beneficiaries will inherit the property.

For example, Joe has passed away, and under his will, he has left his entire fortune to his son and daughter. Both of his children are already financially secure and know that a big tax will be due on the inheritance and want all or part of it to go to their own children to only be taxed once. Joe's estate plan dictates that if his son or daughter predeceases him, then their children become the beneficiaries. By signing a disclaimer, Joe's children will make their own children the beneficiaries of Joe's estate.

The children of the son and daughter now inherit from their grandfather. If the disclaimer is done timely and properly, the movement of the assets from Joe's estate to the grandchildren is not viewed as a gift from the children's parents. The reason is simply that the grandchildren are now viewed as beneficiaries of Joe's estate, so no assets ever came from their parents. Thus, there was no transfer and thus, no tax.

When a person files a disclaimer, he or she can disclaim all or any portion of the inheritance. It is not an "all or nothing" proposition.

However, be careful. This must be done in writing within 9 months of the date of death with no exception for extensions. The beneficiary needs to read the trust or will carefully to be sure he or she knows who the next level of the beneficiary will be. It is quite possible that the beneficiary's children might not be the ones who inherit in the event of the disclaimer.

This is not just for the very wealthy who have taxable estates and create taxable estates for their wealthy children. A common and effective method is to disclaim a part of the estate that carries income tax ramifications. A disclaimer may allow those taxable funds to go to your kids at their tax rate, which is likely much lower than your own.

For example, your parent has \$100,000 left in their IRA. Under the new rules, you must take the funds out over ten years. You will probably pay about 35% of the IRA distributions each year. If you disclaim the IRA, those distributions may be taxed at a much lower rate, giving your child more money to cover tuition and expenses.

If you find yourself in the position of being a beneficiary of an estate, don't just wait for what the will dictates. You have options that may allow you an opportunity to leverage what your parents have provided for their family.

In our next article, we will review Disclaimer Trusts and Powers of Appointment.

If you have any questions or want to explore more regarding disclaimers, please [contact us](#).

Note: Any changes to your estate plan must be drafted by your attorney.

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We are offering a [free preview](#) of the planner for download. Schedule a call to assess your situation for access to the full book.

There is no better time to start, and it is never too early.

Would you like assistance with your Estate Plan? [Doug Venturelli](#) and [Richard Umanoff](#) are available to review your current estate plan, provide recommendations, and consult with your estate attorney.

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