THE

Complete Guide to Legal Planning for New York Parents

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INTRODUCTION

When you become a parent, it can seem like all your waking hours (which can now seem like nearly *every* hour) are spent protecting your child from any imaginable harm: baby-proofing your cabinets; finding the best car seat; blocking electrical outlets; and gating staircases.

Yet, one of the gravest threats to your children is the possibility that something could happen to *you*, and you wouldn't be there to take care of them. Maybe every time you think about it, you're anxious, confused, and have no idea where to begin – so protecting your family stays on your to-do list for months or even years on end.

If this sounds like you, then you've come to the right place. This book is the all-in-one resource for New York parents who want to make sure their family will be taken care of even in the worst of circumstances. From choosing a guardian to minimizing estate taxes, it covers everything you need to know to protect your children in the event of your death or incapacity.

Breaking down complicated legal and financial concepts into plain, easy-to-understand language, *The Complete Guide to Legal Planning for New York Parents* explains exactly what you need to do and why you need to do it. It identifies common pitfalls, provides tips for special circumstances, and even includes practical information, such as the best place to store your will and how to transfer digital assets.

With the information in this book, you'll be ready to finally get the weight of your family's legal planning off your shoulders and onto paper. And you'll feel 100% better knowing you've done everything you can to make sure your kids will always have the best care possible.

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CHAPTER 1

What's The Worst That Can Happen?

Many parents put off doing their will because they think they are too young or that their situation is too simple. It is easy to pretend we are immune to the vagaries of fate and that tragedies only affect other people. But being a responsible parent means facing uncomfortable realities and creating a plan for your kids even in the worst of circumstances.

The first step to embarking on this endeavor is to understand what happens legally and practically when you pass away without a plan in place. Once you understand the risks to your family, you won't want to delay your estate planning even one more day.

WHAT HAPPENS TO YOUR ASSETS

If you're like many parents, you probably haven't given a lot of thought to how bills would be paid if you weren't around. Unfortunately, things don't magically fall into place.

Probate: Obstacles to Accessing Your Assets

Important family expenses like rent, tuition, and childcare costs would still need to be paid. Without a plan to ensure funds are available, your assets can be inaccessible for many months, or even years, causing tremendous hardship for your family.

After you pass away, any assets that are titled in your name individually are frozen, and no one can access those assets until they receive an order from a court appointing them as the executor or administrator of your estate.

The court process that authorizes the access and transfer of your assets is referred to as probate, and the court that oversees the process is called probate court. (In New York State, the probate court is officially called the Surrogate's Court).

If you die without a will, your spouse, with the help of a lawyer, would petition the court to be appointed as the administrator of your estate. This process can be lengthy and burdensome for a grieving spouse and newly-single parent.

If you are not married or if your spouse has also passed away, the guardian of your child may petition the court to serve as the administrator – but first a guardian for your child must be appointed by the court (see *What Happens to Your Children,* below).

Until an order from the court is issued, stocks can't be sold, real estate transactions can't be entered into, and funds can't be made available to pay for lawyers, childcare, and other important expenses.

Even if you have a will, the probate process can be problematic. (See Chapter 4 for how to avoid probate altogether).

Who Gets Your Assets May be a Surprise

If you are married, you may assume that all your assets will go to your spouse if you pass away, so it's not important to have a will. This is a mistake. In New York State, if you are married with children from that marriage, about 50 percent of your assets would go to your spouse and 50 percent would go to your children.

> In New York State, your spouse doesn't automatically inherit your assets.

"What's wrong with assets going to my kids?" you might ask. The answer: **a lot.** Assets left directly to minor children are subject to all kinds of troubling legal rules.

Your Kids' Inheritance Would be Supervised by a Court

Assets inherited by minor children are supervised by the court until the children turn 18 – which can be a nightmare for both your spouse and your kids. Such an arrangement would saddle your spouse – or other guardian – with burdensome legal requirements, leaving your spouse at the mercy of a judge with respect to how the money could be spent. Court supervision also requires your spouse or your children's guardian to report details of your children's finances on an annual basis, and those details become part of the public record. When your children turn 18, they receive unrestricted access to the funds.

If you're a single parent, this situation can be even more problematic because the person charged with managing your children’s inheritance is often often the children’s other parent – who you might not trust to manage the assets.

> If you don’t want financial information about your kids disclosed to the public or for your spouse to be burdened with years of court reporting requirements, then it’s important to have a will to cover the possibility of even one parent dying.

In short, if you don't want to risk leaving your family with a legal and financial mess, then it’s important to have a will to cover the possibility of even one parent dying. (You can read more about all the bad things that happen when assets are left directly to minor children and what you can do to protect your kids' inheritance in Chapter 3.)

WHAT HAPPENS TO YOUR CHILDREN

Even more concerning is who would take care of your kids if no parent were to survive. If you travel together, take cabs together, or even work in the same part of town, there is a chance of both parents passing away at the same time. To put it in perspective, over 1,300 children were orphaned as a result of the tragic September 11, 2001 attacks. Another 1,700 lost one parent.

If this nightmare scenario of both parents dying came to pass, you’d want your children to have the best care possible. This means – at the very least – ensuring that your children would be taken care of someone you know and trust.

In the absence of a will that names a guardian for your children, a court will choose who takes care of them - and it may be the last person you would trust to raise your kids. This is particularly risky if any of your family members would be less than ideal caregivers. It is also extremely risky if your close family members live outside the U.S. (See Chapter 8 for tips for cross-border families.) And while you might think there is an obvious person to take custody of your children, your choice may not be so obvious to a judge who has little information about your family.

Creating a will is just the first step in making sure your family is taken care of. The remainder of this book provides more detailed information about what should be included in a comprehensive plan to protect your loved ones.

CHAPTER 2

Guardianship Planning: Who Will Take Care of Your Children?

The best way to make sure your children are cared for if you’re not there to take care of them yourself is to name a trustworthy friend or family member in your will to serve as the children’s guardian. A guardianship designation not only ensures that your kids would be in good hands; it can also prevent messy, public court battles that can add to your children's suffering.

WHAT IS A GUARDIAN?

> A child without a parent or legal guardian is subject to being taken into state custody.

Because children under the age of 18 are considered minors and not capable of taking care of themselves, they must always be under the legal supervision of an adult. If either parent is alive and able to take care of the child, then no legal guardian is necessary because the parent is responsible for supporting and making decisions on the child's behalf.

If the child’s parents pass away or their parental rights are terminated, the law requires that another adult fill the role of financially supporting and making decisions for the child. The person who fills this role is appointed by a court and is referred to as the child’s legal guardian. There are certain actions that only a parent or legal guardian can take on behalf of a child, such as enrolling the child in school and authorizing medical treatment. In the absence of a guardian, your child could go without necessary medical treatment or schooling. Even more troubling, a child without a parent or legal guardian is subject to being taken into state custody. This is why it's so important to put guardianship provisions in place.

HOW TO DESIGNATE A GUARDIAN

Your choice of guardian should be documented both in your will and in a separate standby-guardianship designation. Your will goes into effect when you pass away, and the document is admitted to a court. Because a will takes effect only if you die, the guardianship designation in your will is not sufficient if a guardian is needed as a result of your incapacity — if, for example, you were rendered unconscious from a car accident. A standby guardianship document allows the designated person to serve as guardian in this scenario.

A standby guardianship document also allows the named guardian to serve immediately upon a parent's death so that there is no gap between the time of the death and the court's appointment of a guardian.

HOW A GUARDIAN IS APPOINTED

I If both parents pass away, a court will appoint a guardian during the probate or estate administration proceedings. This is the court process whereby ownership of your assets is transferred to your heirs.

If one or both parents had a will designating a guardian, the court will likely appoint the person designated in the will. While a court is not legally bound to appoint the person you've designated, a parent's choice carries substantial weight in the court's decision. Ultimately, the court will make a decision based on the best interest of your children.

If no guardian has been named in a parent's will, the court will decide on a guardian for the children independently based on who petitions the court. If more than one person requests to serve as the children's guardian, a lengthy, public court battle could ensue. The judge could even assign your children to state custody pending a court decision; courts have been known to do precisely that when guardianship is unclear. When the dispute is resolved, the court may end up appointing a family member who might be the last person you'd choose to raise your child. Having a will in place can prevent this from happening.

If no adult petitions the court, your child could be placed into foster care permanently — something you want to avoid at all costs. If no friend or family member comes to mind to fill the role of guardian, try to think of other adults who might be willing to take on this responsibility. Teachers, coaches, or other people in your children's life may not be obvious choices, but they may be willing to step up if necessary.

Unlike the appointment of a permanent guardian, no court proceedings are necessary for a standby guardianship to take effect. The person designated in a standby guardianship document becomes a temporary guardian immediately upon the death of both parents or upon certification by a doctor that the parent or parents are incapacitated. The standby guardian then has legal authority to act as guardian for 60 days, unless they file a petition to extend their authority.

TIPS FOR CHOOSING A GUARDIAN

Now that you know how important it is for your children to have a guardian, the hard part is choosing the right person. If you have many close friends and family members nearby, it may be a matter of figuring out which person would be the best choice among many. If you have a small family, you may have trouble coming up with someone who would be appropriate and willing to take on this responsibility. If both you and your spouse are close to your families, you may disagree on who would make the best guardian, each preferring someone from your own family.

While it’s difficult to choose someone other than yourself to raise your children, imagine a court choosing the guardian without your input. Your relatives may argue in court over who gets your children — or they might agree, but not on the person you would have chosen. That's why it's important to designate a guardian while it's still up to you. You can always change your mind later on.

If you're having trouble choosing someone to serve as your children's guardian, the tips below may help you come to a decision.

Tip 1: Think beyond the obvious choices. Make a list of all the people you know who you would trust to take care of your children. You don’t need to limit your list to close family members. While siblings and parents can be excellent choices, also con¬sider extended family members who are old enough to raise your children – cousins, aunts, uncles, nieces, nephews, even second cousins once removed.

Tip 2: Friends can make excellent guardians. Beyond family, consider close friends, the parents of your children’s friends, people you know from your place of worship, even teachers or child¬care providers with whom you and your children have a special relationship.

Tip 3: Consider your guardian’s financial situation. Don’t eliminate anyone from consideration just because you don’t think they have the financial resources to take care of your children. You can take care of the financial component with the assets you leave behind. (That's what life insurance is for.) You can even provide funds for your chosen guardian to build an addition to his or her home or move to a larger home to accommodate your children.

That being said, if the potential guardian has children of their own and your children’s lifestyle and theirs differ significantly, think carefully about the dynamics this could create. For example, you don’t want the guardian to be expected to provide financial advantages to your children that the guardian cannot afford to provide for their own children. Likewise, you don’t want *your* children to be disadvantaged in a more affluent home.

Tip. 4: Focus on love. Consider whether each couple or person on your list would truly love your children if appointed their guardian. Are they affectionate with your children? Do your children already have a close relationship with them?

Tip 5: Values and parenting philosophies are important. Ask yourself which people on your list most closely share your values and philosophies with respect to your:

- religious beliefs
- moral values
- child-rearing philosophy
- educational values
- social values

Tip 6: Personality counts. Consider whether each of your candidates has personality traits that would work for your children. Ask yourself the following questions:

- Are they good role models?
- Do they have the patience to take on parenting your children?
- How affectionate are they? (If your family is particularly affectionate, a guardian who is loving but not physically affectionate might not be a good fit.)
- If they are fairly young, how mature are they?

Tip 7: Location can be a factor. Someone might make a perfect guardian, but if they live far from other people in your children's lives, it might be better to choose someone who lives closer. Con¬sider whether it's important for your children to remain in the same community or close to other members of your family. This factor might be more important when your children are school-aged and have established strong friendships where you live than when they are younger.

Tip 8: Having other children can cut both ways. You might have friends or relatives who are model parents to their own chil¬dren. Before you conclude that they would be great guardians for your children as well, consider the dynamic of adding your own children to their household. Would more children overburden them? Do your children and theirs get along? Would the couple be likely to treat your children just like their own? Or would your kids play second fiddle?

Tip 9: Look for a good – but not perfect – choice. Most likely, no one on your list will seem perfect – that is, just like you. But if you truly consider what matters to you *most*, you should be able to identify some good choices. In the end, trust your instincts. If one couple or person meets all of your criteria but doesn't feel right, don't choose them. By the same token, if someone feels more right than any of the others on your list, there's usually a good reason for it.

Tip 10: Consider a Guardianship Panel. Because it's difficult to predict what your children's needs will be as they grow older, consider appointing a guardianship panel to decide who would be the best guardian when and if it is necessary. Choose trusted relatives and friends to make up the panel.

This approach allows for maximum flexibility so that the most appropriate choice can be made at the time a guardian is actually needed. The panel can consult with your children and assess their needs and desires in order to determine who would be the best person to fill the role at that point in time.

If you choose this approach, be sure to revisit it regularly, espe-cially if you choose people other than close family members. The more people involved, the more likely it is that you will not be as close to one or more of them in the future.

Tip 11: Don't let guilt be a factor. You may think it would kill your mother if she knew you didn't want her to raise your kids. Don't feel badly about not choosing someone who might feel hurt if you decide on someone else. You need to do what is best for your children.

Tip 12: You can encourage relationships with non-guardians in a letter to your chosen guardian. In a document separate from your will, designate “mentors” consisting of special people in your children’s lives to help guide them in ways for which the “mentor” is particularly well-suited. This can be a good way to encourage the continuation of your children’s relationships with the other side of the family, as well as non-blood “aunts” and “uncles.” It can also encourage family unity by soothing the hurt feelings of people you didn’t designate as guardians.

Tip 13: Consider a couple's relationship with each other. Infighting among parents can be emotionally damaging to a child. The effect of such infighting among guardians in the wake of the death of a child's parents can be even worse, so it's a good idea to avoid naming a couple who lacks a harmonious relationship.

Tip 14: Make sure the person you’ve chosen wants the job. Once you’ve decided on someone, make sure the person you’ve chosen actually wants to be your children’s guardian. They may satisfy every requirement you have, but if they don’t want the job, they aren’t the right choice. Being a guardian is an enormous responsibility. You don’t want someone who would take it on begrudgingly. Not only would it be likely to affect their relationship with your children, but it’s also not fair to impose that kind of responsibility on someone who doesn’t want it. Even if that person is your top choice, someone lower on your list would be a better fit.

CHAPTER 3

Leaving Assets to Minors: What You Don't Know Can Hurt Your Kids

Children under the age of 18 are not legally capable of managing assets themselves, so assets inherited by a child are supervised by a court until the child turns 18. The court appoints someone to administer the assets on behalf of the child (the guardian of the estate), who is often — but not always — the same person responsible for caring for the child.

Problems with court-supervised guardianships

The guardian of a child's estate has many legal obligations. This person must obtain permission from a judge to buy and sell certain assets. He or she must also file annual reports with the court documenting the value of the assets being held for the child; the account numbers and the name of the financial institution where funds are held; how much is spent each year; and the goods or services on which the money has been spent. For example, a report might specify how much was spent each year on the child's clothing, childcare, holiday gifts, and field trips.

