

# How to Leave Money to Your Family

**By Matthew Crider, JD  
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Today we're going to discuss a situation that happens all the time. It's a situation that almost nobody thinks about, unless you're an estate planning attorney, but it does occur often enough to talk about. Consider the following hypothetical:

A woman, let's call her Elizabeth, has passed away. Elizabeth is survived by four adult sons.

Our fictional character was a very caring woman, and she lived simply. She had a nice home with a garden and grandchildren who loved her. Nobody would ever have expected that Elizabeth had several hundred thousand dollars in the bank and owned her home outright. Elizabeth was also very thoughtful. She left a last will and testament. She did the best job she could to express her wishes clearly, but she made one critical mistake.

Rather than having a bank account in her name alone, Elizabeth listed her eldest son on the account as a joint tenant with a right of survivorship. What that means now, in simple terms, is that her eldest son is the sole owner of all the cash in that bank account.

## **An Honest Boy**

Elizabeth knew her sons were very close with one another. She knew that the son who was listed on her bank account would share the money with her other sons. She had no doubts in that respect. In this case, let's assume Elizabeth's intuition was right.

Assume that Elizabeth's son is an honest boy and wants to share the money with his brothers. He is between a rock and a hard place. To understand why, we first need to ask why many people choose to arrange their finances in the ways they do.

The simple answer is that many people want to avoid probate court. They want the administration of their estates to be simple for their daughters, sons, grandchildren, and other heirs. Most people don't want the courts involved at all.

In many states, wills don't have to be probated (i.e. a court doesn't have to be involved) if an estate is worth less than a certain dollar amount, \$75,000 for example. By essentially giving cash to relatives—by naming a relative as joint owner with the right of survivorship—estates can effectively be reduced to a level that avoids probate.

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Here's the rub in this situation: Elizabeth's eldest son is now the sole owner of several hundred thousand dollars. If he distributes that money to his brothers, there will be huge gift tax consequences. Worse, if he dies before he's able to make those distributions, then *his estate* will retain the money. In other words, if he dies before figuring out a way to get the money to his brothers, it's likely that his mother's last wishes won't be fulfilled.

Remember, the characters are hypothetical, but the situation does happen quite often.

## **The Cost of Traditional Law Practices**

It is true that Elizabeth's son could use part of his lifetime gift tax exemption to pass the money directly to his brothers, but once that exemption is used, it's gone forever. Elizabeth should have used *her* lifetime gift tax exemption, but she didn't know how. So what could she have done differently and why didn't she do it?

Forming a simple living trust is the easiest way to avoid probate court. In the legal field we call it a revocable *inter vivos* trust. The use of a simple living trust can easily accomplish the goal of reducing an estate to a level that avoids probate. Even better, it allows you to retain control of your assets. Shared or joint ownership is not required. More importantly, use of a living trust absolutely ensures that your wishes will be carried out. In other words, it eliminates risk.

Why don't more people create living trusts? My intuition is that most people simply lack the information they need to make good decisions with respect to estate planning. Most people have heard of a will but don't know that a will often isn't enough. Many people even hire attorneys to draft wills, and their attorneys neglect to inform them of the benefits of a living trust.

That, Ladies and Gentlemen, is a disgrace to my profession. Attorneys have done a great job marketing themselves as personal injury advocates, but they've dropped the ball when it comes to informing families about the things that really matter.

That's the primary reason that we run a different kind of law firm. We are here to fully educate and serve, not just draft a will and move on.

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## About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals and business owners by providing creative solutions and be their trusted advisor and legal counselor. He serves his clients by listening closely to their goals, dreams and concerns and working with them to develop superior and comprehensive estate and asset protection plans. His estate planning practice focuses on preserving and growing wealth by providing comprehensive, highly personalized estate planning counsel to couples, families, individuals and businesses.

