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Seriously, sometimes it pays to skip taking an inheritance

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One of the best ways to use an inheritance may be to not inherit at all.

It sounds counterintuitive to give up wealth, yet experts say so-called disclaimers can be a smart financial move whether you're planning your own estate or find yourself on the receiving end of an inheritance.

The idea is fairly straightforward:

"A disclaimer means you do not accept the benefit," said Larry Lehmann, president of the National Association of Estate Planners and Councils. "You have decided that you do not want it, and you do not have to accept a gift even though someone gave it to you."

The net effect is that the asset passes to someone else as if you predeceased the person willing it, letting you sidestep most of the tax and financial repercussions of taking it.

But why do it? The simplest reason is to dodge an undesirable asset like a piece of real estate that could cost you more than you'd net by selling it (say, because of high property taxes or required repairs), or an asset that comes with strings attached (such as care of the deceased's pet or a requirement to marry).

Individuals who are already wealthy may use disclaimers as an opportunity to pass on wealth they inherit to their own heirs, avoiding taxes their estate might incur by willing such gifts, said Lehmann. Or you might disclaim to benefit another family member — say, if the asset would go to a younger family member in a lower tax bracket, or

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someone who would be able to stretch out distributions of an inherited IRA over a longer period.

When you're planning your own estate, disclaimers can be incorporated to protect assets. A common setup is for married couples to stipulate that any assets disclaimed by a surviving spouse go into a trust for that spouse's benefit, said J.J. Burns, a certified financial planner based in Melville, New York.

"God forbid something happens to you, if you get sick or need care in a nursing home, that asset is protected," he said. Income from the trust could be used to pay bills, said Burns, but the nursing home and other creditors generally couldn't access the principal.

For your estate

"You can truly plan the legacy of your family, so whoever disclaims, you know what's going to happen to those assets," Burns said. Only the bequestor has the opportunity to direct where a disclaimed asset ends up — say, a trust to benefit that person or others, or a different heir entirely.

Be sure to discuss the disclaimer provision with your heirs, especially if you're setting up that option with the aid of an estate planner to help reduce tax consequences or protect assets. While it's common for wills to include a disclaimer, in practice, heirs rarely exercise them, Lehmann said.

"We talk about disclaimer planning, but it's very hard sometimes when you have a grieving spouse who feels insecure," he said.

Keep in mind that you may need more than a will. Many jurisdictions prevent a spouse from being disinherited, for example, so a court might void provisions in a will that leaves everything to your kids from a first marriage, said Joslin Davis, president of the American Academy of Matrimonial Lawyers.

If you want to ensure that new spouse disclaims his or her share — which could be as much as half the estate, depending on state law — **you'll need a signed waiver to that effect in a pre- or post-nup**, said Davis, who is also a principal of Allman Spry Davis Leggett & Crumpler in Winston-Salem, North Carolina.

Consider the wording and timing. Under federal law, only a spouse can waive rights to employment-related retirement benefits, she said. So to be effective, the wording of a pre-nup would need to indicate your fiancée is agreeing to sign that waiver after you're hitched.

For heirs

If you're inheriting, carefully assess if disclaiming that property (in whole or in part) is the best option. Once that decision is made, it's irrevocable, so it's important to carefully consider how much, if any, of those funds you can afford to pass up, Burns said.

Next point of consideration: Who's next in line to inherit? "You can't direct who it goes to," Lehmann said. That might not matter much if you just don't want say, the family time-share, but it could make a big difference if you're disclaiming strategically with the aim of passing assets to a specific person.

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If the deceased didn't specify who would get a disclaimed asset or that it would go into a trust, state law determines what happens next. The asset might go to whoever gets the rest of the estate, or state intestacy laws might apply as if there was no will, he said.

Consult experts including a financial advisor and attorney about possible financial consequences to you. If you're trying to qualify for Medicaid, for example, some states consider a disclaimed inheritance as a recently transferred asset, which could affect your eligibility for the program, said Jeffrey Love, an attorney with Winne, Banta, Basralian & Kahn in Hackensack, New Jersey.

Heirs will need to make sure they meet all the requirements for a qualified disclaimer under federal and state law. That includes putting your refusal in writing and notifying the estate executor within a set time frame, usually nine months of the death of the person leaving you the property, said Love.

While you're weighing the decision, keep your hands off that asset. "Generally speaking, you cannot use or receive the benefits of the inheritance and then later disclaim it," Love said.

(The exception: IRAs. The beneficiary who inherits an IRA can still disclaim it after taking a required minimum distribution for the year of the original IRA owner's death, he said.)



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