> What Can Happen When You Leave Assets Directly to Children:
>
> - Sensitive financial details of your children's inheritance are filed with the court each year and made available in public records.
> - Assets cannot be allocated among your children according to their needs.
> - Your children will have unrestricted access to the assets when they turn 18.

These requirements not only impose burdensome legal obligations on the appointed guardian but also expose detailed information about your children's financial situation to public view, making your children vulnerable to

Is it a good idea for an 18-year-old to be handed a large sum of money with no supervision or restrictions? Probably not, but that's exactly what can happen if you leave assets to children directly.

identity thieves and other predators.

An additional problem can arise if you have more than one child because assets allocated to one child under guardianship cannot be used for the benefit of your other children.

Most parents believe that an equal division among their children is the fairest way to allocate their assets. While an equal division can be fine if your children are similarly situated, it can result in an unfair allocation of assets if there is a significant age difference or if one child incurs large medical expenses as a result of injury or illness.

Suppose one child is 16 and the other is 21 upon the death of the parent. In this scenario, the 21-year-old may have had his entire college education paid for. The child who is 16 will have to use a large chunk of her inheritance to pay for college while the 21-year-old will essentially receive a windfall. In another scenario, one child might develop a disability or other medical issues. The child's medical or therapeutic expenses could deplete that child's account without affecting the other child's inheritance.

As a parent, you provide financial support to your children based on each child's needs, not on an equal allocation. Leaving your assets to your children in court-supervised guardianship doesn't allow the individuals caring for your children to make those same adjustments. They are legally restricted from using assets allocated to one child for the benefit of one of your other children, even if doing so would result in a more just distribution.

Another problem with court-supervised guardianship is that your children may receive access to a large sum of money at a young age. When your child turns 18, he or she must petition the court to lift the guardianship, and all the remaining assets are then transferred to the child's name. Is it a good idea for an 18-year-old to be handed a large sum of money with no supervision or restrictions? Probably not, but that's exactly what can happen if you leave assets to children directly. Sure, your nine-month-old is a perfect angel now, but no one really knows if a child will have great judgment decades into the future. Even the most mature children go through phases when they make questionable decisions.

Having access to money at a young age can result in a slew of problems. Squandering an inheritance, developing a poor work ethic, and becoming the target of predators and con artists are all more likely when a young person is given premature access to a substantial amount of money.

The right way to leave assets to children

Fortunately, these problems can be avoided with proper estate planning. Instead of leaving your assets directly to your children, you should leave them to either a custodianship or a trust for your children's benefit.

A custodianship is the simplest way to avoid a court-supervised guardianship. The custodian is an adult designated to administer the assets on behalf of your children. You designate the custodian in your will (for assets that are governed by your will) or in a beneficiary designation (for non-probate assets).[1] The custodian is not required to seek court approval of expenditures or file annual reports with the court. This relieves the guardian of burdensome legal requirements and protects your children’s privacy. When your child turns 18 or 21 (depending on the type of asset), the custodianship ends and the assets are turned over to the child. (See Appendix B, Illustration 3 for a diagram of a simple will with custodial provisions).

There are some things that a custodianship cannot do, which is why many parents opt to put a trust in place instead. A custodianship cannot postpone your child’s access to the funds beyond the age of 21 or provide the custodian with the flexibility to allocate assets among your children as needed. To accomplish these objectives, it is necessary to leave assets to a trust, which is discussed in the next chapter.

Whether a trust or a custodianship is better for you depends on your financial situation, as well as whether you have more than one child. A trust is more expensive to set up, so if you have only one child and have limited assets that will be depleted by the time your child turns 21, a trust might not be worth the extra money. On the other hand, if your assets are likely to last beyond the time your child turns 21 or if you have more than one child, then creating a trust is a good idea. The benefits of a trust are further explained in Chapter 5.

[1] See Chapter 4 for an explanation of the differences between probate assets and non-probate assets.

CHAPTER 4

Non-Probate Assets: How an Old Flame Can End Up with Your Life Savings

There are two categories of assets for estate planning purposes: probate assets and non-probate assets. Probate assets are assets that are distributed to your heirs pursuant to court order through the estate administration or probate process. Non-probate assets are assets that are transferred to your heirs through some other legal mechanism. The most common non-probate assets are life insurance, jointly owned assets, and tax-deferred retirement accounts. Jointly owned assets are automatically inherited by the surviving owner. Life insurance and retirement accounts are distributed to the beneficiary designated on the policy or account — not to the heirs specified in your will. Assets held in a revocable living trust are distributed to the trust beneficiaries upon your death and do not go through probate.

In general, individually owned assets that do not have a beneficiary designation constitute probate assets. All probate assets are distributed pursuant to the terms of your will. If you have no will, probate assets are distributed pursuant to the state's default inheritance rules, called intestacy rules.

> Failure to keep beneficiary designations up to date can have disastrous consequences

When planning your estate, it is important that your plan incorporate both your probate and non-probate assets. A common mistake is to create a will but leave old beneficiary designations in place. Failure to keep beneficiary designations up to date can have disas trous consequences. It's not uncommon to see former spouses or old boyfriends or girlfriends named in beneficiary designations. Imagine how your family would feel if you died, and they found out you left their inheritance to an old flame!

Below is a list of probate assets and non-probate assets:

NON-PROBATE ASSETS	PROBATE ASSETS
IRAs, 401(k)s, and other tax-deferred retirement accounts	Most non-probate assets without a surviving beneficiary
Any bank or brokerage account with a beneficiary designation	Anything else that is not listed in the column to the left
Life Insurance	
Annuities	
Jointly owned assets (including bank accounts and real estate)	

Leaving non-probate assets to minors

As discussed in Chapter 3, leaving assets directly to your minor children in your will can result in numerous problems. The same applies to non-probate assets. Therefore, non-probate assets should generally be left to your minor children in a Children's Trust or a custodianship.

You can leave your non-probate assets to a children's trust by naming your revocable living trust or your estate as a beneficiary. If you don't have a Children's Trust in place, you can name a custodian to administer the assets until your children turn 18 by either naming a custodian directly on your beneficiary designation or naming your estate (assuming your will includes a custodianship).

Because of special tax rules applicable to tax-deferred retirement accounts (e.g., IRAs, 401ks), you generally should not name your estate or most types of trusts as a beneficiary of these assets. Guidance on planning for tax-deferred retirement accounts is provided below.

THE PROBLEM WITH PROBATE

Any probate assets are frozen upon your death, and no one is able to access those assets without first getting an order from the court through a process called probate. The court that oversees the probate process is called probate court.[2] Probate can be burdensome on those involved, and it can result in costly delays. This is particularly true if minor children are involved.

[2] See Chapter 4 for an explanation of the differences between probate assets and nonprobate assets.

To initiate the probate process, the person named in your Will as an Executor works with a lawyer to file your Will with the probate court and request an order allowing the Executor to access your assets. (If you die without a Will, your next of kin may petition the court for this order and perform the duties of an Executor). Your Executor is responsible for making sure the assets in your estate are distributed in accordance with the terms of your Will (or according to the default inheritance rules if you died without a Will) and filing all necessary paperwork with the court. The Executor is also charged with filing taxes, managing investments, and other administrative responsibilities.

You have to pay a lawyer to question the validity of your will.
If you leave behind a minor child, the probate court will require the appointment of a *guardian ad litem* – a stranger who is designated to represent the interests of your child at the expense of your estate. The appointment of a *guardian ad litem* slows down the process, and, since your estate is responsible for paying the *guardian ad litem,* it can add significantly to the cost of the process. While the *guardian ad litem* is appointed by a court for the purposes of protecting your child's interests, the *guardian ad litem* often "protects" your child by attempting to poke holes in your estate plan. The *guardian ad litem* will investigate the circumstances of the execution of your will and may challenge your will in court if they believe the required formalities were not followed.

Your assets will be made part of the public record.
When a *guardian ad litem* is appointed, the Executor must generally conduct a judicial accounting, an exhaustive, expensive account to the court for every penny that has been received, spent, or distributed by the estate. The document containing the accounting becomes part of the public record, making all your probate assets, where they are held, and the value of the assets available to any member of the public who may request the document from the court or search for it online.

Funds needed by your family can be tied up in court for over a year.
Probate is perhaps most notorious for the amount of time it can take, leaving loved ones without much needed funds. Getting access to funds can take several months to, in some cases, more than a year. During the COVID-19 pandemic, it was not unusual to see families waiting for more than two years

to access inheritances.

While waiting for access to your assets, the guardian of your children would be left to cover important expenses like mortgage payments, tuition, and childcare. Most people are not in a financial position to front these types of expenses for an extended period of time. An inability to pay a mortgage or rent can result in a property foreclosure or eviction.

Any trusts included in your Will will be subject to probate court jurisdiction indefinitely.
If a trust is included in your will (i.e., an inheritance Protection Trust, as explained in chapter 5), the trustee of the trust must be appointed by the court after your death, and any future changes to the trust or the trustee must also be approved by the probate court.

A family member outside the U.S. cannot serve as your sole Executor or Trustee.
Under New York law, a person who resides outside the U.S. cannot serve as the sole executor of an estate or as the sole trustee of a Children's Trust. They can only serve together with a U.S. resident. This can create enormous administrative burdens and expenses for family members who may be raising your children outside the U.S. This restriction can be avoided by setting up a revocable living trust, explained below.

PITFALLS OF NONPROBATE ASSETS

While naming a beneficiary on an asset may seem like a simple way to avoid probate, this is not the case where the beneficiary is a minor child. In fact, naming a minor child as a beneficiary is one of the most common estate planning mistakes parents make. As discussed in Chapter 3, leaving assets directly to your minor children in your will can result in numerous problems. The same applies to non-probate assets. Naming your child as a beneficiary will land your loved ones right back in probate court.

If you want assets left through a beneficiary designation to receive the protection of a trust (See Chapter 5), you must name the trust as the beneficiary. While, technically, you can name a trust that is included as part of your will as a beneficiary, this arrangement is ripe for complications if you change your will down the road. For this reason, the best way to protect nonprobate assets is by creating a revocable living trust (explained below) and naming the trust as the beneficiary.

If you don't have a trust for your child, you can name a custodian to receive the assets for the benefit of your child. Ask your life insurance carrier or account administrator.

AVOIDING PROBATE WITH A REVOCABLE LIVING TRUST

The most effective way to prevent your assets from being bogged down in court is to create a revocable living trust. A revocable living trust is a trust that is created during your life and can be revoked or amended by you at any time. Revocable living trusts are commonly referred to as revocable trusts or living trusts. The main purpose of a revocable living trust is to avoid probate.

While you're living and capable, you serve as the trustee of your own revocable living trust. You can make distributions from the trust to yourself or to others, and you can put assets into the trust and take them out. The trust document appoints successor trustees to administer the trust if you become incapacitated or pass away. Upon your death, the successor trustee distributes trust assets pursuant to the provisions set forth in the trust document. Like a Will, a revocable living trust might direct that trust assets be distributed to your spouse if you pass away and, if your spouse is not living, to a Children's Trust. (See Appendix B, Illustration 6 for a diagram of how a revocable living trust works).

It is important to understand that a revocable living trust prevents probate *only for assets that either are titled in the name of the trust or designate the trust as a beneficiary.* Any assets that held outside of the trust at the time of your death and don't name a beneficiary must go through the probate process. If you don't transfer your assets to your revocable living trust while you are alive, all your assets will go through the probate process, rendering your revocable living trust a waste of time and money.

One of the most common mistakes in estate planning is a failure to fund a revocable living trust. For this reason, it is important to work with a law firm that will assist you with making sure that your trust is "funded" – i.e., that your assets are arranged in such a way that they will go through your living trust and avoid probate.

While a revocable living trust can benefit anyone, such trusts can be particularly useful if any of the following apply to your situation.

CHAPTER 5

Trusts Aren't Just for Rich Kids

It is a common misconception that trusts are only for the ultra-wealthy. While trusts are often used by wealthy families for tax purposes, they can provide many important benefits for families with more modest assets as well. The misconception about trusts causes many middle- and upper-middle-class families to miss out on the valuable benefits their wealthy counterparts enjoy.

Trusts come in many different forms and can serve various functions. The common elements in all trusts are a trust agreement, a trustee, and a beneficiary or beneficiaries. The trust agreement creates the trust and sets forth the terms under which the assets in the trust must be held and administered.

The trust agreement appoints a trustee, which is the person (or financial institution) tasked with administering the assets held by the trust. The trustee must administer the trust in accordance with the terms set forth in the trust agreement. The trustee's duties include investing the trust assets, filing income tax returns for the trust, and making distributions to the trust beneficiaries. The trustee has a legal duty to administer the trust assets in the best interest of the beneficiaries and cannot use the money for the trustee's own benefit.

REVOCABLE LIVING TRUSTS

As explained in Chapter 4, a revocable living trust is a trust created to avoid the probate process, making the transition of your assets easier for those you leave behind and ensuring that assets would be available quickly to cover important family expenses.

A revocable living trust is often paired with an Inheritance Protection Trust, explained below, to both avoid probate and protect assets.

INHERITANCE PROTECTION TRUSTS

An Inheritance Protection Trust is a trust that is created by your will or revocable living trust and goes into effect only upon your death. This type of trust is often used to protect assets for young children. There are two main types of Inheritance Protection Trusts: Cinderella Trusts and Children's Trusts.

A Cinderella Trust protects the assets for the surviving spouse and children if one spouse passes away. A Children's Trust protects the assets left to your children if both spouses pass away (or if you are a single parent).

Because Inheritance Protection Trusts only go into effect after you have passed away, there is no maintenance necessary for the trust during your lifetime. You can change the terms of the trust at any time by simply changing your will or revocable living trust. (A diagram of a Cinderella Trust paired with a revocable living trust can be found in Appendix B, Illustration 4).

The Cinderella Trust: Protecting Assets from Second Spouses

Do you remember what happened in the fairy tale Cinderella? After the girl's mother died, her father remarried a mean woman with children of her own. After Cinderella's father died while on a business trip, the wicked stepmother lavished her own daughters in luxury while poor Cinderella was relegated to sweeping the cinders.

Putting aside its grossly unfair depiction of a stepmother, Cinderella can teach us a useful estate planning lesson. If Cinderella's mother had set up a trust instead of leaving all her money to Cinderella's father, Cinderella wouldn't have needed a prince!

A Cinderella Trust is a type of Inheritance Protection Trust used to protect assets for children in the event the surviving parent remarries. The trust assets can be used solely for the children or for both the children and the surviving spouse. The assets cannot be used for the benefit of a second spouse or non-marital children. Unfair depictions aside, do you really want to put your children's welfare in the hands of your spouse's second wife/husband?

A Cinderella Trust is best paired with a Revocable Living Trust so that your spouse doesn't have to go through probate. A diagram of this structure can be found in Appendix B, Illustration 5.

Children's Trust: Protecting Your Kids' Inheritance from Themselves – and Others

A Children's Trust ensures that assets left to your children are managed prudently until the child is mature enough to make weighty financial decisions. The Children’s Trust provides a number of other benefit for your children as well.

