



Estate Planning

Local estate experts note recent statute changes that may impact your will.

BY DON BUTLER

We asked a few experts for ideas and tips for planning wills and estates, along with thoughts on including distribution information to charities:

- **Jennifer D'Amato**, chair of trusts and estates practice, Reinhart Boerner Van Deuren, Milwaukee
- **Michelle Fitzgerald**, attorney/mediator and owner of Horizons Law Group, Brookfield
- **Megann Hendrix**, partner at MacGillis, Wiemer, Milwaukee
- **Michelle M. Stoek**, Attorney, Phillips & Gemignani LLC, Waukesha

If someone hasn't had a will or hasn't updated one in a while, what are a few recent changes or trends they should be aware of?

Hendrix: In my practice, the biggest trend has been the desire to avoid a probate administration by using a revocable trust to administer the estate. Many clients are surprised to hear that a will does not avoid probate.

Avoiding a probate administration can reduce the amount of work involved for the estate and reduce the fees of administering the estate. After we discuss the benefits of a non-probate administration by using a revocable trust, most clients are opting for the revocable trust.

D'Amato: For Wisconsin residents, over the last decade there have been changes to our state statutes that impact estate planning documents — Wisconsin's enactment of a new trust code in July 2014 is particularly

relevant. In addition, there's a relatively new digital property statute. Federal law changes would include the CARES Act that impacts retirement distributions, and also the many changes to the estate tax exemption that have occurred over the last ten years (and the sunset of the current law scheduled for January 1, 2026).

Equally important are changes in the client's own situation — change of state residency, children who are now adults, divorce, named fiduciaries who have died or become incapacitated, and changes to overall financial circumstances.

Fitzgerald: A complete will package includes power of attorney documents — health care and financial. These documents are so important before a person passes away, and are a must have to avoid guardianship proceedings. Most people don't realize that having a will does NOT avoid probate — it simply tells the probate court where to distribute your assets so that we don't have to go up the family tree.

We had to do that for a single person a few years ago who had no children ... no will, parents gone, no siblings; we looked up both sides of the family tree and almost 72 beneficiaries later, all to divide about \$150,000. You can see why a will is still helpful. She really would have left it to her neighbor/friend who handled the probate but didn't receive any benefit.

Stoek: First, everyone should be aware of the current federal estate tax exemptions and the amount of the annual gift exclusion. Proposals to subject more families to the 40 percent federal estate tax and to increase the tax rate were not implemented. Instead, inflation adjustments were made: For 2022,

individuals can pass on \$12.06 million (and married couples may pass on \$24.12 million) without application of the federal estate tax. Further, individuals may gift \$16,000 per person per year, up from \$15,000 in 2021. Gifts exceeding the \$16,000 per person limit require filing a gift tax return, but the lifetime gifting limits without taxation have increased to \$12.06 million.

While only a small percentage of estates are subject to the estate tax at the current levels, a higher percentage of individuals are in a position to gift during their lives. In our practice, we're seeing clients struggle with the question of whether to gift during their lives to children and family who could benefit from financial assistance now, or whether to save the funds for their own potential need in the future. Additionally, we're seeing concerns with the stability of marriages and relationships, and clients who desire to try to protect gifts from creditors, divorce or lawsuits. Our firm practices family law as well, and the two practice areas overlap as we advise our clients of their options and potential outcomes. Our managing partner, Cheryl Gemignani, mediates family law matters and regularly encounters gifting disputes in divorces, providing attorneys and their clients with options for resolving those complex matters. It's prudent to seek advice of counsel when planning to gift to properly address the issues before disputes arise.

Additionally, beneficiary planning is one of the most important parts of estate planning (and always has been), but the pandemic has highlighted the significance of it. Many assets — real estate, retirement assets, life insurance, investments or bank accounts — will be distributed according to the beneficiary designation, and failing to designate a beneficiary beyond a spouse, or designating "my estate" as the default, has led to the need for probate and even litigation, whereas an updated designation would have avoided the process entirely. Whether wills or trusts are used as the main vehicle of the estate plan, proper beneficiary planning is necessary. It's critical that individuals have their counsel actively participate to review beneficiary designations and ensure that they are consistent with their wishes. It is also important to review those designations annually, and particularly after a change in circumstances, such as a death or divorce in the family.

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Best Lawyers®

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Methodology for *The Best Lawyers in America®* and *Best Lawyers: Ones to Watch in America* - This list is excerpted from the 2022 editions of *The Best Lawyers in America®* and *Best Lawyers: Ones to Watch in America*, the pre-eminent referral guides to the legal profession in the United States. Published since 1983, Best Lawyers® lists attorneys in 148 specialties, representing all 50 states, who have been chosen through an exhaustive survey in which thousands of the nation's top lawyers confidentially evaluate their professional peers. The 2022 edition of Best Lawyers is based on more than 13 million evaluations of lawyers by other lawyers.

