

# New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends  
of*

**FERRIS & ASSOCIATES**  
A PROFESSIONAL CORPORATION  
Attorneys and Counselors at Law

Trust & Estate Planning ♦ Probate & Estate Administration ♦ Business Formation & Planning

## **DISCLAIMERS: AFTER DEATH MAGIC (USE OF THE DISCLAIMER OPTION)**

*by Carrie Rae Wiser, Esq.*

### **BACKGROUND**

All of our planning—or the lack thereof—must someday be put to the test. When it comes to making sure your assets get to your chosen beneficiaries, Estate, Trust, and Probate Administration is the process of implementing and supervising that planning. The extent of such administration is directly related to “how much” estate planning has been done prior to death. Obviously, a well thought out and properly executed plan requires much less time and expense than no plan at all. Our law firm, since its inception in 1993, has committed itself to a full service estate planning law practice, including **Estate, Trust, and Probate Administration** assistance to clients as well as other families who have lost loved ones.

Of all the events we may experience throughout our lives, one of the most difficult is the announcement that “there has been a death in the family.” The death of an individual,

whether they had a will, a living trust or no plan, sets into motion a series of actions. There are family members to contact, memorial services to be arranged, burial plots to be located and the list goes on and on.

Because of the grief associated with a family member’s death, most people are not aware of another series of actions that need to be taken. These steps are the ones that we, as Estate Planning attorneys, are more familiar with—allocation of assets between the Marital and Family Trusts in a living trust centered estate plan, the probating of a will, the appointment of a personal representative of an intestate estate, the filing of Estate Tax Returns, etc.

In other words, it is wise for the family of a deceased individual to meet with an experienced Estate, Trust, and Probate Administration attorney to review the status and nature of assets in the decedent’s estate to

determine if any after-death planning opportunities are available.

An often overlooked, yet most useful, after-death planning tool is the **DISCLAIMER**.

### **WHAT IS A DISCLAIMER?**

A disclaimer is a legal “no thank you.” It allows the recipient of property (a spouse, for example) to refuse acceptance of an inheritance. These two words “No Thanks” said at the right time, by the right person, may avoid significant estate or gift taxes, as well as achieve many other non-tax benefits after death. This is an important statement. For it to be effective, a disclaimer must meet strict IRS and State Law requirements. Recent changes in Virginia Law have made the Disclaimer strategy an even more powerful and flexible post mortem planning option.

### **HERE ARE THE RULES FOR A DISCLAIMER TO BE EFFECTIVE:**

1. It must be made within nine (9) months of decedent’s date of death;
2. It must be in writing;
3. The person saying “No Thanks” must not have accepted any interest in the property or any benefits therein, and
4. The property must pass to the recipient without any directions by the disclaimant (person saying “No Thanks”).

The chief advantage of a disclaimer is that it allows decisions to be made about the **FLOW** of property to beneficiaries and the ultimate taxation to the estate and beneficiaries even after the decedent’s death.

### **WHAT ARE SOME COMMON EXAMPLES OF DISCLAIMERS?**

Over the years of handling after-death administration situations, Ferris and Associates has gained a great deal of knowledge and

experience in the use of the disclaimer strategy. The following are a few examples of situations in which a disclaimer was used:

1. An individual died without a will (intestate) and his or her assets were to be split under intestacy law between surviving spouse and children. The children were able to disclaim their interests back to the surviving spouse.
2. A disclaimer of joint property (1/2 interest) to utilize the Federal Estate Tax exemption of the first spouse to die, later saving the children significant estate taxes.
3. A disclaimer of the primary beneficiary of IRAs or deceased individual’s life insurance proceeds by the spouse to his Revocable or testamentary trust to protect the deceased individual’s Federal Estate Tax Exemption.
4. A disclaimer to qualify the deceased individual’s estate for a charitable estate tax deduction.
5. An individual was in an at-fault lawsuit due to a recent automobile accident; he disclaimed his inheritance from his father to his children, protecting his family inheritance from his own creditors.
6. An adult child received land through his parent’s will worth \$150,000. Federal and state environmental clean-up penalties on the land exceed \$250,000. Child disclaimed property to county, avoiding clean-up costs.
7. Property was left to two children and one child felt that his sibling should have received the entire property. Child was able to disclaim his interest in the property in favor of the sibling.
8. And, generally, disclaimers are used to cure problems arising from errors, misjudgments or changes in family situations after the estate plan went into effect prior to death.

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*About the Author*

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So, as you can see, there are a myriad of situations that may arise after death for which the disclaimer strategy would provide a better solution. In order for this tool to be effective, however, immediate after-death assistance by a skilled estate administration attorney must be secured. The disclaimer strategy must be completed within nine (9) months of the individual's death—no exceptions to this rule. Our Firm has produced overwhelming results by using this option for families. The key to our successes have been families seeking immediate counsel prior to making decisions to change titles, filing for life insurance proceeds, implementing IRA Rollovers or accepting or rejecting property at the death of a loved one.

If there is the death of a spouse, family member or friend, the disclaimer strategy authorized by Virginia Law can be the only solution to an estate plan that otherwise may be ineffective due to tax law or family changes prior to death. In every estate plan, the major goal for the family is to "make the plan work" **EFFICIENTLY** and **EFFECTIVELY** after death. The disclaimer option, if completed in a timely manner, can achieve this goal.

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