If the children are not similar in age or if one of them incurs large medical expenses as a result of injury or illness, then dividing assets equally among them could pose a serious problem.

1. Prevents Your Kids from Having Access to Their Inheritance at an Early Age. A children's Trust allows you to designate the age at which your children would have unrestricted access to their inheritance. If you wouldn't want your children to be handed a large sum of money when they turn 18, then a Children's Trust is the way to go. You would designate a friend or family member to serve as trustee of the trust and choose the age at which you would want your children to have unsupervised control over the assets. Until that age, the trustee would be charged with administering the assets and making distributions to the children. You would be relying on the trustee's judgment to determine, for example, if your child needed the newest iPhone (maybe) or if investing in their friend's new bar would be a good use of the funds (probably not).

2. Provides Flexibility to Address Each Child's Needs. If you have more than one child, assets left to your children directly would be divided among your children and held in separate accounts for each child until the child turns 18 (or 21 under a custodianship).

In many cases, this method of dividing the assets is appropriate. If the children are close in age and have similar financial needs, then allocating the assets equally can result in a fair distribution. However, as explained in Chapter 3, if the children are not similar in age or if one of them incurs large medical expenses as a result of injury or illness, then dividing assets equally among them could pose a serious problem.

As parents, you provide financial support to your children based on each child's needs – not based on an equal division of available funds. The only way to provide this flexibility if you pass away is to leave your children's inheritance in a trust. The trustee has the ability to allocate the assets to your children according to each child’s situation – much as you would do as a parent.

The flexibility provided by a trust allows the trustee to save money for the younger child’s education or allocate money to a special fund if one of the children develops a disability or has unforeseen medical needs. When the children reach a specified age, the assets remaining in the trust can be divided equally among them.

3. Protects Assets from Creditors and Future Spouses. Because assets held in trust are not considered owned by your children, the assets are protected from potential creditors in the event of a lawsuit and from spouses in a divorce. This protection can be particularly beneficial if a child enters a professional field with a high rate of lawsuits, such as medicine, law, or architecture, or if the child becomes a business owner. Trusts can also protect against your assets ending up in the hands of someone who breaks your child's heart. All parents hope that their children choose their spouses wisely and live happily ever after, but there is a high probability that any marriage will end in divorce.

While these matters can seem far off, good estate planning includes provisions for events that can affect your children well into the future and provide benefits to your family long after you're gone.

4. Controls the Ultimate Disposition of Assets. In some situations, especially in the context of divorce, a parent may be concerned about who would eventually end up with their assets if a child who inherited the parent's assets dies before the child's inheritance is exhausted. Under the default rules in New York, the child's other parent would be the first to inherit the child's assets — which could be a less-than-ideal outcome. A mother who passes away leaving money to her child probably wouldn't want the money to end up with her ex-husband.

This can also be a concern for married parents if one spouse expects to inherit a substantial sum of money from his or her own parents or has been given an advance inheritance. The grandparents may want the money to go back to their own family – not to their in-laws – if their child and grandchild pass away. While these can seem like morbid considerations, they are issues that do come up during the planning process, and thinking about them and discussing them beforehand can make the process less stressful.

Structuring a Children's Trust

In most cases, it is best to provide your trustee with broad discretion with respect to how trust assets can be spent for your children. This enables the trustee to respond to unanticipated events in the most effective way possible.

Many parents think it's a good idea to require a certain portion of funds to be spent on college. This seems like a great idea in theory, but it could tie the trustee’s hands in the event of unexpected circumstances. For example, suppose the child gets into an accident and suffers severe injuries. The money might be needed for medical purposes, and if your child develops cognitive problems, college might not be the best option.

Another consideration is how and when the assets should be distributed to the children. Some lawyers set up trusts so that the money is distributed to the children in stages. For example, 25 percent of the money is distributed to a child when he or she turns 25; 25 percent when the child turns 30; 25 percent when the child turns 35; and the remainder when the child turns 40. A drawback of this structure is that there is no way to protect the assets once the child reaches the specified age. Assets that are held by the trust are protected from creditors as long as the assets remain in the trust, so there is a benefit to keeping assets in the trust for as long as possible. Keeping the assets in trust can also provide tax benefits, depending on the child’s financial situation.

An alternative structure can protect the money for the child’s lifetime or until there is no money left in the trust. With this structure, the trust remain-s intact, and the child becomes trustee of the trust at a certain age. For example, when the child turns 30, she becomes trustee of her own trust and is able to make distributions to herself, with some limitations. If you have more than one child, the trust would split into equal trusts for each child at a certain age. Each child would then become the trustee of their own trust.

This structure allows your children to leave money in the trust until it is needed. In the meantime, the assets are protected from creditors and estranged spouses. It also prevents the trust assets from becoming part of the child’s estate for estate tax purposes.

IRREVOCABLE TRUSTS

An irrevocable trust is a trust that you set up during your lifetime that – not surprisingly – cannot be revoked. This type of trust is most often used for estate tax planning and asset protection purposes. The assets in an irrevocable trust generally aren't included in your estate for estate tax purposes, and they are shielded from both your creditors and the creditors of the beneficiaries of the trust. More information on irrevocable trusts can be found in Chapter 6 in the discussion of estate tax planning.

CHAPTER 6

Minimizing Taxes: Preventing Your Kids' Inheritance from Ending Up with the Government

New Yorkers are inundated with taxes: income taxes, sales taxes, and real estate taxes. The State of New York is one of the most highly taxed states in the country, and taxes on estates are no exception.

> In many cases, New York estate taxes can far exceed federal estate taxes.

The good news is that, in recent years, the state has lessened the burden on many families by increasing the estate tax exemption from $1 million to around $7 million. The bad news is that, if your estate *does* exceed the exemption amount, your tax bill may be a whopper — and that's on top of federal estate taxes. This chapter will help you understand the estate taxes that New Yorkers face at both the state and federal levels.

THE FEDERAL ESTATE TAX

The U.S. gift and estate tax functions as a coordinated tax that applies to assets that you give away to another person either during your life as gifts (gift tax) or upon your death as bequests (estate tax). The tax is levied upon the value of the assets you give away that exceeds your gift and estate tax lifetime exemption (explained below).

Federal Gift & Estate Tax Lifetime Exemption

The lifetime exemption is the amount any person can give away before they are subject to the gift or estate tax. You might think of the lifetime exemption as a bucket that holds $15 million.[3] Each person has a bucket, and every tim-

[3] Recent changes to the tax code increased the lifetime exemption to $15 million permanently, unless Congress later changes it. The lifetime exemption amount is adjusted each year for inflation.

e you make a gift, it goes into the bucket and reduces the exemption that is left. Once the bucket is filled, you have used up your exemption, and any subsequent gifts or bequests are subject to tax.

To illustrate, if you give away $5 million as a gift to your kids during your life, you will use up $5 million of your $15 million bucket. Your remaining exemption would be $10 million. If you leave another $12 million to your kids upon your death, $2 million would be subject to estate tax. Likewise, if you gift $18 million during your life, you have to pay gift tax on $3 million, beginning in the year that your accumulated gifts exceed $15 million.[4]

Federal Gift & Estate Tax Rate

At the federal level, the tax rate for both the gift and estate tax is 40%, which applies to any amount that exceeds your lifetime exemption. The calculation looks like this:

Gift Tax = 40% X { Amount of Gift Minus Remaining Lifetime Exemption }

Estate Tax = 40% X { Value of Your Estate Minus Remaining Lifetime Exemption }

THE VALUE OF YOUR ESTATE

The value of your estate equals your net worth (the value of all your assets minus your debts) plus any life insurance proceeds that would be paid out upon your death.

Value of Estate = Assets – Liabilities + Life Insurance

It is important to remember that life insurance is subject to estate tax. Many parents have large life insurance policies that push the value of their estate beyond the lifetime exemption, triggering estate taxes.

TAX-FREE TRANSFERS

Certain gifts and bequests are exempt from tax and are not counted against your lifetime exemption. In other words, they fall outside your bucket. The

[4] Counterintuitively, gift tax is imposed on the donor of the gift, not the recipient.

most significant of these exemptions is the marital deduction. The marital deduction allows for unlimited gifts and bequests between spouses free of tax, so you can leave $20 million to your spouse and no estate tax would be due. The same applies to a $20 million gift. Even after you've gifted your spouse $20 million, you still have your full lifetime exemption, which you can use to make gifts or bequests to other people. Note that the marital deduction does not apply to gifts or bequests to spouses who are not U.S. citizens.

Another exemption is the annual gift tax exclusion, which allows you to make gifts of up to $19,000 per beneficiary each year without affecting your lifetime exemption.[5] To illustrate, suppose you are married and have three children. You can gift up to $19,000 to each child per year without it counting against your lifetime exemption. Between two spouses, you can transfer up to $90,000 per year out of your combined assets. Because giving a minor child $30,000 each year outright generally isn't a good idea, most parents who take advantage of the annual gift tax exclusion put the money into an irrevocable trust.

Other tax-free transfers include payments for medical or educational expenses, such as college tuition. In order to qualify for this exclusion, payments must be made directly to the medical provider or the educational institution.

Note that paying for things on behalf of your children while they are minors (under age 18) is considered support and usually doesn't count as a gift. However, substantial monetary transfers at any age can be considered a gift.

DIFFERENCES BETWEEN THE FEDERAL ESTATE TAX AND THE NEW YORK ESTATE TAX

The New York estate tax operates similarly to the federal estate tax; however, there are some key provisions that can make a big difference in your tax bill.

Exemption Amount

The biggest difference between the federal estate tax and the New York State estate tax is the exemption amount. The New York estate tax exemption is $7.35 million in 2026 and is adjusted annually for inflation. Families with estates below this exemption amount will not be subject to estate taxes at

[5] $19,000 is the expected amount of the annual gift tax exclusion as of 2026. This amount increases over time in line with inflation.

either the federal or state level.

Unlike the federal system, New York does not have a gift tax, but gifts made during your life count against your estate tax exemption.

Estate Tax Rate

The federal estate tax rate is a flat 40 percent. The New York estate tax rate, on the other hand, ranges from 12% to 16%, based on a progressive scale that increases with the value of your estate. An $8 million estate is taxed at 13.6 percent, while an estate over $10.1 million is taxed at 16 percent. Although the federal estate tax rate is much higher than the state estate tax rate, your state estate tax bill can be much higher than your federal estate tax bill as a result of the New York estate tax "cliff" and the lack of spousal portability (explained below).

New York Estate Tax Cliff

One of the biggest differences between the federal and New York estate taxes is what is called the New York estate tax cliff.

At the federal level, the 40 percent tax is imposed only on the value of your estate to the extent that it exceeds the lifetime exemption amount. For example, if your remaining lifetime exemption is $8 million (because you made gifts during your life) and your estate is valued at $8.1 million, your federal estate tax will be $40,000.

The New York estate tax works differently. Once the value of your estate exceeds the state exemption amount by more than 5%, the value of your entire estate is subject to tax. Using the same example, your New York estate tax would be close to $800,000 — far more than the federal estate tax liability.

Spousal Portability

A rule called "spousal portability" also contributes to a difference between the state and federal estate taxes. At the federal level, a surviving spouse can use the deceased spouse's unused lifetime exemption, in addition to the surviving spouse's own exemption. This effectively allows married couples to combine their exemption amounts. This benefit is not available at the state level, which can hurt spouses who leave assets to each other.

To illustrate, suppose each spouse has $5 million in assets and the exemption for both the federal and state estate tax is $8 million (just for illustration purposes). If the husband dies first and leaves all his assets to his wife, the wife will then have $10 million in assets. When she dies, there will be no federal estate tax because she will be able to use her husband’s exemption in addition to her own, for a total estate tax exemption of $16 million. At the state level, where there is no portability, the wife cannot use her husband's unused exemption, so the applicable exemption is limited to her own $8 million exemption. As a result, her $10 million estate will trigger hundreds of thousands of dollars in taxes at the state level.

STRATEGIES FOR MINIMIZING ESTATE TAXES

There are a number of strategies you can use to keep the value of your estate below the lifetime exemption amount and avoid estate taxes altogether. It is possible, but far more challenging, to avoid estate taxes once your net worth exceeds the exemption amount. That’s why it’s important to plan for estate taxes before you have a taxable estate.

> It’s important to plan for estate taxes before you have a taxable estate.

Below are some estate planning strategies that can help you to minimize, and in some cases entirely eliminate, your gift and estate tax liability.

Credit Shelter Planning for New York State Estate Taxes

As explained above, the New York estate tax “cliff” and the lack of spousal portability can result in a large estate tax at the state level. The most common strategy married couples use to minimize their New York estate tax liability is a disclaimer trust or “credit shelter trust.”

A credit shelter trust “shelters” the assets of the spouse who dies first so that those assets do not become part of the surviving

spouse’s estate. This is accomplished by leaving the assets to a trust for the benefit of the surviving spouse and children instead of to the spouse directly. The surviving spouse can receive distributions from the trust, but the assets in the trust will not be included in the surviving spouse’s estate. The credit shelter trust works a lot like a Cinderella Trust (Appendix B, Illustration 6).

In the example above, where each spouse has $5 million in assets, the first spouse would leave his or her assets to a trust for the benefit of the surviving spouse and children. Because assets in the trust are not included in the surviving spouse's estate, the value of his or her estate does not increase. The value of the surviving spouse's estate remains at $5 million — $3 million below the estate tax exemption. With this simple planning, the couple avoids couple avoids close to $800,000 in New York estate taxes.

If you are not married, or if the combined value of both spouses' estates exceeds $7 million, a credit shelter trust may not be sufficient to eliminate your estate taxes. Other planning techniques may be helpful in these circumstances.

Irrevocable Life Insurance Trusts

Life insurance can be an excellent way to provide for your family if something happens to you. Unfortunately, because the amount of the death benefit is included in your estate for estate tax purposes, your life insurance policy can push the value of your estate above your lifetime exemption. If this happens, half the proceeds from the policy could end up going to the government.[6]

An irrevocable life insurance trust, sometimes referred to as an "ILIT," is one of the most common estate tax strategies for parents with young children. These trusts are effective for minimizing both federal and state estate taxes that can result from holding a large life insurance policy.

By purchasing your insurance policy through the trust, the proceeds of the policy won't be counted as part of your estate, and your heirs will receive the funds free and clear of any taxes. If you have already purchased a policy, you can transfer it to the trust, but it won't be removed from your estate until three years after the transfer date. Therefore, it is preferable to put the trust in place prior to purchasing the policy. (See Appendix B, Illustration 6 for a diagram of a plan with an irrevocable trust).

Gifting Strategies

While gifts given during your lifetime are generally counted against your lifetime exemption amount, certain types of gifts are excluded and can be used to transfer wealth without reducing your lifetime exemption.

Annual Exclusion Gifts. As explained above, every person is entitled to provide annual gifts of $19,000 per beneficiary without reducing the donor's lifetime exemption. Putting the money into a trust provides you with some control over the money so that your child is not tempted to spend it.