The method used to compile Best Lawyers remains unchanged since the first edition was compiled 40 years ago. Lawyers are chosen for inclusion based solely on the vote of their peers. Listings cannot be bought, and no purchase is required to be included. In this regard, Best Lawyers remains the gold standard of reliability and integrity in lawyer ratings.

The nomination pool for the 2022 edition consisted of all lawyers whose names appeared in the previous edition of *Best Lawyers*, lawyers who were nominated since the previous survey and new nominees solicited from listed attorneys. In general, lawyers were asked to vote only on nominees in their own specialty in their own jurisdiction. Lawyers in closely related specialties were asked to vote across specialties, as were lawyers in smaller jurisdictions. Where specialties are national or international in nature, lawyers were asked to vote nationally as well as locally. Voting lawyers were also given an opportunity to offer more detailed comments on nominees. Each year, half of the voting pool receives fax or email ballots; the other half is polled by phone.

Voting lawyers were provided this general guideline for determining if a nominee should be listed among "the best": "If you had a close friend or relative who needed a real estate lawyer (for example), and you could not handle the case yourself, to whom would you refer them?" All votes and comments were solicited with a guarantee of confidentiality — a critical factor in the viability and validity of *Best Lawyers*' surveys. To ensure the rigor of the selection process, lawyers were urged to use only their highest standards when voting and to evaluate each nominee based only on his or her individual merits. The additional comments were used to make more accurate comparisons between voting patterns and weight votes accordingly. *Best Lawyers* uses various methodological tools to identify and correct for anomalies in both the nomination and voting process.

Recognition in the Best Lawyers: Ones to Watch in America is based entirely on peer review and employs the same methodology that has made Best Lawyers the gold standard for legal rankings worldwide. These awards are recognitions given to attorneys who are earlier in their careers for outstanding professional excellence in private practice in the United States. Our "Ones to Watch" recipients typically have been in practice for 5-9 years.

Ultimately, of course, a lawyer's inclusion is based on the subjective judgments of his or her fellow attorneys. While it is true that the lists may at times disproportionately reward visibility or popularity, the breadth of the survey, the candor of the respondents and the sophistication of the polling methodology largely correct for any biases.

For all these reasons, *Best Lawyers* lists continue to represent the most reliable, accurate and useful guide to the best lawyers in the United States available anywhere.

Highlighted names designate a lawyer named a 2022 "Lawyer of the Year" recipient.

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Megann S. Hendrix, a Wisconsin native, is partner at MacGillis Wiemer, LLC, in Milwaukee. She received her J.D. from Marquette University Law School.

She has established a great complimentary practice by focusing on estate planning, elder law and family law. Megann's knowledge and skills in those areas help her provide a global view and holistic approach to effectively capture her client's goals and needs.

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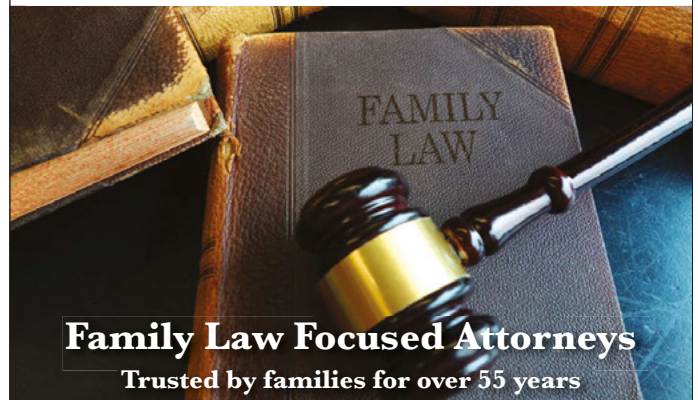
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Monte Weiss

However, when an insurer takes the wrong position on coverage, Monte will aggressively pursue your interests in litigating those coverage issues.



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Photo by Laura Dierbeck

Attorneys Frank Crivello (right) and Victor Harding

Warshafsky Law

PERSONAL INJURY

Hard work, pragmatism and dedication to a higher calling have always been hallmarks of the Warshafsky Law Firm., which has won verdicts that have resulted in safer, better lives for not only its clients, but for everyone.

Thanks to the firm's passionate, committed attorneys, consumers are no longer exposed to several hazardous drugs and pharmaceuticals. There are safer cars on the road. Injured people receive their day in court.

Those are only a few of the reasons why Attorneys Frank Crivello and Victor Harding have again been selected as Best Lawyers in Wisconsin. Along with the other award-winning attorneys, investigation team and staff, the Warshafsky firm has consistently been regarded among the top legal organizations in the United States.

The firm is led by Attorneys Crivello and Harding, both of whom are perennially included in Best Lawyers® for personal injury litigation - plaintiffs based upon voting by lawyers.

Victor was recognized as the Product Liability Litigation - Plaintiffs "Lawyer of the Year" in Milwaukee for 2022 by Best Lawyers, an

achievement awarded to only one lawyer per practice in each metropolitan area.