Health & Education Gifts. While your children are minors, payment of

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[6] It is a common misconception that life insurance is not subject to estate taxes. While life insurance proceeds are not subject to income taxes, they are subject to estate taxes at both the state and federal level.

their medical and educational expenses is considered parental support – not a taxable gift. When your children turn 18, you can continue to pay their medical and educational expenses free of gift tax and without affecting your lifetime exemption.

Estate Freezing Strategies

Another widely used strategy to limit estate taxes is to "freeze" the value of your estate. Suppose you want to gift stock worth $1 million. If you transferred the stock immediately, you would use up $1 million of your lifetime exemption. If you waited 10 years to gift the stock, with reasonable growth, that $1 million in stock might now be worth $2 million, and making the same gift would use up $2 million of your lifetime exemption.[7] By implementing certain "estate freezing" strategies, you can freeze the value of your assets for estate tax purposes.

Gifting is the primary means of "freezing" the value of your estate. Accounting for investment returns, the value of your assets in the future will likely be higher than the value of your assets today. By gifting assets now, you “freeze” the value of those assets for estate tax purposes.

The most common vehicle for estate freezing is an irrevocable trust. Gifting assets to a trust allows you to remove appreciation on the asset from your estate while retaining some control. You probably don’t want to hand over a high-growth stock to your 10-year-old, but you may have no problem transferring it to a trust to hold for your child until some point in the future.

There are many different types of irrevocable trusts, but the central feature of all of them is that, with some limited exceptions, you cannot take back assets that you transfer to the trust, so it's best to transfer only assets that you are fairly certain you won’t need for retirement. This is why life insurance is an ideal asset to hold in an irrevocable trust: you generally don't plan to use your life insurance policy during your life.

Irrevocable trusts are the keystone of advanced estate tax planning and are used for Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs), and other complex estate planning strategies.

Get Professional Help

While simple wills might be done online, estate tax planning is not a do-it-

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[7] While the lifetime exemption increases with inflation, if your assets are invested wisely, your investment returns are likely to outpace the rate of inflation.

yourself project. It is a complicated area of the law and should only be undertaken with the help of an experienced estate planning attorney, preferably one who has an advanced degree in tax law (called an LL.M.) or a CPA license.

INCOME TAX RULES FOR INHERITED RETIREMENT ACCOUNTS

You might assume that income taxes stop upon your death. Surprise! The IRS wants its money on all those tax-deferred accounts, such as IRAs and 401(k) accounts that haven't been taxed. Whoever inherits those accounts will have to pay up. The rules for how these taxes apply are complex, and they can have a big effect on how much of your savings in these accounts is actually received by your family.

Rules for Tax-Deferred Retirement Accounts During Your Life

During your life, you can contribute money to a tax-deferred retirement account, such as an IRA or a 401(k), with pre-tax dollars. The funds in these accounts grow tax-free until you withdraw the money during retirement, at which time the amount withdrawn is subject to income tax.

The longer the funds remain in the account, the greater the savings from tax-deferred growth will be. For this reason, it is generally advantageous to leave the funds in the account for as long as possible. When you turn 73, the government requires you to begin withdrawing a certain minimum amount from the account each year, so that the money can be taxed. Those required withdrawals are called Required Minimum Distributions or RMDs.

The amount of RMDs you must take each year depends on the life expectancy of an American your age, as set forth by the IRS. At a high level, the IRS requires you to withdraw an amount each year such that the account will zero out in the year of your death. The specific amount is set forth in IRS tables. To illustrate how this works, if you are 73 years old with a life expectancy of 15 years, you must withdraw roughly one-fifteenth of the funds in your account each year, so that your account will be depleted over 15 years. The calculation is more nuanced than this example, but it should give you a general idea of how the formula works.

Rules for Inherited Tax-Deferred Retirement Accounts

When a beneficiary inherits a tax-deferred retirement account, assets held in the inherited account continue to grow free of tax. When funds are withdrawn from the account, the money is subject to income tax at the beneficiary's ordinary income tax rate.

Just as there are RMD rules for an original account owner, there are also RMD rules for beneficiaries who inherit these types of accounts. In fact, there are several different RMD rules for inherited accounts, depending on who is named as the beneficiary. There are three classes of beneficiaries: 1) spouses, 2) non-spouse individuals, and 3) trusts, estates, and other entities.

An account inherited by a spousal beneficiary is essentially treated as the spouse's own IRA. The spouse can defer taking any distributions until the spouse reaches the age at which they must begin taking RMDs from their own IRA. This is generally more favorable treatment than is available for a non-spouse beneficiary.

With certain exceptions, an individual beneficiary who is not the account owner's spouse (e.g., an account owner's child) must withdraw all the funds from the retirement account within 10 years of the account holder's death. While the non-spouse beneficiary does not have to take distributions each year for the 10 years, they should avoid taking a lump-sum distribution at the end of 10 years because doing so could trigger a large tax liability.

One exception provides that an account inherited by a minor child can be distributed based on the child's life expectancy until the child reaches the age of 21. Once the minor child reaches 21 years of age, they will need to withdraw all the funds from the account within 10 years.

The third class of beneficiaries consists of most types of trusts, estates, and business entities. If the account owner passed away before they were required to take distributions from the account, entity beneficiaries must deplete the account within 5 years after the death of the account holder. If the account holder passed away after they were required to take distributions, the entity beneficiary can take RMDs over the account holder's life expectancy.

Options for Leaving a Retirement Account to a Minor

As explained in earlier chapters, children under the age of 18 are not legally capable of managing their own assets, so any assets (including retirement accounts) left directly to a minor are subject to court supervision. Due to the administrative burdens and lack of privacy of this arrangement, naming a minor as a beneficiary of a retirement account is not recommended.

There are two alternatives to naming a child as a direct beneficiary of a retirement account in a way that preserves the account's tax benefit. First, you can name a custodian to administer the account until the minor turns 18. Alternatively, you can name a trust for the benefit of the minor. Leaving a retirement account to a regular trust could shorten the period for deferring taxes. In order to maintain the tax deferral benefits of the account while providing the protection of a trust, the assets must be left to a specialized trust that is approved by the IRS.

Naming a Custodian. Naming a custodian to administer a retirement account is the easiest and cheapest way to avoid court involvement. It allows you to name an adult (the custodian) to administer the account for the benefit of a child until the child turns 18.[8] Upon turning 18, the child receives full ownership of the account, and he or she can spend the money without restriction. A custodianship is a good option when the account does not hold substantial funds and when allocating the money to address the needs of multiple children is not important.

Leaving the Account to an IRA Trust. A retirement account can be left to a trust without triggering adverse tax consequences if the trust contains special provisions mandated by the IRS. Such a trust is referred to as an IRA Trust or a See-Through Trust.

Leaving retirement accounts to a trust is a highly specialized area of estate planning. If the trust is not structured correctly, the period for paying taxes could be accelerated and subject the proceeds to higher tax rates. Leaving a retirement account to your estate can have the same effect.

Because this area involves complex tax rules, it's best to consult with an experienced estate planning lawyer if you plan to leave your retirement accounts to a trust.[7]

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[8] A custodianship established pursuant to a will allows assets to be held for the child until he or she turns 21; a custodianship established pursuant to a beneficiary designation allows the assets to be held only until the child turns 18.

CHAPTER 7

Marital Rights and Conflicts in Estate Planning

Thinking about your own mortality is never fun, and it can be even less fun if you and your spouse disagree about how assets should be divided. The potential for conflict can increase when there is a financial imbalance between the spouses.

> How you and your spouse view your assets for practical purposes may be very different from what each of you owns as a legal matter.

WHAT, EXACTLY, DO YOU OWN?

Estate planning is the process of arranging for the distribution of everything you own when you pass away. If you're single, what you own is relatively straightforward. When you're married, however, what each spouse "owns" is often unclear, as assets and income can become intermingled.

How you and your spouse view your assets for practical purposes may be very different from what each of you owns *as a legal matter.* To confuse matters even more, different areas of the law treat the question differently, so what you own for purposes of a divorce is different from what you own for purposes of your will.

What You Own as a Matter of Matrimonial Law

Under New York matrimonial law, there is a concept of marital assets and separate assets. Assets that you own prior to the marriage and assets that you inherit or receive as a gift from someone other than your spouse during the marriage are considered separate assets. In the event of divorce, these assets are not divided between the spouses; they are retained by the spouse who originally owned or received them. If separate assets are commingled with assets of the other spouse or with marital assets, the separate assets can become marital assets.

Marital assets are assets that either spouse has received during the marriage other than by gift or inheritance. For example, the income that one spouse earns from his or her job is considered a marital asset, regardless of whether the money is kept in a separate bank account. Marital assets are divided "equitably" between the spouses in the event of divorce. What constitutes an equitable division is largely left to the discretion of a judge.

The rules for the division of assets in a divorce can be altered by a pre-nuptial or post-nuptial agreement.

What You Own as a Matter of Estate Law

Many people are surprised to learn that estate law does not incorporate marital law concepts of ownership. Rather, your estate (those assets distributed by your will) consists only of those assets that are held in your name. There is no such thing as "marital assets" in estate law, so assets that are in the name of one spouse are considered to be owned solely by that spouse, even if the asset would be divided among the spouses in the event of divorce.

As a result of this rule, a parent who doesn't work outside the home can have a much smaller estate than the income-generating spouse if the couple's funds are not kept in a joint account.

These same rules apply for estate tax purposes as well. As a general matter, the value of your estate under the estate tax rules equals the value of all the assets in your name, plus any life insurance proceeds payable upon your death. Assets that are jointly owned with your spouse are considered to be owned 50 percent by each spouse.[9]

WHEN YOU AND YOUR SPOUSE DON'T AGREE: DEALING WITH MARITAL CONFLICTS

In some cases, getting on the same page with your spouse can be the most challenging aspect of estate planning. The process requires frank, and often difficult, discussions about money, family members, and remarriage. There are three scenarios where spousal conflicts most often arise.

Choice of Guardian

The most common conflict arises over who would raise the children in the

[9] This rule does not apply where one or both spouses is not a U.S. citizen.

event of both parents passing. When choosing a guardian, it isn't unusual for each parent to prefer someone from his or her own family.

In order to work towards a resolution, first try to agree on the criteria that are important to you both, for example, location, personality, religion, political orientation, etc. You can draw on the factors listed in Chapter 2 as a starting point. Then evaluate each potential guardian using those factors so that you are both comparing each person by the same criteria.

A common concern is that the children would lose touch with the side of the family that does not have custody of the children. You may be able to address this concern by designating a guardian from one side of the family and a trustee or custodian from the other side. You can also provide a letter to the chosen guardian articulating your desire that the children spend a certain amount of time and specific holidays with the other side of the family.

You can provide a similar letter to your trustee with instructions to use money for travel expenses either for your children to visit relatives or for relatives to come visit your children. Such letters are not legally binding, but they establish your wishes and provide guidance for your guardian.

Concern over Second Spouses

Conflict can also arise when spouses disagree about protecting assets for their children in the event the surviving parent remarries. If you wish to protect assets for your children in the event that your spouse remarries after your death, you may not want to leave all of your assets directly to your spouse. To protect your assets in this situation, you can leave some or all of your assets to a trust that distributes money to your spouse and children — or even to a trust that leaves all your assets to your children. (See explanation of a Cinderella Trust in Chapter 4).

Whether this arrangement poses a problem for the surviving spouse can depend on a number of factors, including who serves as the trustee, since this is the person who will be making the distributions. In order to provide the surviving spouse with maximum flexibility, the surviving spouse can be appointed as the trustee. This arrangement provides the surviving spouse with substantial control, but also imposes a legal obligation to use the funds only for his or her own needs or for the benefit of the marital children. Alternatively, you may appoint a mutual friend, accountant, or financial institution to serve as the trustee if you want added protection against misuse of the money by your spouse.

Regardless of who serves as trustee, the idea of this arrangement doesn't always sit well with the other spouse. Suppose a wife decides to leave her assets to a trust for her husband and children instead of outright to her husband. The husband may feel that the wife doesn't trust him to make smart decisions with the money or to use it in the best interest of their children.

A desire to protect assets from a future spouse and future non-marital children doesn't always reflect a lack of trust in the other spouse. Estate planning inherently assumes a worst-case scenario. You are already operating under the assumption that you will die a premature death, so assuming that other bad things can happen isn't a big stretch. It can be very hard to know what will come down the road, so putting protections in place for second marriages if one spouse dies isn't necessarily an indication of how much you trust each other.

The surviving spouse may be tempted to use the money for a perfectly justifiable purpose – albeit not the purpose that the deceased spouse intended. In the scenario above, suppose the husband's father or sister got sick and needed financial help. Alternatively, suppose he remarries, has kids with the new spouse, and one of them gets sick. Few people would blame him for using his assets to pay their medical bills. In another scenario, the husband might die before his second wife; in the absence of a pre- or post-nuptial agreement, the second wife would have a right to one-third of his assets — even if his will leave everything to his kids (see "Rights of a Surviving Spouse" below). Leaving assets to a trust can protect against these scenarios.

Leaving Assets to Other Family Members

Disagreement can also arise when parents want to leave a portion of their assets to other family members, such as their own parents or siblings, instead of leaving everything to their spouse and children. This, too, can result in hurt feelings.

> When a conflict arises, it can help to identify exactly what each spouse is concerned about, and then work with an estate planning lawyer to come up with a solution to address those concerns.

In this scenario, it can be helpful to do some hard-nosed calculations to separate the actual financial concerns from the hurt feelings. How much money will the spouse and children actually need to support their lifestyle? The couple might try to come up with an amount that will provide sufficient financial security to sustain the family's lifestyle, and the amount above that number – or a percentage of an amount above that number – can be left to other family members. Purchasing a life insurance policy to benefit other family members can also be a good way to address this issue.

When a conflict arises, it can help to identify exactly what each spouse is concerned about, and then work with an estate planning lawyer to come up with a solution to address those concerns. Estate planning can be extremely flexible, so if you are able to come up with a solution, it can generally be incorporated into a will or trust. Consulting an independent professional, such as a financial advisor or even a marriage counselor, in addition to your estate planning attorney, may be helpful in getting both parties on the same page.

RIGHTS OF A SURVIVING SPOUSE

A spouse who is written out of a will – or is left less than one-third of his or her spouse's estate – has a remedy in the form of an “elective share.” The elective share entitles the surviving spouse to one-third of the deceased spouse’s estate, regardless of the provisions of the decedent’s will.

For example, suppose a wife’s will leaves all her assets in trust for her children and leaves her husband nothing. Upon her death, the husband can make a claim for one-third of the assets that would otherwise go into the trust.

A spouse who opts to take the elective share must give up his or her rights to any other assets. The right to an elective share can be waived by a pre- or post-nuptial agreement.

CHAPTER 8

Special Planning Issues

Some families have unique estate planning needs. Below are some tips for situations that call for specialized planning.

SAME-SEX PARENTS

Since the United States Supreme Court recognized the equal rights of same-sex couples in 2015, estate planning for same-sex parents is nearly identical to estate planning for opposite-sex parents. Still, if you are in a same-sex marriage, there may be a greater chance that your wishes would be contested, so it can be particularly important to put your legal documents in place. Additionally, if you die or become incapacitated in a state that is hostile to the rights of same-sex couples, the laws protecting your relationship may not be immediately enforced or may require a legal fight, and having your legal documents in order can provide added protection for your family.

Same-sex parents often have the additional estate planning wrinkle of having children who were born through artificial reproductive technology, discussed below.

ARTIFICIAL REPRODUCTIVE TECHNOLOGY

More and more children these days are born through artificial reproductive technology. This can present unique estate planning issues. When the parents of a child conceived in this way are also the child's biological parents, no unique planning issues are generally involved. However, when a sperm or egg donor is used, there is a need to ensure parental rights for the non-biological parent if the biological parent passes away. A non-biological parent's rights can be challenged even if that parent's name is on the birth certificate. The best way to secure the rights of the non-biological parent in New York is to do a second-parent adoption. A second-parent adoption is the only way to conclusively establish legal parenting rights for a non-biological parent.

SINGLE PARENTS BY CHOICE

If you are a single parent by choice, estate planning is particularly important because there is a far greater chance that your child could be left with no parent. The planning itself, however, is not much different from planning for other parents. In fact, in some ways, it can be easier because there aren't two people trying to agree on who should serve as the child's guardian or in other important roles. Just make sure you have your documents in order and that they are shared with a person close to you. Also be sure to put in place the documents discussed in Chapter 13, so that you have a backup plan in case you're unavailable for any reason.

DIVORCED PARENTS

There are two estate planning issues that specifically affect divorced parents. The most common concern among divorced parents is making sure their assets don't end up with a former spouse. The other less common, but often more important, issue involves preventing your ex from having custody of your children if you pass away.

Protecting Your Assets from Your Ex

In most states, including New York, if you are legally separated or divorced, all references to your former spouse in your will, power of attorney, and healthcare proxy are nullified. This provides some protection, but it does not completely shield your assets from your former spouse. There are a number of ways your ex can still end up with your assets.

> Until an order of divorce or legal separation is issued by a court, your spouse maintains all of his or her rights under your will or under the default state rules.

First , until an order of divorce or legal separation is issued by a court, your spouse maintains all of his or her rights under your will and under the default state rules. Suppose you found out that your spouse has been unfaithful, but you're still in negotiations about who gets the house. If you died before legally filing for divorce or separation, your spouse could end up with all (or a good chunk) of your assets. Even worse, in the absence of a healthcare proxy to the contrary, your spouse would be your default healthcare agent charged with making life-or-death decisions on your behalf.

Second, while divorce nullifies references to your former spouse in your legal documents, it does *not* nullify beneficiary desig¬nations for your retirement accounts. If you don't remove your ex-spouse as a beneficiary, he or she will receive the balance of the account if you die. For this reason, removing your spouse from beneficiary designations should be at the top of your to-do list immediately after – or even before – you get divorced.

There is another, less obvious, way your ex can end up with control over your assets. As explained in Chapter 3, any assets left directly to minor children are subject to a court-supervised guardianship until the children reach age of 18. If you don't have a will designating someone to administer the assets, a court will choose someone to fill that role, and there's a good chance that it will be your children's other parent. If you wouldn't completely trust your ex-spouse to spend your money wisely, you should leave your assets to a custodian or, better yet, a trust for your children. This will enable you to designate someone close to you to make decisions about how the money will be spent.

Another concern may be that your spouse would end up with your assets if one of your children were to die prematurely. If a child passes away after inheriting your assets, there is a good chance that the money would end up with your child's other parent if he or she were still alive. When Whitney Houston's daughter Bobbi Kristina Brown died at a young age, Houston's ex-husband Bobby Brown, who notoriously abused Houston, could have ended up with Whitney Houston's money. Because Houston had left her fortune in a trust for her daughter, the money was preserved for Houston's mother and sister. While most parents don't have the type of wealth that Whitney Houston had, any amount that ends up with an ex-spouse is usually too much.

Guardianship of Children

Another common question is whether you can designate someone other than your children's other parent to serve as their guardian in the event of your death. In most cases, the answer to this question is no. If the surviving parent is at all capable and wants custody of the children, a judge is unlikely to appoint a different guardian. Only in extreme cases, such as when a surviving parent has a drug addiction or a history of physical abuse, is a judge likely to appoint someone other than the surviving parent to serve as the children's guardian.

What should you do if you think your children's other parent is not fit to raise them? Even if a judge is unlikely to deny the other parent custody, you should designate another guardian if you truly believe that it would be better for your kids to be in the care of someone else. If the other parent has demonstrated neglect or abuse, document these events and prepare a letter explaining why the other parent is unfit to take care of the child in the event of your death. Keep this letter with your other estate documents.

CHILDREN WITH SPECIAL NEEDS

While the thought of not being there to raise your children is difficult enough for most parents, it can be particularly troubling for those parents who have children with special needs. If you fall into this category, it is important to create an estate plan that ensures your child will receive the best care, support, and resources available to allow them to thrive, notwithstanding their limitations.

Leaving assets to a child or loved one with special needs can affect their eligibility for government benefits vital to their care. Without proper planning, any inheritance would simply provide replacement funding for lost government services, with little-to-no net benefit to your child. With a special needs trust, you can provide for a child with special needs without affecting his or her eligibility for government benefits. Your child can continue to receive benefits, and the trust can provide resources to enhance the child's quality of life.

Planning for children with special needs does not begin and end with a special needs trust. In order to ensure that your child receives appropriate care, it is necessary to put in place a comprehensive plan that includes a choice of guardian, as well as documentation of drug regimens, therapeutic exercises, and dietary restrictions. You want to make it as easy as possible for a guardian to continue your child's care with as little disruption as possible.

NON-U.S. CITIZENS AND MULTINATIONAL FAMILIES

Estate planning can be a challenging task for anyone, but add multiple citizenships, minor children, and foreign assets into the mix, and it can become particularly complicated — and particularly important. Failing to have a plan in place in the presence of international issues can leave your family wading through a thicket of foreign court procedures and whopping tax bills. More troubling, your children may have no family nearby to take care of them, and they could end up in foster care if no one steps up to take them in.

Below are some tips that can help you protect your family if your assets or relatives' cross borders.

Designate a temporary or permanent U.S. guardian.

If you have minor children, your first priority should be making sure a trusted person is able to take legal custody of them in the event of your death or an injury that leaves you unconscious. When you live in a foreign country, far from family and close friends, it is critically important to designate someone who would take custody of your children immediately. It may take time for a family member to travel to be with your children and, even then, they may face an uphill battle in getting your children out of the country.

At best, it will take months — and possibly years — for a family member from outside of the country to be appointed as your children's legal guardian. For this reason, it is absolutely critical to have clear documentation designating a temporary guardian in the U.S., in addition to the foreign guardian.

Line up an executor in the U.S.

Choosing an executor can also present a problem when your family lives in another country. An executor is responsible for administering your estate when you pass away. This person typically retains a lawyer to assist them in filing the appropriate documents with the court and distributing assets to your heirs. While people often choose a close family member to serve as their executor, state law bars foreign residents who are not U.S. citizens from serving as an executor without a U.S. co-executor.

In the absence of an executor, the court may appoint a stranger to gather and distribute your assets. If you don't have family or close friends in the U.S., consider asking your accountant, financial advisor, or attorney. Alternatively, consider using a revocable living trust, which allows a foreign person to administer your assets as a trustee.

Create a revocable living trust.

If any of the individuals you have chosen to serve as your executor, custodian, or trustee for your Children's Trust live outside the U.S., it is usually a good idea to create a revocable living trust. (See Revocable Living Trusts in Chapter 5). Like executors, custodians and trustees of Inheritance Protection Trusts must be approved by the probate court, and foreign residents who are not U.S. citizens are not permitted to serve in these positions.

On the other hand, no court approval is necessary to appoint the trustee of a revocable living trust, and there is no requirement that the trustee live in the U.S. This can make the process a great deal easier if close friends and family members live abroad.

Create more than one will.

While most people should have only one will, if you own assets in more than one country, you may want to have a will for each of those countries. As a technical matter, a will be executed in the country where you permanently reside can apply to certain assets in other countries; however, applying a U.S. will to non-U.S. assets — and vice versa — can prove challenging as a practical matter, resulting in substantial delays and expenses.

Execute a power of attorney for each country where you own assets.

A power of attorney authorizes a designated person to access your assets in the event of your incapacity. This document can be extremely important if those assets are necessary to care for yourself or your family.

Financial institutions and governments are unlikely to recognize the validity of a foreign power of attorney. For this reason, you should execute a power of attorney for each country in which you own assets. To execute a power of attorney in a foreign country, you must work with an attorney who is licensed to practice in that country. Some financial institutions may have their own power of attorney forms which you can use instead.

Know your domicile.

Your domicile is the legal term for the place where you live and intend to stay. The concept of domicile plays an important role in estate planning and estate administration. Your estate is administered in, and under the laws of, the country in which you are domiciled, and estate taxes can differ dramatically based on your domicile. Knowing your domicile is the first step in figuring out what documents you need and what taxes you may be subject to.

Seek advice on estate taxes.

If you are a permanent U.S. resident but not a U.S. citizen, you are subject to U.S. estate tax on all your assets, wherever they are located — just like U.S. citizens. You are also entitled to the same estate tax exemption that applies to U.S. citizens (see Chapter 6). However, there are a few federal estate tax benefits for married couples that do not apply to noncitizens who are legal permanent residents. In particular, non-citizen spouses are not entitled to the unlimited marital deduction that applies to gifts and bequests to U.S. citizen spouses, so special planning may be required to minimize your family's estate tax exposure.

If you are living in the U.S. as a temporary resident, then very different tax and estate laws apply, so it's particularly important to seek legal advice for your situation. For instance, the U.S. estate tax applies only to your U.S. assets; however, your lifetime gift and estate tax exemption may be as low as $60,000, potentially creating a huge tax liability for your family.

Tax and estate laws can prove a minefield for multinational families. Careful planning can reduce unexpected taxes and minimize the challenges your loved ones could face if you pass away.

Get Professional Advice

If you have assets or family members that cross borders, the tips above can help you identify some of the issues that may arise in this context. However, this guidance only scratches the surface of the myriad issues that can arise in these situations. International estate planning is a highly specialized area of estate law. If these issues apply to you, it's important to consult with an attorney who has experience in these matters.

CHAPTER 9

Planning for Incapacity: Protecting Your Family if You're Out Cold

While much of the focus of legal planning is on protecting your family in the event of your death, it is equally important to plan for the possibility of your incapacity. You want to make sure that your family would be okay if you had a sudden medical emergency or were in an accident and ended up unconscious in the hospital.

POWERS OF ATTORNEY

> Until an order of divorce or legal separation is issued by a court, your spouse maintains all of his or her rights under your will or under the default state rules.

The best way to make sure your family would be financially taken care of if you became incapacitated is to execute a power of attorney. While a power of attorney is important for everyone, it is particularly important when other people are financially dependent on you. If you are responsible for paying important family expenses – such as your mortgage or childcare costs – someone else should be authorized to make those payments on your behalf if you're not able to. Having a power of attorney in place allows a trusted person to take over those responsibilities for you.

A power of attorney also provides your designated person with the ability to make legal decisions for you. This includes the ability to file your taxes, apply for Medicaid or other government benefits, and sign contracts and other legal documents on your behalf.

If you become incapacitated and do not have a power of attorney in place, your family may have to file proceedings with the court for authorization to make decisions for you. This process can be lengthy, expensive, and burdensome for your loved ones.

Springing Power of Attorney v. Durable Power of Attorney

There are two types of powers of attorney: a springing power of attorney and a durable power of attorney. A springing power of attorney only goes into effect if you become incapacitated. A durable power of attorney goes into effect immediately and remains in effect unless you revoke it.

You might think a springing power of attorney is the better option if your goal is to have someone else manage your finances only if you become incapacitated. The problem with a springing power of attorney is that it is seldom recognized by financial institutions in the absence of a court order. Use of a springing power of attorney is likely to require a legal proceeding, so it may be of little use for practical purposes. For this reason, estate planning lawyers generally recommend a durable power of attorney.

It is not unusual to be concerned that a durable power of attorney may be abused. Giving someone the power to empty your bank accounts is inherently dangerous, so you want to make sure that you trust that person completely. In order to provide additional protection, you can sign the document yourself but hold off on having your agent sign it. Without your agent's notarized signature, the document is not effective. After you've signed the document, you can entrust it to a third party with instructions to provide it to your designated agent if you become incapacitated. The third party cannot use it, and your agent cannot use it until he or she receives it from the third party and signs it in front of a notary.

HEALTHCARE PROXIES AND LIVING WILLS

A healthcare proxy allows a designated person to make medical decisions for you if you aren't capable of making those decisions yourself. Unlike a durable power of attorney, a healthcare proxy is only effective if your doctor determines that you are mentally incapacitated.

Many people confuse healthcare proxies and living wills. Living wills (also known as advance directives) are specific instructions about the medical treatment you wish to receive if you were inca-pacitated. For instance, if you were in a vegetative state, a living will might direct that you do not receive artificial life-sustaining measures, such as a feeding tube or ventilator. A living will does not provide any flexibility to your healthcare agent; the doctor or hospital must follow the instructions you have provided in the document.

Is one better than the other? Should you have both? At the very least, everyone should have a healthcare proxy because it allows someone to make decisions for you about treatments that might not be covered by a living will, such as certain medications or surgeries.

Whether you wish to have a living will is another question. The benefit of a living will is that it leaves no doubt as to what the doctors should do. They are legally obligated to carry out the instructions in the document.

On the other hand, a living will provides no flexibility to consider circumstances that you may not have foreseen. When you execute the document, you have no idea what age you will be at the time, what your specific medical problem will be, or what scientific advances will have been made with respect to your condition. For this reason, many people prefer to simply communicate their general wishes to their healthcare agent and leave the specific decisions to their agent's discretion.

CHAPTER 10

Do I Need to Hire a Lawyer?

With the advent of online legal document drafting software, you may be wondering if it is really necessary to hire a lawyer to draft your documents. While they are not a substitute for individualized professional advice, online solutions do have their place.

You might think of estate planning the same way you think about buying a car seat for your child. You don’t plan on being in an accident, but it’s extremely important that your child be in a car seat if you do.

It is almost always better for your child to have the cheapest car seat than no car seat at all. The same goes for your will.

Like estate plans, the quality of car seats varies widely. Some are safer than others. Some fit your child better than others. Certain car seats are more convenient to use – while others do the job but are more cumbersome to get your child in and out of.

Unless you absolutely must, you probably don’t want to buy the cheapest car seat available. That being said, it is almost always better for your child to have the cheapest car seat than no car seat at all. The same goes for your will.

THE BENEFITS OF USING AN ATTORNEY

While technology certainly has its benefits, there are some things you can only get with old-fashioned expert advice from a real person. Below are a few reasons it's usually better to work with an attorney than to go it alone.

You Don’t Know What You Don’t Know.