Frank has been included in Best Lawyers for the past 12 years in personal injury litigation - plaintiffs, has been voted into multiple exclusive organizations for the top trial attorneys, and is one of two lawyers to have achieved the highest civil jury award in Wisconsin history at the time.

An aggressive boutique firm, Warshafsky focuses exclusively on personal injury, automobile and motorcycle accidents, products liability, medical malpractice, wrongful death suits and other cases in which consumers need a champion in court. From when the firm's early roots were planted over 75 years ago, serving the needs of the community has been its guiding principle.

The firm's slogan, "Injured – it is about the money," reflects the very heart of representing those injured due to the negligence of others. Our civil justice system compensates the injured monetarily, and Warshafsky Law is among the leaders in maximizing the recovery of those most in need. Hard working, true trial lawyers who get record-breaking results.



Photo by Laura Dierbeck

Pasternak & Zirgibel s.c.

PERSONAL INJURY

EXPERIENCED

Injury lawyers Frank Pasternak and Jeff Zirgibel have over 50 years' experience working as preeminent Wisconsin personal injury and wrongful death attorneys. During those years, they have been award-winning personal injury attorneys with both being honored by Best Lawyers® in personal injury litigation — plaintiffs since 2013 and 2015 respectively.

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Can you share some examples of the benefits of estate planning and keeping your will up to date?

Hendrix: If a person has no estate planning documents, they're letting the law decide who inherits their estate, letting a court decide the guardian for a minor child, and could be releasing funds to a child at the age of 18 or 21 years old rather than allowing a trustee to manage the funds for a longer period of time. Having an estate plan allows you to make these decisions based on your unique situation and ensure your wishes are followed.

In addition, if the right estate planning tools are used, you could remove the court from the process entirely, which saves time and fees. Many people forget about the importance of powers of attorney — for health care and for finances. All adults should have powers of attorney in place to nominate their agent in the event they are unable to make decisions for themselves. The last thing your family wants to do in a crisis is go through an adult guardianship court process, but that's what would be needed if no powers of attorney are in place.

When drafting an estate plan, I try to anticipate a number of possibilities and tie in contingency planning into the documents to avoid the need to make updates after foreseeable life changes. However, it's important to review your documents regularly to ensure they still meet your needs. I typically suggest reviewing the documents every five years to ensure they still match your wishes.

Fitzgerald: Updates may include changing who is in charge of your estate after you pass — called the personal representative — or updating who will be your health care power of attorney (POA) or financial POA. You may have listed a sibling after your spouse, but now one of your children is responsible enough to handle those roles. Updating is needed if you wish to add

or change beneficiaries, including charities, as those desires and wishes may change over the years.

D'Amato: The only way to leave a financial legacy exactly as you want to is to have an up-to-date estate plan. It's not something you do for yourself, it's something you do for your family and other loved ones. A good estate plan can protect your beneficiaries from unnecessary taxes, from creditors (including ex-spouses) and in certain instances from themselves — issues such as addiction and spendthrift tendencies can be managed.

Further, in order to make things as easy and inexpensive as possible for your beneficiaries, you should ensure that your assets are properly titled and coordinated with your estate plan so that probate can be avoided. Probate is a court process to retitled assets after someone passes away, and it will add time and expense to the process.

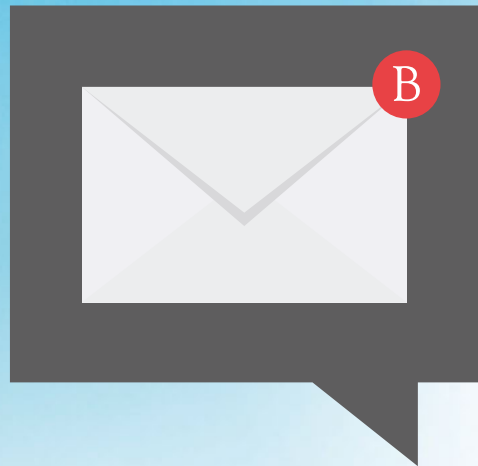
Stoeck: Preparing a will or trust is necessary in order to plan for what happens after death. Those documents appoint individuals to carry out wishes, set forth what the instructions are, and significantly streamline a very difficult time in life. Wills plus probate avoidance techniques, or trusts which are funded by the assets in the estate, are needed to avoid significant cost of proceeding to court, litigating over what the decedent wished for, and months of work and difficulty. Additionally, powers of attorney designate an agent to make financial or healthcare decisions which are spelled out in advance by the principal and can avoid a costly guardianship action. Proper beneficiary planning avoids probate, will contests, litigation and potentially devastating tax consequences. Reviewing the choices made in the plans annually ensures that individuals appointed to important roles are appropriate and that the goals and objectives are met. **MKE**

Find the full story – including examples of estate planning, common questions around planning for charitable donations, and other planning tips – at mkelifestyle.com.

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