Did you know that it’s technically fine to name two people to serve as your executors but that it can be a nightmare in practice? Probably not, and Legal

Zoom isn't going to tell you. There are numerous issues just like this that an online document program won't warn you about. Estate planning lawyers have years of experience helping people who have run into problems in this field, so they can inform you about some not-so-obvious pitfalls, which you won't get with online software.

Saving Money Now Can Cost Your Family in the Future.
There are endless stories about individuals who relied on legal document software to save money, only to leave an expensive legal mess for their family when they died. While hiring a lawyer can seem expensive, not hiring one can often cost your family far more in money and headaches.

Estate Planning Is About More Than Documents.
As you might have gathered from reading this book, estate planning is about far more than legal documents. Having a comprehensive estate plan means choosing the right people for the right roles, planning for your non-probate assets, and making sure your plan will work in practice. A good estate planning lawyer will help make sure all of these pieces are in place.

No Software Program Can Replace a Personal Relationship.
Even in our digital era, nothing can replace the value of a personal relationship. Estate planning can be an intimidating and confusing process that touches on some of the most important and sensitive aspects of your life. Is your mother terrible with kids? Is your spouse bad with money? These aren't the types of things you want to entrust to a computer program. Furthermore, it can provide peace of mind to know that there is someone you can call when you have a question and who your family can call in an emergency.

WHEN TO DO IT YOURSELF

If you have few assets and little life insurance to leave to your family, then spending a good chunk of money to have a lawyer draft your will might not make a whole lot of sense. Your most important priority in this situation is to establish your choice of guardian. Your second priority is to get life insurance ASAP if you don't want your family to end up destitute in the event of your death.

Another instance where an online solution can make sense is when you're about to go on vacation and don't have enough time to have your documents done professionally. It may make sense to print something from an online program as a stop-gap measure.

If you do go the online route, know that it is laced with certain pitfalls. To steer clear of these, keep your documents simple, and pay careful attention to the execution of the documents.

Keep It Simple. Online documents can be a good solution for very simple plans. They are not a good solution for more complex matters and can be even worse than having no documents in certain situations. Setting up anything more than simple documents on your own can be a recipe for disaster.

Know What You're Setting Up. The value of hiring a lawyer lies not just in the documents the lawyer provides but also in the advice and custom tailoring that comes with it. Lawyers can answer questions about why documents are being set up a certain way, how they work in practice, and when they need to be changed or updated. Some online plans include consultations with a lawyer about your documents. If you go the online route, take advantage of this option.

Keep in mind that how your documents are set up and the exact wording of your documents is extremely important. In the world of law, the improper placement of a comma can have enormous consequences. If something happens to you and your documents are unclear or defective, there will be no opportunity to change or fix them if something is wrong.

Pay Attention to Execution. By far, the biggest pitfall with online document solutions is execution of the documents. In many (perhaps most) cases, people order the documents only to have them sit in their desk drawer without any signatures at all. Needless to say, in these situations – even though the online program seems like a good deal – it is a complete waste of money.

In New York, a will is valid only if execution of the document complies with specific rules, including a declaration of intent, signature, and the signature of two independent witnesses. Unless both you and the witnesses also sign a notarized affidavit declaring that you signed the will in the witnesses' presence and that you were competent to make the will, your executor will have to produce the witnesses to testify, perhaps many decades later. It may be very difficult for your family to find and produce the testimony of those individuals. In some cases, this situation is worse than having no will at all since locating the witnesses can result in substantial costs and delays.

Estate planning lawyers are practiced in overseeing the execution of these documents. Additionally, when a lawyer has prepared and overseen legal documents, they are far more likely to be upheld in the event of a challenge. The lawyer can testify as to the validity and intent of the document and verify that it was executed properly.

Think Beyond Your Legal Documents. Remember that an online document service provides you with one thing: documents. It does not help you put in place a comprehensive plan, so it can be easy to overlook things like non-probate assets that are not covered by your will. Pay close attention to the portions of this book that address aspects of planning not covered by your documents.

YOU GET WHAT YOU PAY FOR

Even if an online program provides a review by a lawyer, you won't be able to choose which lawyer to work with. Lawyers who are willing to work at the bottom-barrel rates paid by online document providers are probably not the best in the business and are unlikely to have specific expertise in estate planning. This may not be a problem if you have a very simple situation. However, if you have substantial assets, if there is anything unusual about your situation, or if you simply want the peace of mind that comes from having the help of a highly qualified professional, then an online solution probably isn't for you.

CHAPTER 11

Beyond Your Legal Documents

There is a secret lie that happens in estate planning. Families get fooled into thinking their loved ones are protected. They hired an attorney. The documents are signed. The notary stamps the pages. The attorney shakes their hand, hands them a folder, and tells them that their family is protected. As if these documents on fancy paper will sweep down out of the sky and protect their family if something goes wrong.

They leave feeling relieved. Maybe even proud. They did the thing that so many people put off for years. They faced the uncomfortable questions, made the hard decisions, and put it all on paper. They are one of the responsible ones.

Here is what no one told them: the signing was not the finish line. For most families, it isn't even close.

The documents in that folder are necessary. But they are not sufficient.

A will that no one can find is worthless. A trust that was never funded controls nothing. A plan that captured your wishes perfectly on the day it was signed — but hasn't been reviewed since your second child was born, since you moved to a new house, since you started a business — may bear almost no resemblance to the life it was meant to protect.

This chapter is about everything that should happen *after* the signing, but most often doesn't. Not because lawyers are trying to fool anyone. Not because these clients don't *want* to protect their families. But because estate planning has been practiced by lawyers the same way for literally hundreds of years, and it is utterly unsuited for modern life.

Suppose you planned an international vacation for your family. You researched the destinations, you mapped out the dates. You made the reservations. You had the tickets. You thought everything was all set. But you didn't check to see if everyone's passport was up to date. And when you get the airport, half your family can't board the plane. What happens to your perfectly planned trip? Your reservations? Your connecting flights?

Many estate plans are like that vacation plan. People think their legal documents are enough – until it's too late.

For your legal documents to work, you need a real plan. One that enables your loved ones to navigate our modern existence.

THE THREE THINGS MISSING FROM MOST ESTATE PLANS

When clients come to The Village Law Firm after working with other firms, we often find the same three problems. The documents exist. But the plan was never finished.

The Trust Was Never Funded

A revocable living trust is one of the most powerful tools in estate planning. As discussed in Chapters 4 and 5, a properly funded trust allows your assets to pass to your heirs without going through the probate process — saving your family time, money, and the burden of court involvement at the worst possible moment.

The key word is *funded*. A trust only controls the assets that are titled in the name of the trust or that name it as a beneficiary. If your house, your bank accounts, and your investment accounts are still titled in your name alone when you die, they will go through probate — regardless of what your trust document says. The trust, sitting in a drawer, will have no effect on those assets whatsoever.

> One of the most common mistakes in estate planning is a failure to fund a trust.

Funding a trust requires real work: retitling real estate, updating account registrations, changing beneficiary designations, and coordinating with financial institutions that have their own forms and procedures. It is not complicated, but it takes time and attention.

Most law firms don't include trust funding as part of their services. They draft the documents, oversee the signing, and consider the engagement complete. The client goes home with a trust that exists on paper but controls nothing in practice.

No One Inventoried the Assets

New York State currently holds *billions of dollars* in unclaimed funds — a significant portion of which represents money that families never knew existed. Bank accounts, investment accounts, life insurance policies, pension benefits: all of it left unclaimed because no one in the family knew to look for it.

This is not a problem of bad intentions. It is a problem of missing information. When someone dies, their family is suddenly responsible for locating, managing, and distributing assets they may have known very little about. If no one prepared an inventory — a clear, organized record of what exists and where it can be found — the result is often chaos.

An executor or trustee with no asset inventory must reconstruct a financial life from scratch, often while grieving, often under time pressure from creditors, courts, and financial institutions. Some assets are found. Others take months to locate. Some are never found at all.

The Practical Information Was Never Compiled

This is the gap that surprises people most, because it has nothing to do with legal documents at all. It's a true story, and I use it as a warning to my clients.

After the father passed away, a family discovered a mold problem in his lake house that resulted from a burst pipe that had been repaired before he died. The house couldn't be salvaged. In order to file an insurance claim, they needed two things: the homeowners insurance policy and documentation of the original repair. They couldn't find either.

Without this documentation, the family was out hundreds of thousands of dollars.

This loss was not caused by a defective will. It was not caused by an unfunded trust or an outdated beneficiary designation. It was caused by the absence of information that no attorney ever asked about because it falls entirely outside the traditional scope of estate planning.

WHAT YOUR FAMILY WILL ACTUALLY NEED

The legal documents matter enormously — but they answer legal questions. The practical information answers the questions that the legal documents govern. Below are the categories most commonly missing, and most likely to cause real harm when they are.

Insurance policies. Make sure your family can locate every policy you carry: homeowners, auto, life, umbrella, disability, and long-term care. For each one, record the insurer, policy number, coverage amount, and agent contact information.

Medical information for you and your children. If something happens to you and someone else steps in to care for your children, they will need to know your children's allergies, current medications and dosages, chronic conditions, and the names and contact information for their pediatrician, dentist, therapist, and any specialists. For children with serious allergies or special needs, this information is not merely helpful — it is essential.

You also need your own medical information documented. If you were in an accident and unconscious, your medications and medical history would be critical to your doctors and your healthcare agent.

Financial accounts and recurring obligations. Your family should have a record of every account: bank, investment, and retirement accounts. They will also need to know about automatic payments and recurring obligations — mortgage, utilities, insurance premiums, subscription services — that will continue to charge even after your death. Without this information, important payments may be missed, accounts drained by services no one knew existed, and the process of piecing together your financial life left entirely to an executor who is already managing grief and legal responsibilities simultaneously.

Property and home records. Your family will need your homeowner’s insurance policy — insurer name, policy number, coverage details, and agent contact — but also records of significant home repairs and improvements: contractor invoices, permits, warranties, and inspection reports. If a prior repair becomes relevant to an insurance claim after your death, those records may be the difference between a covered claim and a six-figure out-of-pocket expense. Keep a file, physical or digital, of every significant repair or improvement, including the contractor's contact information, the date of service, the nature of the work, and any permits or warranties associated with it.

Practical household information. Consider the information that keeps your household running: alarm codes, the location of important keys and documents, the combination to your safe, and the names and numbers of the service providers you rely on — plumber, electrician, accountant, financial advisor, attorney. None of this appears in a will. All of it matters when someone is trying to manage your home and affairs on your behalf.

PLANNING FOR DIGITAL ASSETS

These days, much of our personal information and many of our assets are stored electronically, which can make it challenging for an executor or someone acting under a power of attorney to access and manage your affairs.

For much of U.S. history, executors and heirs relied on paper documents and bills that arrived by mail to piece together a loved one's finances. Utility bills, bank and mortgage statements, and account notices were delivered to a person's house on a regular basis. Nowadays, you will find few, if any, of these things in a physical mailbox. Instead, they arrive in an email account. If no one has access to that account, it can become nearly impossible to determine where someone's money is held and what bills need to be paid.

The Practical Solution: Password Managers

In practice, the easiest way to ensure your family can access your digital life is to make sure they have your passwords. Because passwords change frequently, the best approach is to use a password manager — such as 1Password, LastPass, or Apple Keychain — that stores all your login information in one encrypted location.

Many of these services offer an Emergency Access or Digital Heir feature, which allows you to designate a trusted person who can request access to your vault. If you do not deny the request within a set period — typically seven to thirty days — they are automatically granted access. This allows your executor to manage your affairs immediately, without having to fight with a customer service department or wait months for a legal process to run its course.

The Legal Safety Net: New York's Article 13-A

If you have not set up a password manager, your executor must rely on New York law. New York has adopted Article 13-A — the Uniform Fiduciary Access to Digital Assets Act — which provides a legal mechanism for your executor to access your accounts, but only if you have given them explicit permission in your legal documents.

Under this law, the hierarchy of authority works as follows:

- **Online tools (the gold standard).** Some platforms allow you to designate a legacy contact directly — Facebook's Legacy Contact and Google's Inactive Account Manager are examples. If you use these tools, your designation overrides everything else, including your will.
- **Your legal documents.** If you have not used an online tool, the law looks to your will, trust, or power of attorney. If these documents explicitly grant authority to your fiduciary, the service provider

must legally grant access.

- **Terms of service.** If you have done neither of the above, you are bound by the platform's default terms of service. In almost all cases, this means no access for your family.

It is also critical that your estate planning documents explicitly grant access to the content of your electronic communications — not merely the catalogue. Without that specific language, companies may provide only a list of who you emailed and when, rather than the emails themselves.

Cryptocurrency: The Asset You Can Lose Forever

If you own cryptocurrency or NFTs, standard estate planning rules do not apply. Unlike a bank account, there is no customer service department to call and no password reset. Cryptocurrency is secured by a private key — or a seed phrase of twelve to twenty-four words. If you have the key, you have access to the funds. If the key is lost, the funds are gone permanently.

A common and dangerous mistake is writing the private key or seed phrase inside your will. Your will becomes a public record once it is submitted to probate court. Anyone — including criminals — can access it. If your private keys are in the will, anyone who finds it can drain your wallet instantly.

Instead, write your access instructions in a separate, secure document — not attached to your will. Store it in a physical safe or other secure location, and reference its existence in your asset inventory. For larger holdings, consider using a multi-signature arrangement that requires more than one key to authorize a transaction, so no single person can access the funds unilaterally.

LETTERS TO GUARDIANS AND TRUSTEES

Your legal documents establish the structure of your plan. Your letters to the people in those roles give that structure a human voice.

A letter to your children's guardian can help ensure that your children are raised in accordance with your values and provides guidance that no legal document can capture. It might address your children's personalities and needs, the relationships you want them to maintain, how you feel about education and religion, and the kind of upbringing you envisioned for them. It should also include critical practical information: allergies, medications, emotional issues, and contact information for doctors, dentists, and therapists.

A similar letter to your trustee or custodian can provide guidance about how you would like the trust assets to be used. As discussed in Chapter 5, your trust document should give the trustee broad discretion to respond to unanticipated events. A letter allows you to provide specific guidance — about education, housing, travel, family obligations — without legally constraining your trustee's ability to adapt.

Neither letter is legally binding, but both are invaluable. They give the people you have entrusted with your most sacred responsibilities a window into your intentions — something no legal document, however carefully drafted, can fully provide.

WHERE TO KEEP YOUR DOCUMENTS

Once your legal documents are executed, where you keep them matters as much as what they say. A will that cannot be found is, for practical purposes, no will at all.

A will is one of the few documents that must be produced in the original. Copies of other documents may suffice, but you want to make absolutely certain that someone you trust has access to the original will. Options include a fireproof home safe, the home of a family member or close friend, or your attorney's office.

The benefit of storing your will with a law firm is that a lawyer can attest to the chain of custody if the document is lost or damaged. It is one of the few circumstances where a court will allow a copy of the original document.

If you rely on a law firm to store your documents, make sure that you have a contract in place for the terms of service, with a requirement to return the document if the law firm stops offering the service or shuts down. You should keep in regular contact with the firm, so that you are aware if the attorney retires or the firm shuts down.

Whatever storage method you choose, make sure that at least one trusted person knows your documents exist, knows where to find them, and has the access needed to retrieve them in an emergency. Share your attorney's contact information with that person as well.

A DIFFERENT KIND OF ESTATE PLANNING

Everything described in this chapter — funding your trust, inventorying your assets, compiling practical information for your family, protecting your digital life, writing letters to your guardian and trustee, storing your documents securely — represents the difference between an estate plan that exists on paper and one that actually works.

Most law firms provide the basics. The documents are drafted and signed, and the engagement ends. What happens next — whether the trust is funded, whether the assets are inventoried, whether the family information is ever compiled — is left entirely to the client.

Most clients, understandably, never get to it.

> The gap between a signed document and a complete plan is where most families are left unprotected. Closing that gap requires a dynamic plan that incorporates practical details of everyday life.

At The Village Law Firm, we approach estate planning differently. Signing your documents is not the end of the engagement. It is the beginning of the most important work.

After your documents are executed, we work with you for up to three months to make sure your plan is complete in every sense of the word. That means funding your trust — transferring assets, retitling accounts, changing beneficiary designations — so that the structure you built actually controls the assets it was designed to protect. It means preparing an inventory of your assets, so that your family and executor will know exactly what exists and where to find it. And it means helping you compile the practical information your family will need: insurance policies, home repair records, medical information for your children, digital account access, and more.

We also offer a continuity program, where we store your legal documents and other important information mentioned above and meet with you annually to ensure everything is up to date. If something does happen, we have everything needed for your loved ones to start the process of piecing their lives back together. All they need to do is call us.

This is what we mean when we say comprehensive estate planning. Not a transaction, but a relationship. An ongoing commitment to making sure your family is truly protected — not just on the day you sign, but for every day that follows.

What a Complete Estate Plan Includes

Legal documents (will, trust, powers of attorney, healthcare proxy)
A fully funded trust — assets transferred and beneficiary designations updated
A comprehensive inventory of assets and where to find them
Compiled practical information: insurance policies, home repair records, children's medical information, digital access
Letters to your guardian and trustee
Secure, accessible document storage
An annual review to keep the plan current as your life evolves

The first item on this list is what most law firms provide. The rest is what separates a complete plan from an incomplete one.

CHAPTER 12

Financial Resources and Estate Planning

In addition to your legal documents, you want to make sure that sufficient financial resources would be available in the event you die or develop a disability. The most sophisticated trust is of little use if there's nothing to put in it.

There are two ways to make sure that your family has adequate financial resources if they can no longer rely on your income. The most common way is insurance. The alternative is to self-insure. Self-insuring means that there are sufficient assets to support your family in the absence of your income. Because the amount that would be required to sustain most families for a long period of time is substantial, very few parents are able to self-insure. For everyone else, life insurance and disability insurance are critically important.

DISABILITY INSURANCE

While most people think of their house or their retirement account as their most valuable asset, in most cases, your greatest asset is your ability to work. Losing one parent's income – or one parent's unpaid labor – can be devastating. Even if you are a stay-at-home parent and don't get a paycheck, replacing the work you do could cost your family well over $100,000 annually.[10] If your income or ability to work is permanently lost, it could leave your family destitute, so a plan to replace that income if something happens to you is critical to making sure your family is provided for.

[10] http://www.businessinsider.com/value-of-stay-at-home-moms-2013-5.

No one thinks that he or she will develop a long-term disability. However, the reality is that illness and injuries can happen to anyone at any time. To give you an idea of the magnitude of this risk, a healthy, non-smoking 35-year-old female has a 25% chance of developing a disability before retirement age, with the average disability lasting 82 months. For a 35-year-old male, the risk is just slightly lower.[11]

Imagine if you were in a car accident and suffered a head injury, or if you were diagnosed with a disabling autoimmune disease (which often develops during a woman's childbearing years). How would that affect your family's financial situation? Would you be able to continue paying your mortgage (or rent)? Would you be able to continue to pay for your child's private school or after-school activities? How about summer vacations? In order to make sure that your family won't suffer more than necessary in the event that you developed a disability, you need either a good disability insurance policy or enough assets to support yourself and your family for several decades.

Types of Disability Insurance

If you decide that disability insurance is a good idea, make sure you purchase a policy that will cover your needs. There are two main types of disability policies: own-occupation and any-occupation.

An own-occupation policy pays benefits if you suffer a disability that renders you unable to continue in your current occupation. If you are a teacher, this type of policy would pay benefits if you were unable to teach. If you are a lawyer, it would pay benefits if you were no longer able to practice law.

An any-occupation policy is much more limited: it pays benefits only if you are unable to work in "any occupation." An any-occupation policy pays nothing if you could no longer practice medicine, but you could work at McDonalds or a call center. This type of policy may be useful if you were to suffer a catastrophic injury, but it provides no benefit in the more likely scenario that you suffer a disability that prevents you from working in your current job but is not completely incapacitating.

For most families, an own-occupation policy is the best way to protect against the financial hardship that can accompany a disability. Talk to a financial advisor or an insurance agent about your options. The policies may vary in terms of waiting periods before payments would begin and the portion of your salary that the policy pays.

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[11] Council for Disability Awareness, http://www.disabilitycanhappen.org/chances_disability/disability_stats.asp

LIFE INSURANCE

Life insurance is one of the most complex financial products you can buy. There are endless types of policies, some of which even experienced financial professionals find difficult to understand. To make things worse, life insurance agents are notorious for pushing the most expensive policies, which often aren't the best choice.

The information below can help you understand the different types of life insurance, how to choose a policy that meets your needs, and how to figure out the amount of coverage you should buy.

When You Should Buy Life Insurance

Many parents wait until a pregnancy occurs before they look into getting a meaningful life insurance policy. For most women, this can be too late.

> Many life insurance companies refuse to provide coverage for pregnant women.

Once someone is pregnant, it is far more difficult – and sometimes impossible – for them to obtain new or increased coverage during the pregnancy. While pregnancy and childbirth in the U.S. are relatively safe, they still carry significant health risks that affect the cost of insurance. Many life insurance companies refuse to provide coverage for pregnant women. Other companies may provide coverage at an increased premium and/or require heightened medical screening. The same is true with disability insurance.

It is best to purchase coverage as soon as you start trying to become pregnant so that insurance benefits are available in the unlikely event that you do not survive the pregnancy, but your child does. By purchasing coverage prior to getting pregnant, you lock in a lower premium, and the insurance company cannot cancel your policy once you conceive.

If you are already pregnant and cannot obtain coverage, apply for it as soon as possible after delivery. Life insurance might be the last thing you're thinking about with a new bundle of joy – and less joyful sleepless nights – so make sure you set a reminder for yourself or ask a close friend or relative to remind you to get it taken care of.

Figuring Out How Much Life Insurance You Need

There are many different approaches to calculating how much life insurance you should buy, but most boil down to how much money your family would need in order to maintain their standard of living in your absence.

The primary factors that go into this calculation are:

- Your annual financial contribution to household expenses.
- The value of your non-financial contributions to the family.
- Your expected contribution to long-term family goals; and
- Your net savings (or debt).

The calculation also should incorporate fluctuations in your family's financial needs over time and investment returns on the policy proceeds.

Step One: Calculate Your Family Financial Contribution. The first figure to calculate is the amount you expect to contribute to your family's expenses over time. To arrive at this figure, determine the amount of your income that you expect to allocate to household expenses each year, which we'll refer to as your annual Family Financial Contribution. This number should not include any amount spent on yourself individually. If you won't be around to make the money, you won't be around to spend it either. It should, however, include the financial support you provide to your spouse, especially if he or she is the primary caregiver.

For example, suppose you earn $200,000 per year and pay $50,000 in income taxes. You contribute $40,000 to your 401(k) plan, save $5,000 in a separate brokerage account, spend another $5,000 on your own personal expenses (food, transit, clothing), and the remaining $100,000 is spent on housing, food, and other family expenses. Your Family Financial Contribution for the year would be $100,000.

If you expect your income to increase substantially in the near future, your financial contribution may not accurately reflect the amount necessary to provide the standard of living you envision for your family. For example, if you are in graduate school, starting a business, or completing a medical residency, your current income may be much lower than you expect it to be in a few years. If this is the case, it may be better to look at the amount that you expect to contribute to family expenses in the future

Step Two: Calculate the Value of Your Domestic Work. Next, consider the value of non-financial contributions you make to the household, especially if you are the primary caregiver. For example, watching your children, taking them to doctors' appointments, managing school and extracurricular activities, and helping your kids with their homework are all activities that fall into the category of non-financial contributions. While you don't get a paycheck for doing these things, your spouse might have to pay someone to do them if you weren't around. If you are the primary caregiver, look at the cost of hiring a full-time nanny in your area. Your life insurance should reflect at least that amount. Even if you are not the primary caregiver, you want your policy to cover the cost of replacing any unpaid help you provide to the household, whether that be cooking meals or dropping the kids off at school.

Continuing our example, let's suppose you contribute approximately $10,000 per year in domestic labor, such as tutoring your kids, shuttling them to and from afterschool activities, and doing household chores.

Step Three: Estimate Your Financial Contribution to Family Goals. Finally, consider the financial goals that you have for your family – for example, your children's college education, part of your spouse's retirement, or a family vacation home. You want your life insurance policy to replace any contribution that you are planning to make towards these goals.

In our example, you and your spouse plan to pay for four years of college for each of your two kids (approximately $600,000). You expect your spouse to contribute half of this amount, with your expected contribution being $300,000. If your spouse is the primary caregiver, then you might want to designate enough for his or her retirement as one of your goals.

Step Four: Determine Changing Family Needs Over Time. It is important to consider how the financial needs of your family are likely to fluctuate over time. If you have a young child who goes to private school, you can expect those costs to continue until the child graduates from high school. On the other hand, if your child is currently in daycare and you expect him to attend public school, your expenses are likely to go down in the near future. Your domestic contributions are also likely to decline as your children get older and need less direct supervision. Once your children complete their education and (hopefully!) become self-sufficient adults, your household costs should decrease substantially.

Considering the family lifecycle, it often makes sense to have more insurance coverage earlier on and less in later years. If one or both parents die while the children are still young, more money will be needed than if a parent dies later, when the children are grown and can take care of themselves.

To calculate the amount of coverage using our example and taking into account the changes in the family lifecycle, we need to break the analysis down into different stages based on the family's evolving needs.

In our example, we might separate the analysis into three stages: Years 1-20 (childrearing stage); Years 21-40 (empty nest stage); and Years 40+ (retirement stage).

In Years 1-20, your financial contribution to the family is $100,000 per year and the value of your domestic contributions is $10,000 per year, for a total of $2,200,000 over 20 years.

In Years 21-40, you expect your household expenses to drop approximately 50%, with your expected contribution being $50,000. The value of your domestic contributions drops to $4,000. The total value of your contribution to the family during this period is $1,080,000.

In Years 40+, you are retired and are not earning any income. The value of your domestic contributions is $2,000, for a total contribution of $40,000 (assuming you live until Year 60).

The total value of your annual contributions to the family is $110,000/year for Years 1-20, $54,000/year in Years 21-40, and $2,000/year in Years 40+.

Using a simple calculation of the figures above gives us a total of $3.62 million:

$2,200,000 Contribution to Household Expenses Yrs 1-20
+$1,080,000 Contribution to Household Expenses Yrs 21-40
+ $40,000 Contribution to Household Expenses Yrs 41-60
+ $300,000 Contribution to Long-Term Goals

$3.62 million Unadjusted Lifetime Family Financial Contribution

Step Five: Adjust for Inflation and Investment Returns. Fortunately, we can reduce this number substantially when we account for the fact that life insurance is paid out in a lump sum and investment earnings on the proceeds can provide additional funds to meet your family's needs. On the other hand, we need to adjust the cost of maintaining the family's standard of living for inflation: the cost of food, clothing, and housing in the future is going to be higher than it is today.

Over time, investment returns generally outpace inflation, so making these adjustments has the effect of lowering the amount of insurance you need. The adjusted figure is referred to as the "present value" and can be calculated using a financial calculator or an Excel spreadsheet. If, like most people, you are unfamiliar with these types of calculations, it is best to hire a professional to help.

A conservative estimate assumes a 3% rate of inflation and a 5% annual return on investment. Applying this to our calculation above, and adjusting for present value, we get approximately $2.64 million – nearly $1 million less than our simple calculation. This represents the total amount needed to-replace your expected financial contributions to your family throughout your life.

Adjusted Lifetime Family Financial Contribution = $2.64 million

Step Six: Add Net Savings (Debt). The last step is to subtract your current savings from your Adjusted Lifetime Family Financial Contribution because the money you have saved can be used to offset the future needs of your family. Likewise, if you have negative net savings (i.e., debt) then the amount needed to pay off the debt must be added to the amount needed to provide for your family.

When it comes to a mortgage, take care not to count the cost twice. If you include your mortgage payment in calculating your Family Financial Contribution, then you should not include it as debt. On the other hand, if you prefer that the mortgage be paid off immediately upon your death, then count the amount of principal as debt, but exclude mortgage payments from your Family Financial Contribution.

In our example, we subtract $300,000 in savings, giving us $2.34 million, which is the amount of life insurance coverage needed.

2,640,000 Lifetime Family Financial Contribution — $300,000 Savings
2,340,000 Insurance Coverage Needed

Two million dollars may seem like a high number, but keep in mind that you won't always need this much insurance. The amount of insurance your family needs will go down each year as your savings increase, your debt is paid off, and the multiplier (number of years) left in each period of the Family Financial Contribution calculation declines. For example, in Year 10, the first and largest number in the Expected Lifetime Family Financial Contribution equation will be cut in half and eliminated entirely in Year 20.

Make Additional Adjustments. While the calculation above may seem complex, it is actually a simplified version of a more sophisticated analysis. A comprehensive calculation would include adjustments for taxes, health insurance, other employee benefits, and immediate costs incurred upon a death (burial expenses, family time off, etc.). Because of the complexity of this calculation, most parents would benefit from the assistance of a professional in determining the amount of life insurance they need.

The Differences between Whole, Universal, and Term Life Insurance

Life insurance policies can be divided into two main categories: term life insurance and permanent life insurance.

Term Life Insurance. Term insurance is the simplest and least expensive type of life insurance. A term policy provides coverage for a certain "term" of years for a fixed annual premium. When that term is up, the premium often increases significantly to account for your age. For example, a 40-year-old man might pay $700 per year for a 20-year term policy with a death benefit of $1 million. At the end of the 20 years, he might be able to renew it for $15,000 per year. If he has developed a health condition, the premiums may be much higher, or he may not be able to renew the policy at all. For an additional cost, some term policies allow the owner of the policy to automatically qualify for another policy when the term expires, regardless of the insured's health.

Permanent Life Insurance. In comparison to a term policy, permanent insurance is generally more expensive. The typical permanent life insurance policy is called whole-life insurance. To give you some idea of the difference in premiums, a $1 million whole life policy for a 40-year-old male might cost $6,000 per year, compared to $700 per year for a term policy. With a whole-life policy, however, the premiums never increase, and you can maintain the insurance regardless of your health.

Permanent life insurance is best thought of as a term policy plus an investment vehicle. When you are younger, the insurance company allocates a portion of the premium to term insurance and invests the remainder, which is used to build up a cash value and to offset the higher cost of insuring you as you get older.

In most cases, purchasing a term policy and investing the remainder in a diversified stock and bond portfolio will provide a higher return than purchasing a whole life policy and having the insurance company invest the money for you. Separating your investment from your insurance allows far greater flexibility to respond to changing plans or circumstances. If you invest money in stocks and bonds and decide to buy a vacation house instead of saving money for your heirs, there is no penalty to sell the investments. If, instead, you had invested the money in a whole life policy and then decided to use the funds from the policy for another purpose, you would pay a heavy financial penalty for cancelling the policy and withdrawing the funds. You may be able to borrow against the policy, but that, too, will cost you.

A universal life insurance policy is a type of permanent insurance that is a hybrid between a term policy and a whole life policy. A universal life policy allows greater flexibility in the investment portion of the insurance, with the potential to earn higher returns and reduce premiums in later years. However, like a whole-life policy, it cannot be cancelled easily, and if the investment portion fails to perform as expected, premiums can skyrocket in later years. As a result of poor predictions by insurance companies, universal life insurance policies have created significant problems in recent years, as older policyholders have been forced to pay unexpectedly high premiums just to keep the policy in place and avoid a heavy penalty.

The Tax Benefits of Life Insurance

Life insurance is often referred to as a "tax-free" investment. While it is true that the proceeds of a life insurance policy are not subject to income tax, it is a common misconception that the policy is also exempt from estate tax.

Because life insurance is not exempt from the estate tax, a life insurance policy can push your estate above the federal and/or state estate tax exemption. If you believe your insurance policy might subject your family to estate taxes, you may be able to eliminate your estate tax exposure by purchasing the policy through an irrevocable life insurance trust. (See Irrevocable Life Insurance Trusts in Chapter 6).

It is important to keep in mind that tax benefits alone do not make life insurance a good investment. It is necessary to look at the potential tax savings in light of the overall financial benefits. This analysis will vary depending on your individual circumstances.

Determining What Type of Policy Is Best for You

In most cases, a term life insurance policy is the optimal choice for parents with young children. This is the only type of policy that allows you to separate the insurance function of a policy from the investment function, and its lower premiums free up money to save for your retirement or other financial goals. Even with its tax benefits, the return on a life insurance policy will rarely equal returns from an individual investment portfolio, and you may pay heavy penalties if you need to withdraw the money.

> In most cases, a term life insurance policy is the optimal choice for parents with young children.

There may be some cases where purchasing a permanent life insurance policy makes sense. In most states, including New York, the cash value of the policy makes sense. In most states, including New York, the cash value of the policy is exempt from bankruptcy and unreachable by creditors. If you are a doctor or otherwise have a high risk of being sued, putting money into a life insurance policy can make a lot of sense. In certain situations, a permanent policy can also be a good choice if you are in a high-income tax bracket.

Because of the complexity of various permanent life insurance policies, most parents would benefit from professional advice - ideally from an unbiased financial advisor - before purchasing this type of policy.

Using Multiple Life Insurance Policies

Because the amount of insurance a family needs can decline substantially as children get older, some parents purchase multiple-term policies to reflect the different amounts of coverage needed during each time period. In our example, you might purchase a \$1 million 10-year policy and a \$1.5 million 20-year policy instead of purchasing a \$2.5 million 20-year policy. This strategy reduces the cost of insurance by eliminating excess coverage in later years.

CHAPTER 13

Protecting Your Kids in an Emergency

Whether you are out of the country or stuck on the subway, there are times when you can't be physically present with your children. In these cases, it is important to make sure a trusted adult is able to step in if needed.

Two documents enable a friend or family member to attend to your children's needs in your absence: a medical consent form and a written authorization to pick up your child.

MEDICAL CONSENT FORM

In the absence of written permission, only a parent or legal guardian may authorize medical treatment for your children. If you aren't present and you haven't provided written consent to another adult, a doctor or hospital may refuse to treat your children (with the exception of life-saving measures).

If you plan to be away for any period of time, you can execute a medical consent form to authorize a relative or caregiver to consent to medical treatment for your children during your absence. In New York, medical consent forms covering a period of more than 30 days must be notarized, and all medical consent forms expire after six months.

AUTHORIZATION TO PICK UP CHILD

You should also ensure that a friend or family member is authorized to pick up your children from school or extracurricular activities in your absence.

By law, an organization may not release your children to someone who is not a parent or legal guardian unless you have given them prior written authorization to do so. If you are in an accident and your children are in the care of a school or other organization, the organization may not legally release your children to a nonparent adult – even a grandparent – in the absence of your written permission. In the event no authorized person is available to pick up your child, the organization may contact the police or child protective services.

To prevent this from ever happening to your children, make sure a trusted person is authorized to pick them up in the event of an emergency. Talk to your children's school or daycare center about the procedures they follow if neither parent is available. The organization will usually require advance written authorization by the parent before they will release a child to someone else.

CHAPTER 14
Conclusion

Thinking about your own mortality can be scary, but it's an import-ant part of being a responsible parent. While you can't always prevent an accident or illness, you *can* take steps to ensure that your children receive the best care possible in the worst of circumstances.

With the information in this book, you should be ready to start protecting your family right away. The most important part of planning is taking action. The sooner you put something in place, the better off your family will be.

APPENDIX A:

Checklist for Protecting Your Family

CHECK THE COMPLETED SAFETY PROVISIONS

- [ ] Will with guardianship designation
- [ ] Trust (included in will or separately) for assets
- [ ] Inherited by children. Alternatively, custodial provisions in will
- [ ] Standby Guardianship Designation
- [ ] Power of Attorney
- [ ] Healthcare Proxy
- [ ] Updated beneficiary designations
- [ ] Life Insurance
- [ ] Disability Insurance
- [ ] Letters to Guardian and Trustee/Custodian
- [ ] Document authorizing emergency contact to pick child up from school/activity
- [ ] Medical Consent Form (when you’re away)
- [ ] Inventory of Your Assets
- [ ] Plan for Transfer of Digital Assets

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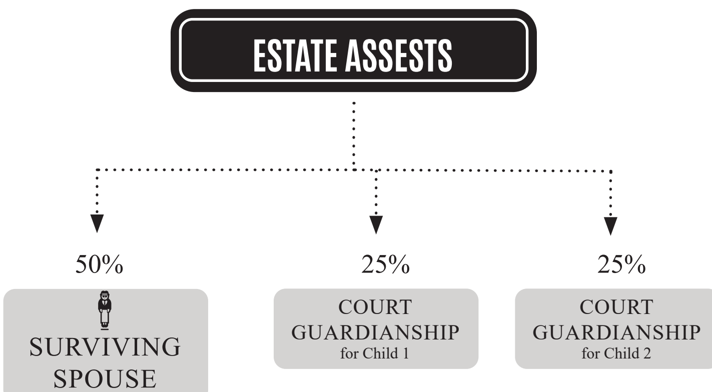
APPENDIX B:

Illustrations of Estate Structures

ILLUSTRATION 1:

NO WILL
MARRIED WITH TWO CHILDREN



HOW A COURT-SUPERVISED GUARDIANSHIP WORKS

- Guardian of assets must file annual, public reports detailing how assets are invested, what income is earned on the assets, and how the money is being spent for each child.
- Guardian of assets cannot use assets allocated to one child for the benefit of the other children.
- Assets are transferred to each child when he or she turns 18.
- Surviving parent must comply with court's guardianship requirements.

ILLUSTRATION 2:

SIMPLE WILL

WILL

Leaves everything to spouse, if living.
If spouse is not living, assets are divided equally and held in a court-supervised guardianship for each child.

COURT GUARDIANSHIP
for Child 1

COURT GUARDIANSHIP
for Child 2

BENEFITS

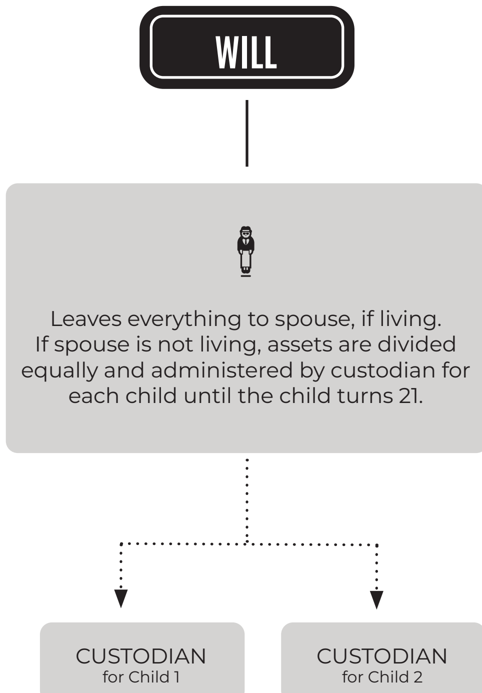
- Prevents assets from going into court-supervised guardianship if spouse survives.

DRAWBACKS

- Doesn't avoid probate.
- Doesn't protect assets if surviving spouse remarries.
- If both spouses die, children's inheritance goes into
- court- supervised guardianship.
- Child receives assets without restriction on 18th birthday.

ILLUSTRATION 3:

SIMPLE WILL WITH CUSTODIAN PROVISIONS



BENEFITS

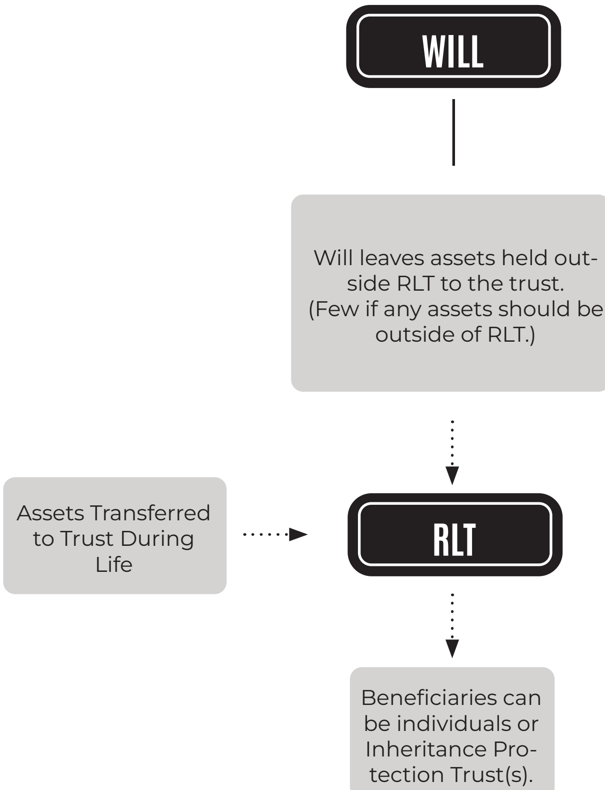
- Simple
- Inexpensive
- Prevents court-supervised guardianship of assets

DRAWBACKS

- Doesn't avoid probate.
- Doesn't protect assets if surviving spouse remarries.
- Child receives assets without restriction on 18th birthday.

ILLUSTRATION 4:

REVOCABLE LIVING TRUST

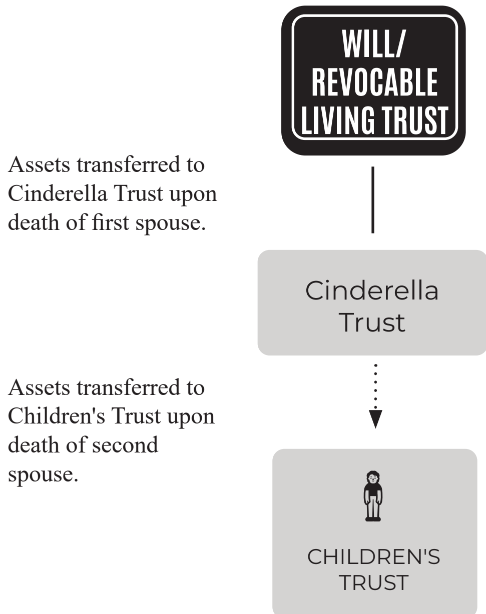


BENEFITS OF REVOCABLE LIVING TRUST

- Assets in the trust avoid probate.
- No (or minimal) court proceedings needed to administer estate.
- Faster than court administration.
- Can be administered by foreign person.
- Eliminates need for multiple court proceedings if you own property outside of New York State.

ILLUSTRATION 5:

INHERITANCE PROTECTION TRUSTS



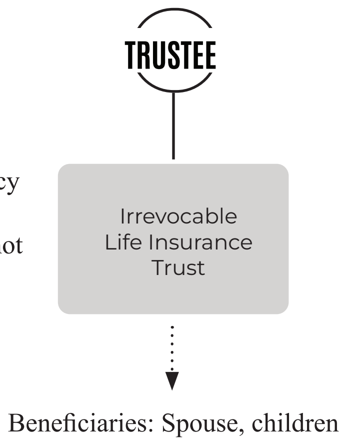
BENEFITS OF INHERITANCE PROTECTION TRUST

- Protects assets if surviving spouse remarries.
- You designate age at which children have control over inheritance.
- Flexibility in distributions if one child has greater need (.e.g.,
- medical expenses).
- Trust assets protected from creditors for child's lifetime.

ILLUSTRATION 6:

IRREVOCABLE LIFE INSURANCE TRUST

- Life Insurance policy is owned by trust.
- Insured parent cannot control trust assets.



BENEFITS OF IRREVOCABLE LIFE INSURANCE TRUST

- Minimizes estate taxes by removing life insurance proceeds from your taxable estate.

APPENDIX C:

Overview of Estate Structures[11]

	Will	Chil-dren's Trust	Cin-derella Trust	Revo-cable Living Trust	Irrevoca-ble Life Insurance Trust
Designates guardian for children	X				
Shields children's inheritance from court supervision and public exposure of sensitive information		X			
Prevents children from receiving all their inheritance at the age of 18		X			
Protects assets from children's future creditors and spouses		X			
Protects children's inheritance from second marriage			X		
Prevents assets from going through probate process				X	
Minimizes NYS estate taxes			X		
Minimizes federal estate taxes					X

[11] Assumes both parents pass away.

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ABOUT THE AUTHOR

Shannon P. McNulty is an estate planning attorney and Founder of The Village Law Firm in New York City, which provides comprehensive tax and estate planning for individuals and families. Ms. McNulty and her team counsel clients on legal strategies for building and preserving their wealth and protecting their loved ones, with a focus on parents with young children.

Ms. McNulty graduated *cum laude* from Georgetown University Law Center and received her LL.M. in Taxation from New York University School of Law. She has also earned the CFP® designation from the Certified Financial Planner Board of Standards.

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